

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

Complaint no. 5206 of 2023
Date of filing 01.12.2023
Date of first hearing 13.03.2024
Order pronounced on 29.01.2025

1. Bindu Arora
2. Mahesh Kumar

Both R/o:- 1604, Tower 11, ULM Amangani, Garhi Bolni
Road, Rewari-123401, Haryana

Complainants

Versus

Vatika Limited

Regd. Office at:- Flat no. 621A, 6th Floor Devika
Towers, 6, Nehru Place, New Delhi

Corporate office at:- Vatika Triangle, 7th floor,
Mehrauli- Gurgaon Road, Sushant Lok Phase- I,
Gurugram- 122002

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Akhil Aggarwal (Advocate)

Shri Venket Rao (Advocate)

Complainants

Respondent

ORDER

1. This complaint has been filed by the complainants/allottee(s) 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 thereunder 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name and location of the project	"Vatika India Next (Phase II)", village Sihi, Shikohpur, Sikanderpur Badha, and Kherkidaula, Sector 81-85, Gurugram
2.	Project area	10.72 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2022 71 of 2010 dated 15.09.2010 valid upto 14.09.2021 62 of 2011 dated 02.07.2011 valid upto 01.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2024 66 of 2014 dated 15.07.2014 valid upto 14.07.2019
5.	RERA registered/ not registered and validity status	Registered Registration no. 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
6.	Allotment Letter	20.11.2012 (Page 36 of complaint)
7.	Date of buyer's agreement	08.01.2013 (Page 28 of complaint)
8.	Tri-partite agreement	03.01.2013 (Page 71 of complaint)
9.	Plot no.	21, Block C, 1 st Floor, Street 82C-9, Sector 82 (Page 39 of complaint)
10.	Unit area admeasuring	1653.15 sq. ft. (Page 39 of complaint)
11.	Possession clause	15. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR "The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said House/ said



		<i>Residential Floor within a period of 3 (Three) years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-II or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.”</i> (Page 47 of complaint)
12.	Due date of Possession	08.01.2016 (Calculated to be three years from the date of execution of agreement)
13.	Total sale consideration	Rs.1,07,48,428/- (As per SOA dated 18.01.2019 at page 124 of complaint)
14.	Amount paid by the complainants	Rs.32,38,686/- (As per SOA dated 18.01.2019 at page 124 of complaint)
15.	Occupation certificate	Not obtained
16.	Intimation of Possession	08.03.2016
17.	Legal Notice sent by respondent to either provide documents as required by bank or refund amount paid by complainants	22.07.2016 (Page 113 of complaint)
18.	Reply to said legal notice sent	22.08.2016 (Page 116 of complaint)
19.	Notice for Termination	12.04.2016 - Outstanding dues amounting to Rs.90,21,850/- (Page 112 of complaint) 18.01.2019 - Outstanding dues amounting to Rs.1,30,65,880/- (Page 123 of complaint) 12.10.2020 - Outstanding dues amounting to Rs.1,30,65,880/- (Page 18 of reply) 31.03.2022 - Outstanding dues amounting to Rs.23,17,452/- (Page 127 of complaint)
20.	Cancellation Letter	19.04.2022 (Page 130 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That the complainants bought a unit in the project of the respondent at a basic sale price of Rs.1,04,72,034/- and total consideration of Rs.1,06,79,692/-. The respondent thereafter raised a demand of Rs.5,39,790/- even before issuance of any allotment letter, let alone executing the buyer's agreement.
- b) That the provisional allotment letter was issued on 20.11.2012. After issuance of the said allotment letter, respondent coerced the complainants to pay an amount of Rs.16,19,343/- by 15.12.2012, i.e. more than 20% of BSP even before signing and executing the buyer's agreement.
- c) That the buyer's agreement was executed between the parties on 08.01.2013. Thereafter, the complainants further paid Rs.10,79,553/-, i.e., by 30.05.2013 as per the demands raised by the respondent.
- d) That since the very inception, complainants had informed that they wish to take loan for payment of the consideration and the respondent assured that it has been working with all the banks and has all necessary approvals and documents which will be provided to the bank on request.
- e) That the complainants initially applied for loan with the Canara Bank. However, Canara Bank did not process the loan since respondent failed to provide multiple documents like approvals and sanctions as required by the Canara Bank. Subsequently, complainants applied a loan with HDFC Bank and received an in-principal approval from HDFC Bank on 27.12.2012. Subsequently, a tri-partite agreement was entered into between complainants, respondent and HDFC Bank on 03.01.2013 and respondent issued a letter dated 25.02.2013 to HDFC Bank stating that it had all necessary approvals and sanctions but still failed to provide documents substantiating the same. Due to this, the bank did not disburse any loan to the complainants.

