

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

Complaint no. : 813 of 2023
Date of complaint : 24.02.2023
Date of order : 21.02.2025

Viral Navnitlal Mehta
R/o: - A 404, Orchard, Godrej Garden City,
Nirma University, Jagatpur Road,
Ahmedabad, 382470, Gujarat

Complainant

Versus

1. M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg, Sainik Farms,
New Delhi- 110062.
2. M/S ICICI Bank Ltd.

Registered Office: Landmark, Race Course Circle,
Vadodara 390007, Through Its Branch Office
(Green Park, New Delhi)

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Geetansh Nagpal (Advocate)
Shri Garvit Gupta (Advocate)
Shri Vikas Vashisht (Advocate)

Complainant
Respondent for R1
Respondent for R2

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 under the provision of the Act or the rules



and regulations made there under or to the allottee 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. N.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
7.	RERA registration valid up to	31.01.2023 5 Years from the date of revised Environment Clearance + 6 months grace period in view of Covid- 19
8.	Date of environment clearances	23.10.2013
9.	Date of revised environment clearances	31.07.2017 [Note: - the date of revised EC is taken from the complaint no. 1681 of 2022 of the same projects being developed by the same promoter]



10.	Unit no.	B-022, 2 nd floor (Page no. 47 of the complaint)
11.	Unit area admeasuring	1621. sq. ft. (Page no. 52 of the complaint)
12.	Allotment Letter	19.08.2014 (page no. 48 of complaint)
13.	Agreement to sell	19.08.2014 (Page no. 50 of the complaint)
14.	MOU	26.09.2014 (Page 96 of complaint)
15.	Tripartite Agreement	Annexed but undated. (Page 104 of complaint)
16.	Possession clause	4.2 Possession Time and Compensation <i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in</i>



		<p>writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”</p> <p>(Page no. 57 of the complaint).</p>
17.	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by May 2015. As per agreement to sell, the construction of the project is to be completed by May 2015 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.</p>
18.	Due date of possession	<p>19.02.2018</p> <p>(Note: - 36 months from date of agreement i.e., 19.08.2014 + 6 months grace period is allowed)</p>
19.	Total sale consideration	<p>Rs. 1,44,31,462/- /-</p> <p>(As per customer ledger at page no.158 of the complaint)</p>
20.	Amount paid by the complainant	<p>Rs. 1,56,38,517/- Credited in the account of the respondent</p> <p>(As per customer ledger at page no.160 of the complaint)</p>
21.	Occupation certificate /Completion certificate	<p>Not received</p>
22.	Offer of possession	<p>Not offered</p>

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked an apartment bearing Unit No. B-022, Tower-B admeasuring 1621.39 sq. ft. in the project of the respondent namely 'Raheja's Revanta' to which the respondent no. 1 issued an allotment letter dated 19.08.2014 to the complainant. Thereafter, the complainant paid a booking amount of Rs. 13,25,000/- vide Cheque No. 719396 dated 28.05.2014 drawn on ICICI Bank.
- II. That the complainant executed an agreement to sell dated 19.08.2014 which was signed between the Complainant and Respondent No. 1 i.e., Raheja Developers Ltd. for a Total consideration of Rs. 1,43,29,098/- as per the payment plan annexed along with the agreement to sell.
- III. That the Complainant has made a payment of Rs.1,39,70,949/- as per the Ledger Account issued by the Builder dated 06.12.2022 and an amount of Rs. 1,56,38,517/- credited in the account of respondent no. 1 against the total debit amount of Rs. 1,57,40,881/. **The complainant has paid more than 92% of the costs by 20.09.2019 as per the demands of the Respondent No.1 which are as per the construction linked plan. It is vital to state that the Construction Linked plan was mischievously designed by the Respondent No.1 to ensure that he could take payments without having reached the commensurate progress. The Respondent No.1 has taken more than 92% of the Total Sale Consideration, without having even completed 60% of the project.**
- IV. That as per the apartment buyer's agreement clause 4.2, the respondent no. 1 had promised the complainants to handover the physical possession of the dwelling apartment /unit by within 48



months from the date of execution of agreement to sell. Therefore, the due date comes out to be 19.08.2018.

- V. That the respondent number 1 sent a letter to respondent number 2 giving them a permission to mortgage on the unit no. B-022 situated on the second floor of the building 'Raheja Revanta,' wherein the respondent no. 1 mentioned that they have sold the said unit to the complainant for a total sale consideration of Rs. 1,43,29,098/- except electricity and water connection charges and registration charges as applicable.
- VI. Upon execution of agreement to sell and permission to mortgage, the respondent no. 1 executed a Memorandum of Understanding dated 26.09.2014 which was signed between the complainant and respondent no. 1 which lays down the details of the project. The developer has offered apartment number B-022 admeasuring 1226.34 sq. ft. which is on the second floor to the complainant. As per clause 3 of the MOU, the respondent no. 1 has confirmed that the complainant has paid an amount of Rs. 23,30,000/- to the respondent no. 1 till the execution of the said MOU.
- VII. The complainant sends an email to the ICICI regarding the frequent calls from Raheja developers. He urges them to sort it out and streamline the whole process. The bank obliges by sending a mail to Raheja by sending them a mail to not to contact the complainant.
- VIII. That the various mails by the bank sent to Raheja developers showing compliance by them to the requests of the complainant and also shows clear accountability on their part. The complainant again sends an email to the ICICI Bank reiterating his complaint of the Raheja Developers contacting him. The ICICI wealth



management team complies by asking the property team to sort out the issue.

