



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>1274 of 2023</b>
<b>Date of filing:</b>	<b>31.05.2023</b>
<b>Date of first hearing:</b>	<b>11.07.2023</b>
<b>Date of decision:</b>	<b>21.11.2024</b>

Gurumehar hospitality and Projects LLP  
Office at Guru Mehar Farm, Mehrauli Gurgaon Road  
Sultanpur, Delhi 110030.

....COMPLAINANT(S)

VERSUS

Vatika Limited.  
A-002, INXT City Centre, Ground Floor  
Block-A, Sector-83, Vatika India Next  
Gurugram-122012

....RESPONDENT(S)

<b>Complaint no.:</b>	<b>1275 of 2023</b>
<b>Date of filing:</b>	<b>31.05.2023</b>
<b>Date of first hearing:</b>	<b>11.07.2023</b>
<b>Date of decision:</b>	<b>21.11.2024</b>

Gurumehar hospitality and Projects LLP  
Office at Guru Mehar Farm, Mehrauli Gurgaon Road  
Sultanpur, Delhi 110030.

....COMPLAINANT(S)

VERSUS

Vatika Limited.  
A-002, INXT City Centre, Ground Floor

Block-A, Sector-83, Vatika India Next  
Gurugram-122012

....RESPONDENT(S)

<b>Complaint no.:</b>	<b>1276 of 2023</b>
<b>Date of filing:</b>	<b>31.05.2023</b>
<b>Date of first hearing:</b>	<b>11.07.2023</b>
<b>Date of decision:</b>	<b>21.11.2024</b>

Gurumehar hospitality and Projects LLP  
Office at Guru Mehar Farm, Mehrauli Gurgaon Road  
Sultanpur, Delhi 110030.

....COMPLAINANT(S)

VERSUS

Vatika Limited.  
A-002, INXT City Centre, Ground Floor  
Block-A, Sector-83, Vatika India Next  
Gurugram-122012

....RESPONDENT(S)

<b>Complaint no.:</b>	<b>1277 of 2023</b>
<b>Date of filing:</b>	<b>31.05.2023</b>
<b>Date of first hearing:</b>	<b>11.07.2023</b>
<b>Date of decision:</b>	<b>21.11.2024</b>

Gurumehar hospitality and Projects LLP  
Office at Guru Mehar Farm, Mehrauli Gurgaon Road  
Sultanpur, Delhi 110030.

....COMPLAINANT(S)

VERSUS

Vatika Limited.  
A-002, INXT City Centre, Ground Floor  
Block-A, Sector-83, Vatika India Next  
Gurugram-122012

....RESPONDENT(S)

✓

**CORAM:**                      **Parneet Singh Sachdev**                      **Chairman**  
   **Nadim Akhtar**    **Member**  
   **Dr. Geeta Rathee Singh**    **Member**  
   **Chander Shekhar**    **Member**

**Present: -**                      Mr. Anshul Yadav & Mr. Prateek Rathee, Counsel for the complainants in all cases through VC  
   Ms. Vertika H.Singh, Counsel for the respondent in all Cases through VC.

**ORDER (PARNEET S SACHDEV-CHAIRMAN)**

1. Above captioned complaints are taken up together for hearing as they involve similar issues and are related to same project of the respondent. This final order is being passed by taking complaint no. 1274/2023 titled as "Gurumehar Hospitality and Projects LLP vs Vatika Ltd" as the lead case.
2. Present lead complaint was filed on 31.05.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.



**A. UNIT AND PROJECT RELATED DETAILS**

3. The particulars of the project, the details 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 table:

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	C-637
5.	Unit area	500 sq. ft.
6.	Date of builder buyer agreement for unit C-637	08.04.2014
7.	Date of Addendum agreement and changed unit no.	Unit no. D-309 Addendum agreement on 29.10.2019
8.	Due date of offer of possession	Not available.
9.	Possession clause	Not available.
10.	Total sale consideration	₹ 22,50,000/-
11.	Amount paid by complainant	₹ 24,58,430/-
12.	Offer of possession	Not given.

13.	Occupation certificate	Not obtained for TOWER-C For tower-D obtained on 19.05.2020.
-----	------------------------	---

### B. FACTS OF THE COMPLAINT

4. Complainant booked a commercial unit bearing no. 637, measuring 500 sq. ft. on 6<sup>th</sup> floor, Tower C of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by respondent at agreed sale consideration price of ₹ 22,50,000/- on 05.03.2014 by paying Rs 1,50,000/-. Builder buyer agreement was executed between the parties on 08.04.2014. By way of the said agreement, respondent agreed to pay monthly assured returns to the complainant at the rate of Rs 71.50 per sq. ft. per month on super area of 500 sq. ft. of the unit.
5. That as per clause (iv) of the allotment letter dated 14.04.2014, respondent promised that possession of the unit would be handed over to the complainant latest by 31.12.2015. Complainant has paid an amount of ₹ 24,58,430/- towards the sale consideration of the unit. But respondent even after receipt of said amount has not offered possession of booked unit till date.
6. That builder is also charging the illegal maintenance charges from the complainant without handing over the possession of the said unit and has sent an email dated 23.02.2023 to the complainant regarding the same. Further, in year 2019 the complainant was telephonically called by the

builder's team who exhorted the complainant to come to the respondent's office for signing the addendum agreement. But complainant refused to sign the same unless a copy of same was supplied to him in advance. Upon perusal of the draft document, complainant was shocked as contents of documents were totally in favor of the respondent.

7. That when after a long delay the builder was unable to handover the possession of the said unit, The builder in the end took advantage of the fiduciary relationship and by means of fraud, coercion and undue influence compelled the complainant to sign an addendum agreement dated 29.10.2019 where in the builder had diluted its obligations as mentioned in the builder buyer agreement dated 03.04.2014. Copy of addendum agreement is annexed as Annexure -E.

8. That the complainant has time and again requested the respondent to handover the possession of the said unit as promised by them at the time of signing the said agreement or to refund the amount paid by the complainant, but the respondent being affluent and influential player in real estate choose not to respond or take any action regarding the said requests. Complainant is aggrieved by the act of respondent in having failed to complete the construction of the unit within stipulated time. Therefore, complainant is praying for refund of paid amount with interest.

### **C. RELIEFS SOUGHT**





9. Complainant in his complaint has sought following relief:
- A. To direct the respondent to refund the complete amount which has been deposited against the unit so booked by the complainant along with interest from the date of deposit till the actual realisation of the complete amount, within 90 days according to section 18(1) real estate (regulation and development) act, 2016, section 19 (4) of the real estate (regulation and development) act, 2016, r/w rule 15 and rule 16 of haryana real estate (regulation and development) rules, 2017. To pay the refund of rs. 24,58,430/- and along with interest for the period of delay of more than 7 years, i.e 31st, december, 2015 till the filing of this complaint (calculated @10.00% per annum) of the amount of rs. 39,66,831/-, and additional delay compensation till the time of actual realisation of the amount.
  - B. To direct the op to pay 5% of the total estimated cost of the project under section 61 of real estate (regulation & development) act, 2016
  - C. To cancel the registration granted to the op for its project, under rera, 2016, for attracting the provisions of section 7 of the real estate (regulation & development) act, 2016 and for not following the mandate of law, as stated in the main complaint.
  - D. Any other relief or claim which the hon'ble authority deems appropriate.



**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 15.02.2024 pleading therein:

10. That in so far the project 'Vatika Mindscape' is concerned, it is apposite to state here that it consists of total 4 towers, i.e., Tower-A, B, C and D. For towers A, B and D, the respondent has already received the Occupation Certificate and these towers are fully functional. The construction of tower-C is already complete and had already been intimated to the complainant vide letter dated 12.03.2018.

11. That respondent has paid each and every penny of assured returns amounting to Rs 20,16,782/- till December, 2018. However, assured returns cannot be further paid to complainant for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, 2019 they are prohibited from granting assured returns to complainant.

12. Further, Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" took the cognizance in respect of Banning of Unregulated Deposits Schemes Act,





2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till next date of hearing. Said matter is listed before the Hon'ble High Court for 22.10.2024. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent Authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely BUDS Act, 2019.

13. Respondent has further taken a plea that complainant is a speculative buyer, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bhatti Knitting vs DHL by Hon'ble Apex Court.

14. That the commercial unit of the complainant is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Further, it is submitted that company was in active discussion



with number of prospective tenants for the property and expected to lease out area in the building in due course. The complainant was accordingly sent Addendum Agreement which was duly executed by the complainant with free consent on 29.10.2019. Hence, the complainant cannot raise any grievance pertaining to assured rental as Clause 15 pertaining to assured rental was deleted vide the Addendum Agreement.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

15. Learned counsel for complainant has submitted that neither the possession of the booked unit C-637 nor the changed unit no. D-309 has been given by respondent till date. He referred to email dated 13.05.2022 stating that complainant raised objection to signing of addendum. Further, he argued that whatever the circumstances may be the complainant attempted several times to take possession of unit from respondent but respondent is not interested in providing possession of unit. Due to said frustration, present complaint has been filed. Without prejudice to interest of the complainant, it is averred that complainant is not desirous of waiting endlessly for a valid possession of unit and is therefore, praying for relief of refund of paid amount along with interest.

16. At the outset, learned counsel for complainant stated that complainant does not want to continue with the project and as such he is pressing for reliefs as prayed in the complaint.

17. Learned counsel for respondent argued that as the complainant is an investor in the project of respondent, relation of complainant and respondent is based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of investment/lease agreement wherein the complainant was to receive monthly assured returns till offer of possession of unit and after offer of possession, respondent was obligated to lease out said unit for rental income to complainant. As a matter of fact, the complainant was paid assured returns till December,2018. It is only after the enactment of BUDS Act, 2019 that the scheme of assured returns became infructuous. In the present case, no date for handing over of possession has been defined in the builder buyer agreement and it is because of the fact that the complainant has invested for monetary gains- assured returns so there is no loss being caused to complainant even if possession is not handed over within reasonable time as respondent has duly paid assured return to complainant until December,2018. Therefore, complainant is not aggrieved by any default on part of respondent. She further stated that the conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled.

Therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority. Further, learned counsel for respondent verbally argued that question of assured return is already pending before Hon'ble Punjab & Haryana High Court in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" which is listed for hearing on 11.03.2025. In respect of addendum agreement dated 29.10.2019, she stated that complainant vide referred emails has only enquired about assured returns. Further, she sought more time to file requisite documents in compliance of directions issued vide order dated 22.08.2024.

**F. ISSUES FOR ADJUDICATION:**

- i. Whether complainant is entitled to refund of the paid amount along with interest?

**G. OBSERVATIONS OF THE AUTHORITY:**

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:

- i. The respondent has taken a stand that the complainant is a speculative buyer who has invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the

W

present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

*Section 2(d) of the RERA Act:*

*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;*

ii. In view of the above-mentioned definition of “allottee” as well as upon careful perusal of builder buyer agreement dated 08.04.2014, it is clear that complainant is an “allottee” as unit bearing no. C-637, later changed to D-309 vide addendum dated 29.10.2019 in the real estate project “Vatika Mindscape”, Faridabad was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the



RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be any party having a status of an investor. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

iii. Respondent has also raised a plea that complainant had applied for allotment of a unit in respondent's project as an investor for steady rental income. It is pertinent to mention here that issue of steady rental income was subject to condition that 'project is ready for possession' and that stage of possession has not been reached by respondent as occupation certificate for the tower C has not yet been received from the competent authority. Further, the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-





requisite that the allottee gets a perfect title in the property. However, it is a matter of fact that the title was never perfected as no conveyance deed has been executed. It is pertinent to mention here that respondent vide order dated 02.05.2024 was directed to place on record as to 'what steps have been taken by them to provide leasing assistance to complainant and to deliver possession to complainant after receipt of occupation certificate dated 19.05.2020 and to submit an affidavit stating that unit of complainant is encumbrance free for execution of conveyance deed'. Vide order dated 22.08.2024, respondent was granted another opportunity to file the requisite documents. As per office record, respondent did not file documents till date of passing of this order. Accordingly, case is being decided/adjudicated on the basis of available documents as sufficient opportunities had already been granted to respondent to file documents. Said documents be filed by parties within next 3 weeks with an advance copy exchanged with each other.

iv. On merits, complainant in this case had purchased the booking rights qua the unit in question in the project of the respondent in the year 2014 by making the payment of total sale consideration amounting to ₹ 1,25,000/- on 03.03.2014 and ₹ 23,33,430/- on 06.10.2014 . Thereafter, builder buyer agreement

for Unit no. C-637, 500 sq ft was executed between the parties on 08.04.2014. Addendum to it for changed unit no. D-309 was executed on 29.10.2019. However, in said agreement there is no specific clause pertaining to deemed date of possession. Therefore, it can be safely presumed that no timeline was fixed by respondent for handing over possession of booked commercial unit.

v. Authority observes that in the absence of specific clause of deemed date of possession in builder buyer agreement, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainants. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Real Estate Appellate Tribunal has referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was allotted to the complainant by way of execution of builder buyer agreement on 08.04.2014. Accordingly, taking a period of 3 years from the date of agreement, i.e, 08.04.2017 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 08.04.2017. In the

present situation, respondent failed to honour its contractual obligations without any reasonable justification.

vi. Respondent in its reply has referred to Civil Writ Petition no. 26740 of 2022 titled as Vatika Ltd vs Union of India & Anr. which is pending for 11.03.2025 before Hon'ble High Court of Punjab and Haryana, Chandigarh in respect of issue of assured return. However, it is pertinent to mention here that complainant in present complaint is not seeking any relief pertaining to assured return.

Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of unit till date as no date was ever specified for handing over possession of unit in allotment letter. Complainant has duly accepted such type of allotment letter/builder buyer agreement for the reason that complainant has invested his money for monetary gains which in this case is assured returns. Said returns were duly paid to the complainants till December, 2018 and were stopped thereafter due to enactment of BUDS Act, 2019. So, plea of respondent is that the complainant is not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant has purchased a showroom space-

commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by respondent on the total sale consideration amount paid by complainant in one-go. Assured returns were paid till December,2018 but stopped thereafter due to enactment of BUDS Act,2019. Complainant has filed the complaint in year 2023 for seeking refund of paid amount, i.e., after 5 years of non-payment of assured returns. Complainant herein is aggrieved of arbitrary acts of respondent ;first in not handing over possession of the unit till date and secondly, not handing over the possession of changed unit no. D-309 for which an addendum was executed between the parties on 29.10.2019. As such, respondent is in receipt of occupation certificate for tower-D on 19.05.2020 as stated in its written reply. But possession has not been made till date. Moreover, in this case respondent has not bothered to incorporate any clause for handing over of possession and rather accepted money only on the basis of assurances of leasing arrangement/assistance. Complainant who has already paid whole of total sale consideration in year 2014 got stuck with respondent without any definite timelines of delivery of possession w.r.t. unit



booked. If we look at the intent of allottee-complainant, he has chosen to invest in a tangible property-showroom space in an commercial project developed under a license issued by DTCP and Haryana Development and regulation of Urban Areas Act,1975, not in any open share market where there is no definite/precise mode of transaction to be carried out. Investment in commercial property does not imply that complainant-allottees never ever wanted to own that property by perfecting the title in their name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit. No justification is provided by respondent in its written as well as oral submissions as to what was actually been stopping them from year 2020 (occupation certificate dated 19.05.2020) to get the conveyance deed executed in favour of complainant. Complainant who has already waited for last 5 years to have possession with conveyance deed does not want to wait any further as he has lost his confidence upon the respondent, who had made him to wait such long without any legitimate ground. Now, complainant is rightly under apprehension that his title of property will never be perfected. Respondent's act of not delivering the unit and not paying heed to request of complainant is the sole reason

W

why the complainant seeks to withdraw from the project. Respondent is not able to prove its willingness to handover possession of unit along with execution of conveyance deed despite receipt of total paid amount since October, 2014. Respondent cannot take benefit of his wrong (by non-delivery of possession of the unit till date). By virtue of Section 18 of RERD Act, 2016, the respondent is obligated to refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein.

vii. The complainant has placed on record certain emails of year 2021 and 2022 for claiming that addendum was signed under duress. Complaint was filed in year 2023, i.e. after 4 years of signing the addendum agreement. Time period of 4 years taken by complainant in filing of present complaint is not justified on part of complainant as such to explain the fact that complainant signed the addendum under duress. On the other hand, respondent after execution of addendum was obligated to deliver possession of changed unit D-309. Respondent in its written statement has not disputed the fact of paid amount nor referred to any demand letters in order to prove that there is any amount which still remains payable on part of complainant. Without any document on record





rebutting receipt of total paid amount, the respondent was bound to handover possession of unit and to execute conveyance deed within reasonable time like 3-6 months of receipt of occupation certificate dated 19.05.2020. However, respondent did not make any effort for execution of conveyance deed till filing of this complaint and even thereafter till today's final hearing. At the time of filing reply to this case, respondent was well aware of fact that an allottee of completed tower against which occupation certificate has already been received approached this Authority for refund of paid amount. Respondent should have communicated/approached the complainant to complete the paper formality/necessary formalities for getting conveyance deed executed. Respondent chose to remain silent and did not act accordingly without any reasonable justification.

viii. Respondent was well within the knowledge of grievances raised by complainant by way of present complaint. Therefore, the respondent at this stage when he is in continuous default since year the 2019/2020 by not acting in accordance with agreement and RERA Act, 2016 cannot deny the right of complainant to withdraw from the project. Keeping in view the conduct of the respondent as discussed in aforesaid paragraphs, it does not lie in the mouth of respondent that complainant cannot be allowed

W

refund of paid amount after receipt of occupation certificate. Hence, it is concluded that respondent has miserably failed in completing the process of handing over the possession and execution of Conveyance Deed of the unit in favour of the complainant from year 2019/2020 to till date despite receipt of occupation certificate dated 19.05.2020.

ix. Moreover, respondent even today has not committed any specific timeline for delivery of possession and conveyance deed. In these circumstances, Authority cannot force the complainant to wait any further for possession/conveyance deed of unit. Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of ibid judgement is reproduced below:

*"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*

W

*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."*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

- x. In view of aforesaid observations, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.
- xi. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:
- (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-*



(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(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, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

xii. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 21.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

xiii. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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”.*

- xiv. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 24,58,430/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order as per the detail given in the table below:

Complaint no. 1274/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 21.11.2024
1.	1,25,000	03.03.2014	1,48,900/-
2.	23,33,430	06.10.2014	26,25,588/-
3.	Total=24,58,430/-		27,74,488/-
4.	Total Payable to complainant	2458430+2774488=	52,32,918/-

*W*

5.	Respondent shall make the payment of refund after deduction of paid amount of assured return Amount of paid assured return=2016782/-
----	---

Complaint no. 1275/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 21.11.2024
1.	1,25,000	03.03.2014	1,48,900/-
2.	23,33,430	06.10.2014	26,25,588/-
3.	Total=24,58,430/-		27,74,488/-
4.	Total Payable to complainant	2458430+2774488=	52,32,918/-
5.	Respondent shall make the payment of refund after deduction of paid amount of assured return Amount of paid assured return=2016782/-		

Complaint no. 1276/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 21.11.2024
1.	1,25,000	03.03.2014	1,48,900/-
2.	23,33,430	06.10.2014	26,25,588/-
3.	Total=24,58,430/-		27,74,488/-
4.	Total Payable to complainant	2458430+2774488=	52,32,918/-
5.	Respondent shall make the payment of refund after deduction of paid amount of assured return Amount of paid assured return=2016782/-		



Complaint no. 1277/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 21.11.2024
1.	1,25,000	03.03.2014	1,48,900/-
2.	23,33,430	06.10.2014	26,25,588/-
3.	Total=24,58,430/-		27,74,488/-
4.	Total Payable to complainant	2458430+2774488=	52,32,918/-
5.	Respondent shall make the payment of refund after deduction of paid amount of assured return Amount of paid assured return=2016782/-		

xv. Regarding relief clause B and C, Id. Counsel for complainant clarified at the time of arguments that he is not pressing upon said reliefs.

#### G. DIRECTIONS OF THE AUTHORITY

19. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire paid amount with interest to the respective complainants as calculated/mentioned in tables mentioned in para 18 (xiv) of this order after deducting paid amount of assured return mentioned therein. It is further clarified that respondent will

remain liable to pay the interest to the complainant till the actual realization of the above said amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

20. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
DR. GEETA RATHEE SINGH  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]

  
.....  
PARNEET SINGH SACHDEV  
[CHAIRMAN]