- f) That the let alone providing the said approvals to the bank, respondent never even showed such documents to the complainants despite multiple requests. Despite entering into a tri-partite agreement, the respondent issued an email to the complainants stating that only bank empanelled with the respondent is ICICI Bank. This is fraudulent as the respondent could not have forced the complainants to take a loan from a particular bank.
- g) That the complainants became later aware that the respondent did not have the sanctioned plans at the time of selling the unit as the entire project was under dispute due some gas pipeline. The layout plans were sanctioned only on 11.06.2014. The complainants were never informed about such a revision. The revised layout plan is significantly different from the layout plan as provided earlier and complainants would have never bought such a property had they were informed about the same at the stage of booking.
- h) That subsequently the respondent unilaterally shifted the location of the unit under the pretext of changing just the number of the unit vide letter dated 28.08.2015. The respondent never showed the actual site to the complainants pursuant to that. Further, as per clause 15 of the buyer's agreement, the respondent was supposed to hand-over the possession to the complainants within 3 years from the date of execution of agreement, i.e. by 07.01.2016. However, the respondent outrightly and abundantly failed to offer possession within the timeline as promised.
- i) That when the respondent abundantly failed to deliver possession on the due date of possession and with malicious intentions offered possession on 08.03.2016 without completing the construction as per the agreement and work was still going on at the site. The respondent completely denied providing copy of the occupation certificate to the complainants.
- j) That the complainants issued a legal notice dated 22.07.2016 to the respondent to either provide documents as required by the bank or refund

the amount paid by the complainants. However, the respondent issued an illegal reply dated 22.08.2022 through its lawyers but neither provided the documents as requested nor made any refund.

- k) That the respondent on a later date cancelled the unit unilaterally vide letter dated 19.04.2022 and not just adjusted the entire demand paid by the complainants but sought an illegal recovery of more than Rs.47 lakhs.
- l) That the complainants have reliably learnt that the respondent has now illegally sold the said unit to a third party despite the complainants having already raised a dispute with the respondents on the said unit and without having obtained the consent of the complainants let alone refunding the amount paid by them with interest.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire amount of Rs.32,38,686/- paid by the complainants to the respondent.
 - II. Direct the respondent to pay an interest of 18% per annum from the date of receipt of payment from the complainants till the date of refund.
 - III. Direct the respondent to pay Rs.2,00,000/- towards legal costs incurred by the complainants.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:

- a) That in September 2012, the complainants, learned about the residential colony project launched by the respondent, wherein the respondent was planning to create independent dwelling units on each floor titled as 'Independent Floors' called 'INXT Floors', situated at Sector 82, Gurgaon and approached the respondent for further details of the said project.
- b) That the complainants, booked a plot, vide application form dated 01.10.2012, upon his own judgement and investigation. The complainants

were aware of terms and conditions of the application form and had agreed to sign without any protest and demur. Further, the complainants were allotted unit no. 21, first floor, Street 82C-9, block C, admeasuring 1653.15 sq. ft. vide an allotment letter dated 20.11.2012.

- c) Further, on 08.01.2013, a buyer's agreement was executed between the parties with the respect to the allotted unit, for basic sale consideration of Rs. 1,04,72,034/-.
- d) That the respondent sent a letter for revision in numbering system dated 28.08.2015, stating that as the possession of few units has already been handed over and to avoid confusion the respondent is informing the final number of the unit i.e., First floor, 21, H-9, Vatika India Next, Gurgaon-122004 with 2 copies of addendum.
- e) That as per agreement, the respondent was obligated to handover the possession of the unit subject to force majeure conditions. Further, as per clause 18 of the agreement, the respondent shall be entitled for a reasonable extension of time due to force majeure conditions. The project has been delayed due to some conditions that were unforeseen, for which the respondent cannot be held attributable.
- f) That the respondent was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprising the township owing to the initiation of the GAIL corridor which passes through the same. This was further compounded with the non-removal or shifting of the defunct, high-tension lines passing through the lands, which also contributed to the inevitable change in the layout plans.
- g) That to further add to woes of respondent, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments, have resulted in respondent

being unable to deliver as per contemplated date of possession. The progress of the construction of the project was also affected due to various other unforeseen circumstances such as re- routing of high-tension lines passing through these lands resulting in inevitable change in the layout plans.

