

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no.: 1679 of 2023
Date of filing: 20.04.2023
Date of decision: 22.08.2024

Sangeeta Bansal
R/o H.No.10, Type 7, Vidyut Nagar, Hisar, Haryana-
125001.

Complainant

Versus

M/s Vatika Ltd.
Office address: Unit-A002, INXT City Centre, Ground
Floor, Block A, Sector 83, Vatika India Next, Gurugram,
Haryana-122012

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Nitin Khanna (Advocate)
Shri Anurag Mishra (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details.

2. The particulars of the project, the amount of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Vatika India Next (Phase-II)" at Sector-82, 82A, 83, 84 & 85 Gurugram.
2.	Project area	182 Acres
3.	Nature of Project	Residential Complex
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018
5.	Name of Licensee	M/s Buzz Technologies Pvt. Ltd. & Others.
6.	Rera registered/ not registered and validity status	Registered (for Vatika India Next Phase-II) Vide no. 36 of 2022 dated 16.05.2022 Valid upto 31.03.2029
7.	Unit No.	HSG-014A-Floor no.1-Plot no.52, ST, K-8.1 (As per page no.55 of complaint)
8.	Unit area admeasuring	929.02 sq. ft. (As pre page no.24 of complaint)
9.	Date of buyer agreement	21.09.2009 (with first allottee i.e., Prem Tanwar) (As per page no.22 of complaint)
10.	Endorsement (in favour of complainant i.e., Sangeeta Bansal)	27.09.2012 [As stated by the counsel for the respondent during the proceedings dated 22.08.2024]
11.	Agreement to sell (between original allottee and complainant)	27.09.2012 (As per page no.44 of complaint)
12.	Possession clause	10.1 Schedule for Possession of the said independent dwelling unit <i>"That the company based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/said independent dwelling unit within a period of three (3) years from the date of execution of this agreement unless there shall be delay or there shall be failure due to</i>

		<i>reasons mentioned in clause (11.1), (11.2), (11.3) and Clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues..... (Empasis Supplied)"</i>
13.	Due date of possession	21.09.2012 (calculated from the date of execution of buyer's agreement)
14.	Addendum to buyer's agreement (for change in unit no.)	29.12.2017 (As per page no.54 of complaint)
15.	Total Sale Consideration	Rs.22,60,607/- (As per page no.24 of complaint)
16.	Amount paid by complainant	Rs.19,13,041/- (As confirmed by both the counseis during the proceedings dated 25.07.2024)
17.	Occupation certificate	Not obtained
18.	Offer for possession	Not offered
19.	Cancellation letter	26.07.2021
20.	Letter for cancellation of BBA-cum-Refund letter (by complaint)	23.08.2021 & 26.12.2022 (As per page no.48-49 of complaint)
21.	Legal notice (for performing as per BBA dt.21.09.2009 failing which refund)	23.02.2023 (As per page no.58 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That in 2009 in respondent impressive projections. Dr Prem Tanwar booked as apartment which was later on transferred in the name of complainant in 2012 having the super area of 929.29 sq. ft. in respondent residential group housing project "Emilia Floors" at Plot No.18 GF, 7th court street Vatika India Next, Sector 82F, Gurugram, Haryana.

- ii. That at that time my client was asked to pay the initial booking amount of Rs.1,00,000/- which complainant had paid vide cheque and respondent had acknowledged the same.
- iii. That after taking /receiving the aforesaid amount from my client, respondent had entered into a builder buyer's agreement dated 21.09.2009 with her i.e., my client for the sale & transfer of the above stated units/apartment.
- iv. That as per payment schedule, complainant has paid an amount of Rs.19,00,000/- out of the total sale consideration i.e. Rs.22,60,607/- to respondent.
- v. That at the time of booking as well as signing of the agreement dated 21.09.2009 respondent had promised complainant that respondent would have handed over the possession of the property/apartment/unit to my client within the time period of 24 months from the date of signing and execution of the "Agreement".
- vi. That as per respondent demand as well as in compliance of the terms and conditions of the aforesaid agreement dated 21.09.2009 my client had paid an amount of Rs.19,00,000/- out of the total sale consideration i.e. Rs.22,60,607/- as per payment schedule to respondent. Further it is also pertinent to mention out herein that complainant complied with the agreed payment schedule and made the payment of aforesaid amount to respondent as per respondent demand to comply their part legally and lawfully.
- vii. That thereafter complainant visited to respondent office the addresses many times to know about the date of possession but the possession was delayed by respondent the above said on one pretext or other and same was not to my client.
- viii. That on 29.12.2017 with mutual consent the unit was changed to plot no.52/ST.K-8.1, level-1, Sector-83 and addendum was added in agreement dated 21.09.2009 to this effect. The respondent again assured that possession shall be handed over to complainant in one year.