- IX. The complainant exercises his buyback option well as per advised by the wealth manager of the ICICI Bank within the time prescribed of 36 months as per the Memorandum of Understanding signed between the parties. Respondent number 1 i.e., Raheja developers confirm the buyback option exercised by the complainant through an email sent to the complainant. Another email from the ICICI wealth manager assures the complainant that he shall get his money back. Complainant again sends an email to the respondent number 2 as Raheja developers were not complying with the terms and conditions of the MoU signed between them. They are applying delaying tactics of various kinds which is causing the complaint immense pain, both mental and economical. The ICICI Bank responds by saying that they are taking this up with Raheja developers and coordinating with them. The matter has now escalated and senior officials of the ICICI Bank are also involved after the complainant mailed Mr. Sachin Bhagat. ICICI bank again assures the complainant that they are trying to coordinate with the Raheja developers. A conference call involving all the three stakeholders is to be done to sort out the problem.
- X. After getting reassurances from Raheja developers about getting his money back and payment of pre- EMIs on time, they send another mail about the subvention extension but they also promise the complainant that they will honour the delay interest of 18 percent as promised in the agreement. After getting tired with the defaults on EMIs on part of the Raheja developers, the complainant



sent another email to the ICICI bank setting out his grievances and the expectations from them. The ICICI bank acknowledges the mail and again assuages the complainant that are following up the matter with the ICICI Bank. To utter dismay of the complainant, respondent number 2 informed him that since they were not privy to the MoU signed between Raheja developer and Viral Mehta and therefore they cannot do anything.

- XI. The complainant received a mail from the respondent number 1 i.e., Raheja developers expressing their helplessness in carrying forward with the payment of the pre-EMIs. They informed the complainant that they are serious liquidation crunch and whatever funds they have needs to go towards the completion of the 'Revanta' project. Therefore, the complainant till 06.12.2022, paid a total amount of Rs. 1,39,70,949/- out of a total sale consideration of Rs. 1,40,73,313/- and credited a total amount of Rs. 1,56,38,517/- out of total debit amount of Rs. 1,57,40,881/- till date.
- XII. That at the time of booking of aforesaid unit it was duly assured, represented and promised by the Respondent No. 1 that the said unit and real estate project will be ready to occupy by the complainant by 48 months as per clause 4.2 of the Builder Buyer Agreement. That since the date of booking and after the receipt of 92% part of the payment, the builder has been purposely delaying the construction of the project and the flat.
- XIII. In addition to above default the Respondent formalised the agreed Memorandum of Understanding dated 26.09.2014 "MoU" with the complainants facilitating an arrangement of Pre-EMI scheme



wherein the buyers were not required to pay any EMI/interest till the date of possession. However, the builder has admittedly defaulted in the same by its exorbitant delays and ICICI Bank has been intimidating, freezing accounts of the complainant, leading to loss in CIBIL score, destroying the financial score for further financial and other activities, fines, loss of opportunities, encashment of other assets under distress by the complainants

- XIV. At this juncture, it is imperative to highlight that the Builder has approached the Complainant, at numerous occasions, to settle the issue of Buy-back, to renegotiate the buyback offer but which was a mischievous attempt by it again which makes it amply clear that the Builder has consciously entered into the Buy-Back scheme with the Complainant and the same cannot be denied or disputed.
- XV. As per clause 6 of the MoU the Builder admits to the special scheme and arrangement of specific loan for the Complainant which brings out the nexus between the Respondent No. 1 & Respondent No. 2. Accordingly, the builder was required to pay Pre-Emi interest upto 36 months from date of execution of the Builder Buyer Agreement thereafter the Respondent No. 1 was to continue the payment of Pre EMI as per the Terms and Agreement of Buy-Back MoU, which were not paid. The loan account statement clearly sets out the defaults on part of the Builder in adhering to the agreement.
- XVI. Additionally, the builder has defaulted under Clause 8 of the MoU wherein it was agreed that the Buyer is considered under the buy-back scheme and should the Buyer requests for cancellation of the said unit within 33-36 months, the Builder will be required to return the entire amount, clear all banks dues and additionally pay





Rs. 1,400/- sq. ft. as premium. However, till date the builder despite agreeing to entitlement of the buy – back scheme has failed to act upon any of the conditions mutually agreed to.

XVII. The Respondent No. 1 delayed/failed to make the payment of the Pre-Emi as per the MoU resulting in severe financial loss, losses in making EMI payments, loss of opportunity, under duress selling of other assets at losses, intimidations by the Bank and hardship to the Complainant. The Builder has failed to pay the premium of 1400/-sq. ft besides the monies and taxes paid by the Complainants, as agreed under the MoU which had become due w.e.f September 2017 despite the buy-back option being exercised vide email dated 14.07.2017 and the same being admitted on 21.07.2017, 01.12.2017 and 04.12.2017 specifically. Alternatively, and without prejudice it admitted that no occupation certificate has been obtained on the said project by the builder.

XVIII. That thus, the Respondents have cheated and played fraud upon the Complainant by inducing them in booking the apartment in the so-called project Raheja Revanta at Village Shikopur, Sector 78, Gurugram and inducing them to secure a loan from ICIC Bank which is at the cost of the Complainants and has enriched the Defendants. It can be observed that the Builder has mischievously induced the Complainant for a loan and thereby directed that money to its own account, enjoyed the entire amount at a low cost in connivance with Respondent No. 2 and refused to provide the unit or the buy-back scheme which was mutually agreed.

XIX. That the complainant several times requested the Respondents telephonically as well as personal visits at the office for the

regularization of the ICICI loan account on account of default in Pre-EMI and met with the officials of Respondents in this regard and completed all the requisite formalities as required by the respondents but despite that the officials of Respondent's Company did not give any satisfactory reply to the complainant and the lingered the on one pretext or the other.

- XX. The compelling actions of the Builder has coerced the Complainant to seek refund of the payment made towards the purchase of the Unit along with Financial Loan from ICICI Bank and all applicable charges, costs and interest and monies arising out of promises made under the MOU for buyback.
- XXI. That the Respondents by providing bad planning, false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit their hard-earned money in their so-called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondents gained wrongfully, which is purely criminal act. That the respondent has also played a fraud upon ICICI Bank which was facilitating the loan amount in favour of the buyer and taking untimely payments without reaching the right stage of progress concealing a lot in the milestone of construction.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. Direct the respondent to refund the paid-up amount along with prescribed rate of interest.



5. The respondent/promoter put in appearance through Advocate and marked attendance on 26.04.2024, 13.12.2024 and 21.02.2025. Despite specific directions for filing of reply, it failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide proceedings dated 03.11.2023, the defence of the respondent was struck off. However, in the interest of justice, the respondent was given a liberty to file written submissions within a period of two weeks, but the same has not been submitted by it till date.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D.II Subject-matter jurisdiction



9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

Section 34-Functions of the Authority:

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

10. 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.

E. Findings on the relief sought by the complainant.

E. I Direct the respondent to refund the paid-up amount along with prescribed rate of interest.

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act 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.-

(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)

12. Clause 4.2 of the buyer's agreement dated 19.08.2014 provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay..... "***

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain



but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in making payment as per the plan may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards the timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

14. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement, the possession of the allotted flat/unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months grace period from the date of execution of the agreement to sell. The buyer's agreement was executed between the parties on 19.08.2014. Therefore, the Authority is taking these 36 months from date of execution of the buyer's agreement. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage. Thus, the due date for handing over of possession comes out to be 19.02.2018.



15. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him 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.

16. 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.
17. 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., 21.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. On consideration of the documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.2 of the agreement to sell, the due date of possession comes out to be 19.02.2018 for the reasons quoted above. Keeping in view the fact that the complainant/allottee wishes to withdraw from the project



and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

19. The due date of possession as per agreement for sale as mentioned in the table above is 19.02.2018 and even after a passage of more than 7 years till date neither the construction is complete nor the offer of possession of the allotted unit/flat has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit for which he has paid a considerable amount towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intend to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

20. Moreover, 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 he 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.....".

21. 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. (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. it was observed:

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."*

22. 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 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 he wishes to withdraw from the project, without prejudice to any other remedy



available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

23. 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 respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him 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. Directions of the authority

24. 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):
- i. The respondent/promoter is directed to refund the entire amount 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 the actual date of refund of the deposited amount.
 - ii. Out of total amount so assessed, the amount paid by the bank/payee, be refunded in the account of bank and the

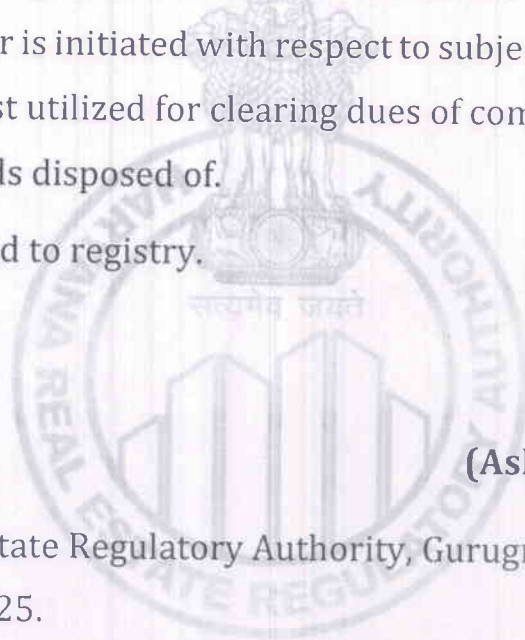


balance amount along with interest will be refunded to the complainant.

- iii. 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.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant. Even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant/allottee.

25. Complaint stands disposed of.

26. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2025.

HARERA
GURUGRAM