- h) That the respondent as per the agreement completed the project and sent an intimation of possession letter dated 08.03.2016, intimating the complainants that the respondent is commencing the process of handing over of possession and the complainants shall pay the final payment due of Rs. 89,44,135.56 towards the said unit, but the complainants failed to do so.
- i) That after non-receipt of any payments by the complainants, the respondent sent a notice for termination dated 12.04.2016, wherein the respondent intimated the complainants about their pending dues and granted a period of 7 days to pay the outstanding dues of Rs. 90,21,850/-.
- j) That the complainants kept on assuring the respondent for the payments, but the respondent never received the payments from the complainants. Due to above circumstances, the respondent was again constrained to send a notice of termination dated 18.01.2019, intimating the complainants that if the dues are not paid then the respondent shall deduct the earnest money.
- k) That the respondent provided one more opportunity to the complainants to pay the outstanding amount vide notice of termination dated 12.10.2020. After non-receipt of the necessary payments, the respondent gave last opportunity to the complainants to pay the outstanding dues vide notice of termination dated 31.03.2022, but the complainants again failed to make the necessary payments.
- l) That on 19.04.2022, the respondent sent a letter of cancellation of buyer's agreement cum recovery notice to the complainants, stating that owing to continuous failure to clear the outstanding dues, the respondent is constrained to and left with no alternative, but to cancel/terminate the

- allotment in accordance with the terms of the buyer's agreement. As per clause 12 and clause 21 of the buyer's agreement, the respondent is obligated to cancel the allotment upon non-receipt of timely payments by the allottees.
- m) That the respondent also intimated to the complainants that the respondent is also entitled to recover an amount of Rs.47,34,904 from the complainants on account of the said cancellation/termination with the detailed calculation of the dues vide letter of cancellation dated 19.04.2022. Further, intimated that the complainants are left with no right, title, interest, charge or lien over the unit and its allotment to the complainants stands cancelled/terminated with immediate effect. The respondent is released and discharged of all its liabilities and obligations in respect of allotment of the unit to you and is free to make fresh sale of the unit to any third party.
- n) That the complainants are allowed to obtain refund from the respondent, then it shall be allowed after making necessary deductions such as earnest money, brokerage etc as the allotment was cancelled due to delay in payments by the complainants despite repeated reminders and notices.
- o) That in case the relief of refund is allowed then the same shall be subject to the necessary deductions which the complainants have agreed under the agreement. Also, the respondent herein has invested the entire receivables towards the completion of the project and in case full refund is allowed then the interest of the allottees shall be at stake.

7. All other averments made in the complaint were denied in toto.
8. 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 parties.

E. Jurisdiction of the Authority:

9. The Authority observes that it has complete territorial and 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 the 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)(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.

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 case 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 objection raised by the respondent.

F.I Objection regarding delay owing to force majeure conditions:

15. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as passing of GAIL pipeline through the project and non-acquisition of sector roads by HUDA. However, the pleas advanced in this regard are devoid of merits. Firstly, the unit was allotted to the complainant-allottee on 20.11.2012 and the GAIL notification regarding laying of pipeline come out in the year 2009, which is prior to the allotment, and thereafter, GAIL granted permission for reducing ROU from 30 metres to 20 metres vide letter dated 04.03.2011. GAIL notification and permission letter was prior to the execution of buyer's agreement dated 08.01.2013. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same to the complainants. However, there is no justification for the wait for such

long period as it is well settled principle of law that a person cannot take benefit of his own wrong. Thus, no benefit of indefinite period in this regard can be given to the respondent/builder.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the entire amount of Rs.32,38,686/- paid by the complainants to the respondent.

G.II Direct the respondent to pay an interest of 18% per annum from the date of receipt of payment from the complainants till the date of refund.

16. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief, the same being interconnected.
17. The factual matrix of the case reveals that the complainants were allotted a unit no. 21, 1st floor, block C, Street 82C-9, admeasuring 1500 sq. ft. in the project "Vatika India Next (Phase II)" being developed by the respondent. The builder buyer agreement was executed between the parties on 08.01.2013. As per clause 15 of the builder buyer agreement the possession of the unit was to be offered within 3 years from the date of the execution of the buyer's agreement. Hence, the due date of possession comes out to be 08.01.2016.
18. The complainant states that there were no signs of completion of the project. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. However, an intimation of possession letter dated 08.03.2016 was being sent by the respondent to the complainants. Thus, it is necessary to clarify whether such intimation of possession made to the allottees tantamount to a valid offer of possession or not.
19. The Authority in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021 had laid down the pre-requisites for a valid offer of possession, which are as under:

a. Possession must be offered after obtaining occupation certificate.

- b. *The subject unit should be in a habitable condition.*
- c. *The possession should not be accompanied by unreasonable additional demands.*

20. In the present matter, the respondent merely sent intimation of possession letter on 08.03.2016 i.e., before obtaining occupation certificate from the concerned department. The relevant part of same is reiterated as under:

"It gives us immense pleasure to inform that we are commencing the process of handing over of our project- INXT Floors.

.....
Issuance of Offer of Possession: Subject to the pre-requisites fulfilment, "OFFER OF POSSESSION" shall be dispatched to you intimating the date of handing over the respective unit....."

Thus, the intimation of possession is an invalid offer of possession as it triggers component (a) of the above-mentioned pre-requisites, being sent by the respondent before obtaining an occupation certificate.

21. Further, the respondent raised another plea that the unit allotted to the complainants had already been cancelled by the respondents vide notice of termination dated 19.04.2022 on account failure of the complainants to make payment of the outstanding dues. To corroborate further, the respondent placed on record various notice of termination sent by the respondent to the complainants to make payment of the outstanding dues.
22. On the other hand, the complainants submitted that the respondent issued a letter dated 25.02.2013 to HDFC stating that it had all the necessary approvals and sanctions but still failed to provide the said documents to the bank. Due to this, the bank did not disburse any loan to the complainants. Therefore, the complainants sent a legal notice dated 22.07.2016 to the respondent to either provide documents as required by HDFC bank or in alternative, refund the entire amount paid by the complainants along with interest from the date of respective payment till actual realization.
23. In line with the aforesaid facts and documents placed on record by both the parties, the main question which arises before the authority for the purpose

of adjudication is that “whether the said cancellation is a valid in the eyes of law?”

24. Perusal of case file reveals that an amount of Rs.32,38,686/- had been paid by the complainants against the total sale consideration of Rs.1,07,48,428/-. Thereafter, a tri-partite agreement dated 03.01.2013 had been executed between the complainants, the respondent and Housing Development Finance Corporation Limited (HDFC), wherein the respondent undertook the responsibility of submitting all the documents of the project as requested by HDFC. The relevant part of the tri-partite agreement dated 03.01.2013 is reiterated as under for ready reference:

“.....The Developer also confirms and undertakes that it shall submit to HDFC all documents for the project as requested by HDFC and shall keep HDFC informed of the progress of the project and shall obtain a clearance from HDFC before handing over possession of the respective independent floor to the borrower.”

Therefore, it is evident that it was the responsibility of the respondent to provide all the necessary documents to the HDFC bank for approval of loan amounting to Rs.73,00,000/- as agreed by the respondent vide tri-partite agreement (Annexure C5, page 75) dated 03.01.2013. Due to failure of the respondent to provide such necessary documents, the loan could not be disbursed. Further, the respondent cancelled the unit owing to non-payment of outstanding dues by the complainants, however, it was due to the respondent’s own fault that the outstanding amount in the form of bank loan could not be disbursed to it on behalf of the complainants. Therefore, the said cancellation letter dated 19.04.2022 is held to be bad in the eyes of law.

25. The complainants herein intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per Section 18(1) of the Act and the same is reproduced below for ready reference:

“Section 18: - Return of amount and compensation



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

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

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act....."

(Emphasis supplied)

26. Moreover, 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. Keeping in view the fact that the allottee-complainants wishes to withdraw from the project and seeks refund of the amount received by the promoter in respect of the unit with interest, the matter is covered under Section 18(1) of the Act of 2016. Accordingly, the respondents are liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.

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

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

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

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

29. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

30. 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., 29.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

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

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

Explanation. —For the purpose of this clause—

.....

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

32. Therefore, the authority hereby directs the promoter to return the amount received by him i.e., Rs. 84,62,437/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, *ibid.* However, it is important to note that the amount of assured returns paid by the respondent to the complainant-allottees shall be adjusted/deducted from the payable amount.

G.III Direct the respondent to pay Rs.2,00,000/- towards legal costs incurred by the complainants.

33. The complainants are seeking the above-mentioned reliefs w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions of the authority

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

- I. The respondent is directed to refund the entire amount received by it from the complainants i.e. Rs.32,38,686/- 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 within the timelines provided in Rule 16 of the Haryana Rules, 2017.

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

35. Complaint stands disposed of.

36. File be consigned to registry.

Dated: 29.01.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM