

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

Complaint no. : 673 of 2024  
Complaint filed on : 28.02.2024  
Date of order : 20.09.2024

**1. Shashank Misra**

**2. Manisha Misra**

**Both R/o** - Villa 22, Sai Paryavaran, Sahyadari  
Luxury Homes, Muthasandra Main Road, Near Sub-  
Registrar Office, Varthur, Bengaluru, Karnataka-560087

**Complainant**

Versus

**M/s. Vatika Limited**

**Office:-** Vatika triangle, 4<sup>th</sup> floor, Sushant Lok, Phase-1,  
Block-A, Mehrauli, Gurugram Road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri. Arun Kumar, (Advocate)

Sh. Anurag Mishra, (Advocate)

**Complainant**

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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. Unit and project related details**

✓

2. The particulars of unit details, 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 of the project	Turning Point, Sectr-88B, Gurugram
2.	Nature of the project	Group Housing Colony
3.	RERA Registered/ not registered	213 of 2017 dated 15.09.2017
4.	License no. and validity	19 of 2013 for area 18.80 acres
5.	Unit no.	3BHK, S-011 [Inadvertently mentioned as A-002, Ground floor in proceeding dated 20.09.2024] [page 18 of complaint]
6.	Unit area admeasuring	1650 sq. ft. [page 18 of complaint]
7.	Date of booking application form	15.09.2016
8.	Date of buyer's agreement	Not executed
9.	Date of building plan approval	26.10.2013
10.	Possession clause	Not available
11.	Due date of possession	<b>15.09.2019</b> [3 years from the date of booking/allotment - Calculated in view of judgement of Supreme Court of India in <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
12.	Total sale consideration	Rs.86,62,500/- [as per SOA dated 03.09.2021 at page 18 of complaint]
13.	Amount paid by the complainant	Rs.10,24,354/- [as per SOA dated 03.09.2021 at page 18 of complaint]
14.	Offer of Possession	Not offered
15.	Occupation certificate /Completion certificate	Not obtained

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:

- i. That the complainants had booked a 3 BHK apartment number S-011 under subvention scheme in the project Vatika Turning Point, situated at sector-88-

B, Dwarka Expressway, Gurugram, Haryana of the respondent on 15.09.2016 for a total sales consideration of Rs.91,85,750/- and paid an booking amount of Rs.1,90,000/- through vide cheque no.113448 drawn on ICICI Bank in favour of the respondent. That the complainants further made a payment of Rs.8,34,354/- through a vide cheque no.013719 to the respondent on 30.11.2016.

- ii. That the respondent had promised to be given possession of said apartment within 3 years from the date of builder buyer agreement. However, the respondent had never executed a builder buyer agreement with the complainants and given lame excuses all the time for executes the builder buyer agreement. The complainants have visited the said project site but were in shocked to found that, there was no construction or development at the site of the project except excavation in the land.
- iii. That the complainants were promised by the respondent that, they will be given possession of the said property to the complainants within 3 years of date of builder buyer agreement, but the respondent is miserably failed to give possession of said property in meantime and execute the builder buyer agreement.
- iv. Further, the complainants have approached to the respondent several times at their office to get refund of paid amount of Rs.10,24,354/- but the respondent had never given satisfactory answers to the complainants regarding when they will receive refund of their said paid amount.
- v. It is settled law as per the Real Estate Regulation Act, 2016 and various order passed by this Ld. Authority if the builder has failed to give possession of an apartment in meantime as promised in the builder buyer agreement or if no BBA signed between builder and consumer than, within 3 years of booking of application, the allottee has an option to get his refund of the paid amount.

- vi. That the complainants approached the respondent several times for refund the paid amount but till date not amount has been refunded.
- vii. That the vide order in case no. CR/4655/2022, dated 28.10.2022, case titled "Ashish Kumar Dhiman and Anr. V. Vatika Limited" of this Ld. Authority observed that the respondent has filed a proposal for de-registration of project Vatika Turning Point on 30.09.2022 and it is evident that the project is abandoned. In the said case this Authority has passed an order in favour of multiples allottees in a single order.
- viii. That the complainants are law abiding citizens of India and suffering huge monetary losses, mental agony, trauma, and harassment due to irresponsible, unethical business practices towards its customers by the respondent. That after several requests, repeated reminders and correspondences from the complainants, the respondent did not adhere to respond so therefore the complainants have left with no other option except to approach this Authority.
- ix. That the cause of action arose on 14.09.2019 when the complainants have not received possession of the said apartment from the respondent. The cause of action is still continuing as the respondent is failed to refund the paid amount to the complainants.
- x. That the complainants have lost all hopes from grievance redressal mechanism of the respondent, so the complainants have approached to this Authority for justice and redress of their grievances.

**C. Relief sought by the complainants:**

4. The complainants have sought the relief as mentioned below:

- i. Direct the respondent to refund the paid amount of Rs.10,24,354/- with 18 % p.a. interest to the complainants.
- ii. Direct to the respondent to pay a sum of Rs.5, 00,000/- towards compensation for mental torture and agony from the hands of the complainants.
- iii. Direct to the respondent to pay a sum of Rs. 1,00,000/- towards the cost of litigation.

5. On the date of hearing, the Authority explained to the respondents /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act.

**D. Reply by the respondents:**

6. The respondents have contested the complaint on the following grounds:
- i. That the complaint is liable to be dismissed as the complainants has come with unclean hands and has hidden facts with an attempt to mislead this Authority. The complainants have tried to mislead this Authority by false and frivolous averments.
  - ii. That vide notification no. L.A.C. (G)-N.T.L.A./2014/3050 dated 24.12.2014 to acquire land in sectors 88A, 88B, 89A, 89B, 95A, 95B & 99A for purpose of construct and develop sector roads published in newspaper Dainik Jagran on 30.12.2014. However, it is pertinent to state that the even though the respondent has received license of the said land however the land was not acquired by the Authority/Government for the purpose of development and utilization of sector roads and therefore there has been delay on the part of the state government for acquiring the land for more than 3 years i.e. till 23.12.2016.
  - iii. That the complainant had booked residential unit bearing no. S/011 having area of 1650.00 sq. ft..
  - iv. It is deemed that prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access/approach roads, key distances, looked at the vicinities, physical characteristic of the project etc. and then filed an application for allotment with the respondent which factum is also recorded in the builder buyer agreement executed with each of the complainants. Not only this, basis the individual requests, the respondent also caused site visits for the prospective buyers who had made requests for visiting the project site before making application for allotment. It

is submitted that almost all the buyers (including the complainants) have visited the project site and were aware of the fact that the project had no direct access road and the respondent was working on the getting a remedy for the same.

- v. That as far as the service tax is concerned nothing has been recovered illegally and the same has been recovered in accordance with the rules, policies, laws prevailing from time to time and deposited to the govt. account. Since entire money so recovered from the complainants have been duly deposited to the service tax department and as soon as the concerned department will release the money, the same will be returned to the complainants.
- vi. That it may be pointed out that almost all the buyers of 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 majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. 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. It is submitted that most of the flat buyers in the said group housing project have wilfully defaulted in the payment schedule which is the main cause of the delay in the construction activity and affecting the completion of the project. This wilful default by the flat buyers is due to the fact that most of them have purchased the flats as an investment option when real estate market was doing well in the year 2014. When in the year 2015-2016 onwards, the real estate market started facing slowdown, the flat buyers started defaulting in payment of instalments. The complainants are well aware of the above mentioned facts and reasons behind the delay in completion of the project. Hence the present complaint is a malafide attempt to misuse due process of law and gain unlawful enrichment at the cost of the respondent ✓

when the real estate market is down. In view of the above mentioned facts and grounds, this complaint must be dismissed.

vii. It is stated that the delay, if any, is on account of reasons beyond the control of the respondent, therefore, there is no breach whatsoever on the part of respondent. In any event, it is stated that the time stipulated for completion under the allotment / agreement is not the essence and respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to respondent. On the perusal of below submissions, it would be clear that the complaint of the complainants with regard to delay in completion of construction of the possession is misconceived particularly for the following reasons:

- a) It is submitted that the respondent has, as will be elaborated herein below, indefatigably strived and made best efforts possible to ensure that its endeavor to complete the construction is achieved. Had it not been for the shortage of funds on account of huge defaults by the buyers in the project including the complainants, the respondent would most certainly have succeeded in its endeavor.
- b) The complainants have failed to show in its complaint that the alleged delay was on account of willful delay in construction of the apartment unit which is solely attributable to the respondent herein.
- c) The factors which materially and adversely affected the project are being set out herein under:
  - It may be noted that most of the buyers in the said Group Housing Project has booked their Residential units under the 'construction linked plan' and has severally defaulted in making timely payment of instalments to the respondent. The pace of construction and timely delivery of units in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. If the buyers of Units in such projects delay or ignore to make timely payments of demands raised then the inevitable consequence is that the pace of

construction activities gets affected and it becomes difficult to complete the project within the stipulated time.

- That beside the major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of Rs.500 and Rs.1000 announced by Government of India vide its executive order dated November 8, 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.
- The Road construction and development works in Gurugram are maintained by the HUDA/GMDA but the NHAI has plan the development of Gurugram Pataudi-Rewari Road, NH-352 W under Bharatmala Pariyojana on 11.07.2018.
- The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr. Road (NH-352 W) near Harsaru Village shall develop &construct by the NHAI.
- The GMDA has approached the Administrator, HSVP, Gurugram and request to direct HSVP/LAO to hand over encumbrance free possession of land from Dwarka Expressway i.e. junction of 88A/88B to Wazirpur Chowk to GMDA so that possession of land may be handover to NHAI on 08.09.2020.
- The DTCP published a notification no. CCP/TOD/2016/343 on 09.02.2016 for erecting transit oriented development (TOD) policy. Vatika Limited has filed an application for approval of revised building plan under (TOD) policy 05.09.2017 and paid amount of Rs. 28,21,000/- in favor of DTCP.
- Vatika Limited has filed an another application on 16.08.2021 for migration of 18.80 Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana.
- No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W.
- Re-routing of high tension wires lines passing through the lands resulting in inevitable change in layout plans.



- The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2016 to December 2019. These partial and unplanned bans have also become a factor for delay in construction of the project. In addition to the same the government has imposed various restrictions on the construction sites as follows:
  - 1) No construction activities between 6 p.m. till 6 a.m. (174 days)
  - 2) Stop the usage of diesel generator sets (128 days).
  - 3) Stop entry of Truck Traffic into Delhi.
  - 4) Close brick kilns, Hot Mix plants and stone crushers.
  - 5) Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects.
- The world at large has witnessed COVID-19 pandemic and the Government of India imposed a lockdown on all commercial activities in the light of the ongoing pandemic situation from 22<sup>nd</sup> March 2020. Due to uncertainty and fearing sickness and the epidemic, most of the construction workers left for their home towns. Although our contractors received the permission to commence work on site during the Month of May, the non-availability of manpower impacted the productivity very severely. The above has resulted in delays in construction of the project, for reasons that essentially lie beyond our control. We are committed to make all efforts to reduce the impact of the construction ban. Further, to increase the misery of the respondent, the Laborers started migration towards their hometown. Post lockdown, the labourers have not returned full fledged till date. Surge of covid second wave and apprehension of Covid third wave is also affecting the return of labourers to work sites.
- Declaration of Gurgaon as notified area for the purpose of ground water & restrictions imposed by the state government on its extraction for construction purposes.
- Due to the above mentioned reasons the respondent no. 1 had no option left but to make a request for withdrawal of application for grant of license for mix

land use under (TOD) policy due to change in planning. The DTCP has accepted a request for withdrawal of application under (TOD) policy on 17.08.2021 & forfeited the scrutiny fee of Rs. 19,03,000/-.

- xii. Further, Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favor of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B.
  - xiii. That due to the said loss suffered by the respondent in the said project, the respondent had no other option but to apply for de-registration of the said project.
  - xiv. That the intention of the respondent is bonafide and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project as the project could not be delivered due to various reasons beyond the control of the respondent as stated above and are not repeated herein for the sake of brevity and convenience.
  - xv. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent
7. All the averments made in the complaint were denied in toto.
  8. Copies of all the documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

#### **E. Jurisdiction of the authority**

9. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### **E.I. Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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 complete territorial jurisdiction to deal with the present complaint.

### **E.II. Subject matter jurisdiction**

11. 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) The promoter shall-

(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;

12. 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 complainants at a later stage.
13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and 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 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the*

*Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondents:**

**F.I Objection regarding delay in completion of construction of project due to force majeure conditions.**

15. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization of currency notes, various orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.
16. As no buyer's agreement has been executed, the due date of handing over of possession is calculated as per ***Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018***, that is three years from the date of booking/allotment to be taken as a reasonable time while calculating due date and therefore due date comes out to be 15.09.2019. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondents have even made an application for grant of occupation certificate. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondents cannot be granted any leniency for aforesaid ✓

reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

17. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I. As 3696-3697/2020 dated 29.05.2020 has observed that:

*69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

18. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.09.2019 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

**G. Findings on the relief sought by the complainants.**

**G.I. Direct the respondents to refund the paid amount of Rs.10,24,354/- with 18 % p.a. interest to the complainants.**

19. The Complainants invested in the project Turning Point and paid Rs.10,24,354/- towards total consideration of Rs.86,62,500/- as per statement of account dated 03.09.2021 in the said project. Counsel for complainant's states that respondent has failed to execute any builder buyer agreement and when the complainants visited the site of the project, they were shocked to found that, there was no construction or development at the site of the project except excavation in the land. The Hon'ble Supreme Court in the case of Fortune ✓

Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. The date of booking in the project Turning Point i.e., 15.09.2016 to be taken as a reasonable time period while calculating due date. The period of three years from the date of booking expired on 15.09.2019. Therefore, the due date of handing over possession is 16.01.2018.

20. An booking form has been issued by the respondents but no builder buyer's agreement has been executed. So, the document/receipt/provisional allotment letter so issued in favour of a person can be termed as an agreement for sale to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document.
21. It is pertinent to mention over here that even after a passage of more than 8 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that the project is abandoned, the same is confirmed as counsel for respondent stated that the respondent has applied for de-registration of the project as recorded during the proceedings dated 20.09.2024. In view of the above-mentioned facts, the allottee intends to

withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016

22. In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest as provided under section 18. The relevant portion of Section 18 is reproduced hereunder:

***“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. -*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) 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. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest 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.*

24. 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.

25. 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., 20.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. The Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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. 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."*

27. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit allotted in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottees, as they wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.



28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents are established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (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 Haryana Rules 2017 *ibid*.

**G.II Direct to the respondent to pay a sum of Rs.5, 00,000/- towards compensation for mental torture and agony from the hands of the complainants.**

**G.III Direct to the respondent to pay a sum of Rs. 1,00,000/- towards the cost of litigation.**

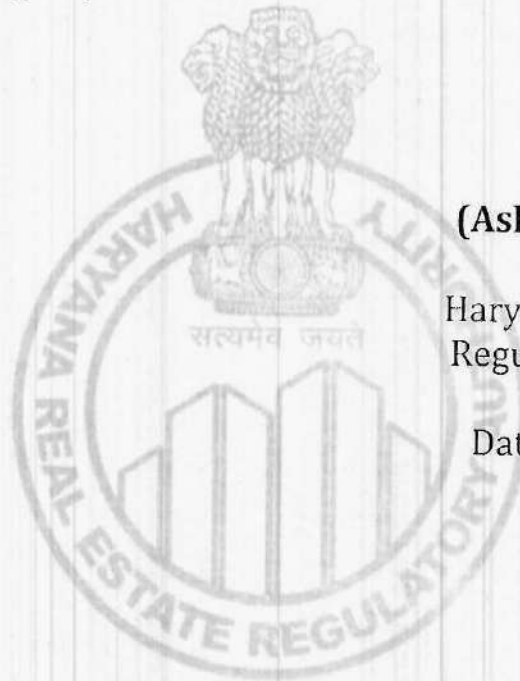
29. The complainants are also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

#### **H. Directions of the authority :**

30. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

✓

- i. The respondents are directed to refund the amount of Rs.10,24,354/- paid by the complainant along with prescribed rate of interest @11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of realization.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
31. Complaint stands disposed of.
32. File be consigned to registry.



**(Ashok Sangwan)**  
**Member**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram  
Date:20.09.2024

**HARERA**  
**GURUGRAM**