- ix. That now it has come into the notice & knowledge of complainant that respondent had not performed respondent part as per the agreed terms as well as had not fulfilled respondent promise.
- x. That thereafter complainant had requested respondent for deliver the possession of the aforesaid apartment but respondent stated that possession will be delivered to complainant till December, 2019 and when complainant again visited respondent office, but till date no possession was offered to my client.
- xi. That respondent is harassing complainant again and again. Due to respondent irresponsible behaviour complainant has suffered a lot financially and physically.
- xii. That in November, 2022 respondent had sold out the subject cited unit to some other buyer. As per account statement provided by respondent an amount of Rs.768960/- has been refunded by respondent and rest has been forfeited by respondent. This is a clear-cut fraud committed by respondent on my client.
- xiii. That it is further intimated that this unit was allotted in 2009 and same was transferred to complainant during September, 2012. As per builder buyer agreement respondent have to hand over this unit within 2 years of sales but respondent violated the agreement clause with malafide intent. The unit was not handed over to my client and respondent again changed the allocation in 2017. Complainant have made payment of all instalments raised till 2020 but unit was not delivered to my client. It is further intimated that my client has spent all her lifetime earnings during transfer of this unit in complainant name in 2012 and unit was not handed over to complainant. This caused mental harassment and pain to my client and complainant is under depression because of pain and harassment caused by respondent.
- xiv. That complainant had booked the property in respondent aforesaid residential group housing project to own a house for a standard living to their

status and taste but complainant was cheated by respondent as respondent have failed to fulfil respondent promise of giving the possession of the property on time and as per the specifications as well as according to the terms & conditions of the agreement dated 21.09.2009.

- xv. That respondent had taken entire amount as per payment schedule from my client on the basis of respondent impressive projections and false promises which complainant had drained out from her hard-earned savings. Thus, respondent have committed the offence of "cheating" which is a criminal in nature.
- xvi. That respondent has also not performed respondent part according to the terms and conditions of the agreement as construction of the project had not been done by respondent as per the agreed schedule and respondent are also unable to hand-over the possession of the property to complainant in near future.
- xvii. That respondent after indulging in unfair trade practice had intentionally grabbed the hard-earned money of complainant and violated the general principals of the real estate business. Moreover, you had given the highly deficient & inadequate services to complainant as you had not kept your promise and had also taken the undue advantages by grabbing the hard money of complainant.
- xviii. That the complainant bonafidely for his needs and better future purchased the flat/unit on question, further the respondent failed to give the possession of the shop/unit in question on time.
- xix. That as huge time had been lapsed, the complainant therefore made several calls to the customer care and marketing departments to seek status of the construction, but the complainant was never provided with a satisfactory response and the respondent's officials made false and frivolous statements and gave false assurances that the construction is in full swing and the unit shall be handed over within the agreed time. Thereafter, the complainant had

get information from letters of respondent that his allotment was cancelled and its illegal and against principle of natural justice.

- xx. That as the buyer's agreement stated that time was the essence of the contract, it was incumbent upon the builder i.e. the respondent to develop and hand over possession of the said flat/unit within the prescribed period. Hence, it is clear from the above that the respondent is liable to compensate because the time frame of handing over the possession has been lapsed and there is huge delay in handing over the possession of the flat/unit.
- xxi. As per Clause 19(4) of the Real Estate (Regulation and Development) Act, (RERA), 2016 the Allottee is entitled to claim for compensation with interest in the event that the project is delayed.
- xxii. That respondent has not bothered to act accordingly and did not comply with the terms and conditions of the buyer's agreement and did not handover the possession of the unit till date.
- xxiii. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest as per RERA Act in case of any default on his part. They are also liable to pay pendent lite interest and further interest till date of actual payment.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Refund value current market value of flat unit along with interest @24% per annum to complainant from the date of agreement till the date of realization of the amount.
5. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has put in appearance through Advocate and marked attendance on 14.09.2023 and 07.12.2023. Despite specific directions for filing of reply, the respondent has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 07.12.2023, the defence of the respondent was struck off. However, in the interest of justice, on 25.07.2024, the respondent was given an opportunity to file written submissions within a period of 2 weeks with an advance copy to the complainant.
7. That on 08.08.2024, the counsel for the respondent has filled the written submissions and made the following submissions:
 - i. That the complaint is liable to be dismissed as the complainants has come before this Hon'ble Commission, with unclean hands and has hidden facts with an attempt to mislead this Hon'ble Commission. The complainants have tried to mislead this Hon'ble Commission by false and frivolous averments.
 - ii. That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
 - iii. That the complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law.
 - iv. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
 - v. That the "Emilia Floors" is a residential group housing project being developed by the respondent on the licensed.

- vi. Further, after establishment of the Haryana Real Estate Regulatory Authority the respondent applied for registration of its project and the authority registered the said project.
- vii. It may be noted that despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of project was undertaken by the respondent in right earnest and the same proceeded in full swing.
- viii. That the complainant had purchased plot no.18 GF, 7th court street Vatika India Next from the original allottee Mr. Prem Tanwar admeasuring carpet area 936.89 sq. ft. vide agreement to sale.
- ix. That as per clause 7 of the agreement to sale executed with the complainants, the construction of the project was contemplated to be completed subject to force majeure circumstances mentioned in clause 9 thereof which provided for extension of time.
- x. That the OP had offered "Payment Linked Plan" and "Construction Linked Plan" to its buyers. Few of the buyers had opted for "Payment Linked Plan" however most of the buyers in the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. That most of the flat buyers including the complainants, in the project have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.
- xi. Further, it is the admitted position that the complainant has only made payment of Rs.19,13,041/- towards the booking of the said unit and no

further payment has been made by the complainant. Also, the complainant has not made any further payment as per the payment plan i.e., construction link payment plan opted by the complainant himself thereafter till date and it was only due to the same the respondent after several reminders and notice of termination sent through various correspondences had no other option but to terminate the said unit vide termination letter dated 26.07.2021. Accordingly, the complainant is very much aware that the said unit has been terminated in the year 2021 and in the said letter the respondent had also offered the refund of its amount after due deductions as per the terms of the said builder buyer agreement. Thus, the complainant himself has defaulted in making the payment as per the terms of the said Agreement and therefore such frivolous complaint must be dismissed on the said ground itself.

- xii. That the complainant himself has delayed and defaulted in making timely payments of instalments to the respondent. The said delay by the complainants in payment of the timely instalments has also contributed to the delay in completion and possession of the apartment in addition to other factors beyond the control of the respondent. It is an established law, that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. A defaulter under an agreement cannot seek remedy for default against the other for delay. Needless to say that obligation for payment of the instalments was first on the complainants and then the obligation of the respondent was to complete and hand over the apartment. Therefore, the complainants cannot allege delay in completion and are not entitled to any relief under the camouflage of refined wordings and misuse of the process of law. It is submitted that for the aforesaid reason itself this complaint initiated by the complainants should be dismissed as non-maintainable.

- xiii. That beside the above major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated 08.11.2016 has also affected the pace of the development of the project. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wages labourers. The effect of such demonetization were that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non- availability of adequate funds with the banks had further escalated this problem many folds.
- xiv. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent.
- xv. That the complainant herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Hon'ble Authority and in the interest of justice.
8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Written submission made by the complainant.

9. The complainant has filed the written submission on 14.08.2024 and the same are taken on record. No additional facts apart from the complaint has been stated in the written submission.

F. Jurisdiction of the authority

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

*.....
34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

13. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on objections raised by the respondent:

G.I. Objection regarding delay due to force majeure circumstances.

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure circumstances such as demonetization and default in making timely payment by several allottees. All the pleas advanced in this regard are devoid of merits. Firstly, the event of demonetization was in accordance with government policy and guidelines, which came into effect in November 2016. whereas, the due date of completion as per buyer's agreement is 21.09.2012 which was much prior to the event of demonetization. Therefore, the authority is of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. Secondly, due to default by some allottees for not being regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to the default of some of the allottees. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrongs.

H. Findings on the relief sought by the complainant.

H.I. Direct the respondent to refund the amount as per current market value of unit along with interest @24% p.a. from the date of agreement till its realization.

15. In the present case, the original allottee namely, Dr. Prem Tanwar booked a unit in the project of the respondent namely "Emilia Floors" by Vatika India Next, Gurgaon. He was allotted a unit no. Plot no. 18, Ground Floor, 7th Court Street admeasuring 929.29 sq. ft. The builder buyer agreement was executed between the respondent and the original allottee on 21.09.2009. Thereafter, on 27.09.2012, the complainant and original allottee entered into agreement to sell and the unit was endorsed in favor of the complainant. Further on 29.12.2017 an addendum to the buyer's agreement was executed between

both the parties, in which the unit was reallocated from unit no. Plot no. 18, Ground Floor, 7th Court Street to unit no. HSG-014A-Floor no.1-Plot no.52, ST, K-8.1 and states that *"the above-mentioned documents will be read in consonance with the terms and conditions of the apartment buyer's agreement executed by you."*

16. Furthermore, during the proceedings dated 25.07.2024, the counsel for the respondent stated that the unit of the complainant was already cancelled vide cancellation letter dated 26.07.2021 due to non-payment of outstanding dues. Now the question arises before the Authority is that whether the cancellation letter dated 26.07.2021 is valid or not, in the eyes of law?
17. On consideration of the documents, the Authority observes that the cancellation letter dated 26.07.2021 was issued on account of non-payment of outstanding dues demanded through various demand letters dated 06.08.2018, 05.12.2020 and 08.07.2021. However, it is an admitted fact that the complainant has made the last payment on 13.09.2018 including which total amounting to Rs.19,13,041/- which is 85% of the total sale consideration Rs.22,60,607/- and the cancellation letter was issued on account of non-payment of outstanding dues after the lapsed period of 9 years from the due date of possession.
18. Furthermore, the complainant specified in her letter dated 23.08.2021, that she had paid the amount stipulated in the demand letter dated 06.08.2018. Despite this payment, the respondent, through its inadequate conduct, continued to treat the demand as outstanding in its cancellation letter. Additionally, the complainant raised several queries through letter dated 23.08.2021 and 26.12.2022 asking the respondent to clarify the date of possession (as due date of possession has been already lapsed), the status of the project, and requested a revised statement of account reflecting adjustments for delay possession charges and delay payment charges. She also

requested for refund of the entire amount through letter dated 23.08.2021 and 26.12.2022, but the respondent failed to reply to the same.

19. Also, as per clause 9.2 para (i) of Model Agreement for sale as prescribed in the rules, if the promoter defaulted in providing the possession or failed to complete the project within the stipulated time period, the allottee is entitled to stop making any further payment to the promoter, until the promoter corrects the situation by completing the construction. Relevant clause 9.2 (i) is reproduced hereunder: -

"9.2 (i) Stop making further payments to promoter as demanded by the promoter. if the allottee stops making payments, the promoter shall correct the situation by completing the construction/development milestones and only thereafter the allottee be required to make the next payment without any interest for the period of such delay; or"

20. Additionally, during the proceedings dated 25.07.2024, the counsel for the complainant stated that she had never received the demand letter dated 05.12.2020. Furthermore, the Authority observes that the respondent has failed to provide any substantial document with regard to the proper delivery of the demand notices and cancellation letter to the complainant. Moreover, the respondent has also failed to provide the document whether the occupation certificate/ Part completion certificate has been obtained.

21. In view of the reasons quoted above and documents placed on record, the authority is of the view that the cancellation of the allotment letter dated 26.07.2021 is not valid in the eyes of law.

22. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

23. Clause 10.1 of the buyer's agreement dated 21.09.2009 provides the time period of handing over possession and the same is reproduced below:

10.1 Schedule for possession of the said independent dwelling unit

*.....
"That the company based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/said **independent dwelling unit within a period of three (3) years from the date of execution of this agreement** unless there shall be delay or there shall be failure due to reasons mentioned in clause (11.1), (11.2), (11.3) and Clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues.....*

(Emphasis Supplied)"

24. As per clause 10.1 of the builder buyer agreement dated 21.09.2009 the unit was to be offered within a period of 3 years to the complainant-allottee. As per clause 10.1 of the builder buyer agreement the due date of possession comes out to be 21.09.2012. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

"...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait

indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

25. It has come on record that against the sale consideration of Rs.22,60,604/-, the complainant has paid an amount of Rs.19,32,041/- to the respondent-promoter. However, the complainant contended that the due date of possession has been lapsed and No occupation certificate has been obtained against the said project by the respondent. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022, it was observed as under:

“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to

the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

27. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant cannot be compelled to take possession of the unit and she is well within right to seek refund of the paid-up amount.

28. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

29. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

31. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

32. The definition of term "interest" as defined under section 2(za)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. The relevant section is reproduced below: -

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

... (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, ...

33. Therefore, The authority hereby directs the promoter to return the amount received by him i.e., Rs.19,13,041/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

I. Directions of the authority

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent/promoter is directed to refund the entire amount i.e., Rs.19,13,041/- received by it from the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from


the date of each payment till its realization.

b. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to the registry.

Dated: 22.08.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram