

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

Complaint no.:	7673 of 2022
Date of filing:	22.12.2022
Order reserved on:	20.02.2025

1. Manoj Kumar
2. Sushma Kumari

**Both R/o** A-301, Plot no.21, Sector-7, Dwarka, South  
West, New Delhi-110075.

**Complainants****Versus**

M/s Vatika Ltd.

**Office address:** Unit-A002, INXT City Centre, Ground  
Floor, Block A, Sector 83, Vatika India Next, Gurugram,  
Haryana-122012

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Sachin Bajpai (Advocate)  
Ms. Ankur Berry (Advocate)

Complainants  
Respondent

**ORDER**

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



**A. Project and unit related details**

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

S. N.	Particulars	Details
1.	Name and location of the project	"Sovereign Next" by Vatika at Sector-82A, Gurugram.
2.	Project area	7.50 acres
3.	Nature of Project	Group Housing Colony
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018 71 of 2010 dated 15.09.2010 Valid upto 14.09.2018 62 of 2011 dated 02.07.2011 Valid upto 01.07.2024 76 of 2011 dated 07.09.2011 Valid upto 06.09.2017
5.	Name of Licensee	M/s Vatika Limited
6.	Rera registered/ not registered and validity status	<b>Registered</b> Vide no. 280 of 2017 dated 09.10.2017 Valid upto 31.03.2021
7.	Unit No.	1202, 12 <sup>th</sup> Floor, Tower-B (page 38 of complaint)
8.	Unit area admeasuring (super area)	3250 sq. ft. (page 38 of complaint)
9.	Date of buyer agreement	13.11.2014 (page 36 of complaint)
10.	Possession clause	13. Schedule for Possession of the said apartment: <i>"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/ said apartment within forty-eight months from the date of execution of builder buyer's agreement unless there shall be</i>



		<i>delay or there shall be failure due to reasons mentioned..."</i> <b>(Emphasis Supplied)</b>
11.	Due date of possession	<b>13.11.2018</b> (calculated from date of execution of buyer's agreement)
12.	Buy back agreement	<b>13.11.2014</b> (page 88 of complaint)
13.	Clause for buy-back	Clause 7 <i>It is however agreed between the parties that the party of the second part shall have to intimate/inform about the exercising of its options to the party of the first part by the end of 34<sup>th</sup> month of its booking. In the event the party of the second part do not intimate/inform about the exercising of its option, it shall be presumed that the party of the second part opts to surrender his booking.</i> (page no.89 of complaint)
14.	Tripartite Agreement (HDFC Limited)	19.11.2014 (page no. 84 of complaint)
15.	Clause 3 of Tripartite agreement	<i>"The builder in terms whereof the builder hereby assumes the liability of payments under the loan agreement as payable by the borrower to HDFC for 29 months from the date of first disbursement plus fraction period of first disbursement months..."</i>
16.	Total Sale consideration	Rs.3,10,50,500/- (page 39 of complaint)
17.	Amount paid against the allotted unit	Rs.1,61,04,652/- Out of which Rs.48,37,466/- (by the complainants) And Rs.1,12,87,419/- (by HDFC Bank) (as alleged by the complainant)
18.	First Email from complaint to surrender the unit in terms of buy-back agreement	17.12.2017 (page no.98 of complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

**B. Facts of the complaint:**

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

- i. That the present complaint has been filed by the complainants who booked a residential apartment in the project called 'Sovereign Next' which is a Group Housing Colony in the integrated township 'Vatika India Next' at Sector 82A, Gurugram, Haryana.
- ii. That the respondent is engaged in the business of real estate and is a land developer company which purchased the land from the land owners and after developing its, sell the developed units in the form of commercial spaces, office space, shops, flats, apartment etc. to the purchasers.
- iii. That the respondent has obtained Licence No. 113/2008, 71/2010, 62/2011 and 76/2011 from the Director of Town and Country Planning, Govt. of Haryana, Chandigarh (DTCP) for development of a Group Housing Colony, which has been named as 'Sovereign Next' (hereinafter referred to as the said 'Group Housing Colony') on the said land which is part of the integrated township 'Vatika India Next' being developed by the developer in Sectors 82, 82A, 83, 84 and 85 of the Gurgaon Manesar Urban Complex 2021. The complainants booked a 4 BHK apartment on 12th floor having super area of 3250 sq. ft. for a total sale consideration of Rs.3,10,50,500/- under subvention scheme and also executed buy-back agreement.
- iv. That the parties entered into builder buyer agreement dated 13.11.2014 but beforehand respondent received substantial amount of Rs.48,37,466/- between 12.08.2014 to 10.11.2014 from the complainants.
- v. That as per the builder buyer agreement the possession of the apartment was supposed to be delivered within 48 months from the date of execution of the agreement.
- vi. That both parties also entered into a separate buy-back agreement dated 13.11.2014 on the same day. As per the said buy-back agreement the



respondent after the completion of 36 months will buy-back the apartment/unit from complainant and refund the amount paid by complainant; Pre-pay the loan to bank (HDFC Ltd.); and pay premium @ Rs.1,000/- per sq. ft.

- vii. That to meet the financial burden and fund the respondent for the said apartment, the complainant took a home loan under subvention scheme as per the agreed payment plan and entered into a tripartite agreement with respondent and HDFC bank.
- viii. That in short, the complainants booked an apartment and paid Rs.48,37,466/- as advance booking and for balance amount a home loan of Rs.2.33 crores were advanced under subvention loan scheme. Out of Rs.2.33 crores, HDFC Ltd. transferred an amount of Rs.1,12,87,419/- on 30.12.2014. Out of total sale consideration of Rs.3,10,50,500/- respondent received Rs.1,61,24,885/- within 45 days from the date of execution of builder buyer agreement.
- ix. That as per the terms and conditions of the buy-back agreement dated 13.11.2014, the complainants vested with the right to surrender their booking and claim for refund and other arrangements. Accordingly, the complainant vide e-mail dated 17.12.2017 approached respondent reconfirming the surrender at the end of 36 months from the date of agreements i.e. by 30.12.2017 and requested for refund in terms of buy-back agreement.
- x. That the respondent after duly receiving the mail dated 17.12.2017, did not bother to respond. The respondent also started defaulting the EMIs payable to the HDFC bank. In furtherance to that, complainant wrote several other emails dated 21.01.2018; 29.01.2018; 07.05.2018; & 13.06.2018 to the respondent which were mostly ignored and, in few cases, open ended responses were received.

- xi. That after several attempts made by the complainants, the respondent paid premium amount of Rs.29,25,000/- dated 21.08.2018 to the complainants i.e. after the delay of around 8 months from due date. The respondent also deposited TDS of Rs.3,25,000/- on 01.08.2018 to the Income Tax Department.
- xii. The respondent deducted TDS under Section 194A of Income Tax Act, 1961 and showing it as an interest payment. However, it would be paid as per buy-back agreement and accordingly the relevant section applicable would be of sale/purchase of property. This has caused minimum additional 10% tax liability due to change from capital gains to interest payment by OP. This was not rectified by the OP even after informing them through channel partner or through the meeting.
- xiii. That after receiving various emails from the side of complainants, the respondent only paid the premium amount till August, 2018 but failed to pre-pay the loan amount and return the advance collected from the complainants as per the terms and conditions of the buy-back agreement dated 13.11.2014.
- xiv. That the complainant wrote another detailed letter dated 05.01.2019 to Respondent requesting to abide by the terms and conditions of the buy-back agreement and settle the loan with HDFC bank and return the advance.
- xv. That there were many occasions in which respondent failed to pay the timely EMI to the bank resulting which the bank started demanding pending EMIs from the complainant; it severally affected the CIBIL score of complainants.
- xvi. That the complainants left with no option wrote another detailed letter dated 09.04.2021 to Sh. Gautam Bhalla, Managing Director of respondent requesting to fulfil the buy-back agreement and full settlement.
- xvii. That after many attempts the respondent agreed to discuss the issues of complainants and share the link for zoom meeting through email dated 22.04.2021 which was conducted on the same date.



- xviii. That the respondent in the zoom meeting given various commitments with the complainants but all gone into vain. However, the complainants very diligently recorded the minutes of meeting dated 22.04.2021 and shared with the respondent through e-mail dated 23.04.2021.
- xix. That respondent on various occasions accepted its deficiency in services in replies to e-mails sent by complainants and assured to provide better services but all gone into vain.
- xx. That the complainant diligently followed the terms and conditions of the agreements dated 13.11.2014 and made around 51% payment to the respondent within 45 days of execution of BBA. However, the respondent just been inclined to feather its nest by inducing unsuspecting consumers like the complainants.
- xxi. That the respondent was from the very beginning deceitful, fraudulent and malicious in their approach. Solely with malafide intention to lure the complainants and to keep enjoying the money already paid to the respondent, the respondent made false and unwarranted statements and claims.
- xxii. That it is being around 5 years the respondent failed to abide the terms and condition of the builder buyer agreement as well as buy-back agreement both dated 13.11.2014. The complainants have been severally traumatized by the gross deficiency in service and unethical trade practice of the respondent, ruining of CIBIL score, clubbed with the mental agony of the fact that the apartment/unit of the complainants is in fact not even a top priority for the respondent, after having taken huge considerations from them.
- xxiii. That the complainant is before this Hon'ble Authority to raise and express their grievances and concerns as he has invested his hard-earned money in booking the apartment in the said project of the respondent. That although timely compliance from the side of complainant, respondent failed on

various occasions to abide the clauses of the agreements and its keep on failing.

- xxiv. The respondent has no reasonable justification for the inordinate delay in not abiding the terms and conditions of the buy-back agreement dated 13.11.2014 and none of the circumstances resulting this delay were beyond the control of the respondent; it is just a malafide intentions of respondent to deceit the innocent consumers like complainant and make crores of money.
- xxv. That the act of the respondent is mala fide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and as is unsustainable in the eyes of the law and is liable to be prosecuted under the provisions of the Haryana Real Estate (Regulations and Development) Act, 2016
- xxvi. That not only is the purpose of purchasing the apartment with buyback frustrated due to the inordinate delays but the investment made for the same which could have been made elsewhere by the complainants or any other similarly placed buyers is also wasted. The complainants therefore are also eligible to get an interest on the investment made by them in the Respondent's project.

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

4. The complainants have sought following relief(s):
- Direct the respondent, its Director's/Promoters jointly/severally to immediately refund an advance booking amount of Rs.48,37,466/- paid by the complainants along with interest @ 18% per annum (as per clause 7 of BBA) from the due date of buy-back of the property as per buy-back agreement dated 13.11.2014.
  - Direct the respondent, jointly or severally to abide the buy-back agreement dated 13.11.2014 and:
    - Pre-Pay the loan amount to bank to the tune of Rs.1,12,87,419/-;



- Buy-Back the unit from the Complainants after full and final settlement.
  - c. Direct the respondent, jointly or severally to pay the pre-EMI to the HDFC Bank till the time of full and final settlement of loan amount as per Subvention Scheme.
  - d. Direct the respondent jointly and severally to pay the interest @ 18% per annum on Rs.32,00,000/- (paid as premium as per buy-back agreement) as delayed premium amounting to Rs.3,69,271/- which was paid by OP on 21.08.2018 but was due from 30.12.2017;
  - e. Direct the respondent for TDS rectification of paid premium, from Interest payment to property sale/purchase. OR Pay compensation for additional interest liability caused to complainant i.e. minimum of Rs.3,20,000/- due to additional liability caused to applicant due to wrong TDS filing and not rectifying it.
5. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent:**
6. The respondent has contested the complaint on the following grounds:
- i. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
  - ii. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 13.11.2014 as shall be evident from the submissions made in the following paragraphs of the present reply.
  - iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper

adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.

- iv. That the complainants have not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply. That the Hon'ble Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable for reasons stated in the present reply.
- v. That the complainants are not "Allottees" but Investors who had booked the said unit in question as a speculative investment to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the complainants.
- vi. That the complainants vide application form dated 12.08.2014 approached the respondent and expressed their interest in booking of a residential unit in the proposed project namely "Sovereign Next" on the land which is part of the integrated township known as "Vatika India Next" situated in Sector 82 - 85, Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that the complainants took an independent and informed decision, uninfluenced in any manner by the Respondent, to book the unit in question. Thereafter, a unit bearing no HSG-019-B-1202, B-1202, 12th Floor, Tower-B, admeasuring 3250 sq. ft. (tentative area) was allotted to the complainants vide allotment letter dated 30.10.2014. The complainants consciously and willfully opted for subvention scheme along with two in one scheme sovereign next for remittance of sale



consideration for the unit in question. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favor.

- vii. That the complainants were supposed to remit the sale consideration as agreed between the parties within the stipulated time whereas, the complainants failed to remit the total sale consideration which resulted in the accrual of huge outstanding amount.
- viii. Thereafter, a buyer's agreement dated 13.11.2014 was executed between the complainants and the respondent. That the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- ix. That it is submitted that the total sale consideration of the said unit is Rs.3,10,50,500/-. That the respondent has only received an amount to the tune of Rs.1,12,87,419/-
- x. That as per clause 13 of the Agreement, the due date of possession was subject to the complainants having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- xi. That there is no delay or omission on part of the respondent in adhering to the terms and conditions of the agreement. That there is no inaction at the end of the respondent and has duly buy-back the said unit from the complainant after full and final settlement. That there arose no cause of action whatsoever, in the present instance. That the respondent has not defaulted the agreement or the Act, in any manner whatsoever as the respondent are not in control of the force majeure conditions.



- xii. That since the complainants has opted for two in one scheme for remittance of payment, a buy-back agreement dated 13.11.2014 was executed between the complainants and the respondent. That as per the buy-back agreement, on expiry of 36 months from the date of booking, the complainants had two options, either to continue with the booking or to surrender their booking. That the complainants under no undue duress and coercion opted out from the said project and intended to surrender their unit as per the terms and conditions of the buy-back agreement executed between the parties. Pursuant thereto, an amount of Rs.77,64,466/- was credited in the account of the complainants as full and final settlement and in accordance with the buy-back policy. Further, an undertaking dated 25.08.2018 was executed by the complainants wherein the complainants were left with no right, title or interest or any claim whatsoever against the said unit. Moreover, the complainants themselves undertook to raise no claim of whatsoever nature in future over the said unit but on the contrary, in disregard to the undertaking of the complainants, the complainants have filed the said complaint without having any cause of action against the respondent.
- xiii. That the respondent as per the terms of the buy-back agreement has also paid an amount of Rs.29,25,000/- as premium vide cheque number 000575 dated 21.08.2018. That the said premium was duly acknowledged and admitted by the complainants even in their complaint in para 12 at page 10. That the respondent has always abided by the terms of the agreement and has always fulfilled its part of obligations. That the complainants with ulterior motives have filed the said complaint in order to mount undue pressure on the respondents.
- xiv. That without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without



jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

- xv. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 rules, has been executed between the parties. Rather, the agreement that has been referred to for the purpose of getting the adjudication of the complaint though without jurisdiction is the builder buyer's agreement, executed much prior to coming into force of 2017 rules.
- xvi. That the adjudication of the complaint for refund and interest as provided under sections 11, 12 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 rules and no other agreement. This submission of the respondent inter alia, finds support from reading of the provisions of 2016 Act as well as 2017 rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to them.
- xvii. That apparently the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for. are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to them.
- xviii. That as per the undertaking dated 25.07.2018 executed by the complainants, they have surrendered their unit leaving them with no right, title or interest over the said unit. That the complainants have been duly refunded along with the premium amount as agreed between the parties in accordance with the buy-back agreement and no claim lie against each other at this point of time.
- xix. That the complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. The



complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favor of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent.

xx. That in light of the bona fide conduct of the respondent, delay cause is beyond the control of the respondent, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favor of the respondent.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

**E. Written submission made by the complainants**

8. The complainants have filed the written submissions during the proceedings on 02.05.2024 and the same are taken on record. No additional facts apart from the complaint and submissions have been stated in the written submissions.

**F. Jurisdiction of the authority**

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

**F.1 Territorial jurisdiction**

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



authority has completed territorial jurisdiction to deal with the present complaint.

**F. II Subject matter jurisdiction**

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 promoter, 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 complainant at a later stage.

**G. Findings on objections raised by the respondent:**

**G.I. Objection regarding the complainants being investor.**

13. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute

and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(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;"*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**G.II Findings on objection w.r.t maintainability of complaint.**

15. The respondent has taken a plea that the present complaint is not maintainable as the complainants have already subrogated all his rights and claims for refund in favour of HDFC Bank with respect to subject unit. The plea taken by respondent in this regard is devoid of merits. In the instant complainant, the complainants-allottees surrendered their unit only in terms of buy-back agreement, as per which the respondent-promoter agreed to pre-pay the loan amount taken by the complainants-allottees and the right of the complainants for seeking of refund is arrived from the buyer's agreement 13.11.2011 and buy-back agreement dated 13.11.2011 executed between the



complainants-allottees and respondent-promoter and also failure of the respondent-promoter in terms of the provisions of the Act, 2016. Secondly, while deciding the instant complaint all the rights and claims of the financial institution (i.e., HDFC Bank) stands secured and taken into consideration. Thus, the plea taken by the respondent is hereby dismissed and it is well settled principle that a person cannot take benefit of his own wrongs.

**H. Findings on the relief sought by the complainants:**

- H.I. Direct the respondent, its Director's/Promoters jointly/severally to immediately refund an advance booking amount of Rs.48,37,466/- paid by the complainants along with interest @ 18% per annum (as per clause 7 of BBA) from the due date of buy-back of the property as per buy-back agreement dated 13.11.2014.
  - H.II Direct the respondent, jointly or severally to abide the buy-back agreement dated 13.11.2014.
  - H.III Direct the respondent, jointly or severally to pay the pre-EMI to the HDFC Bank till the time of full and final settlement of loan amount as per subvention scheme.
  - H.IV Direct the respondent jointly and severally to pay the interest @ 18% per annum on Rs.32,00,000/- (paid as premium as per buy-back agreement) as delayed premium amounting to Rs.3,69,271/- which was paid by OP on 21.08.2018 but was due from 30.12.2017;
  - H.V Direct the respondent for TDS rectification of paid premium, from Interest payment to property sale/purchase. OR Pay compensation for additional interest liability caused to complainant i.e. minimum of Rs.3,20,000/- due to additional liability caused to applicant due to wrong TDS filing and not rectifying it.
16. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

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

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

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

*(Emphasis supplied)*

18. Clause 13 of the buyer's agreement dated 13.11.2014 provides the time period of handing over possession and the same is reproduced below:

*13 Schedule for possession of the said apartment*

*"That the developer based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/said apartment within a period of forty-eight (48) months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 14, 17 and Clause 37 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues....."*

*(Emphasis Supplied)"*

19. As per clause 13 of the builder buyer agreement dated 13.11.2014 the unit was to be offered within a period of 48 months to the complainants-allottees. As per clause 13 of the builder buyer agreement the due date of possession comes out to be 13.11.2018. 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 they have 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....."*

20. It has come on record that against the sale consideration of Rs.3,10,50,500/-, the complainants have paid an amount of Rs.1,61,04,652/- (Rs.48,37,466/- paid by complainants plus Rs.1,12,87,419/- paid by HDFC Bank) to the respondent-promoter. However, the complainants contended that the due date of possession has been lapsed and No occupation certificate has been obtained against the said project by the respondent. Also, via email dated 17.12.2017, the complainants have exercised their right for refund in terms of clause 7 of buy-back agreement dated 13.11.2011 and requested the respondent-promoter to surrender the unit in terms of buy-back agreement. Further, the Authority would like to clarify that the Authority can only grant relief sought in the instant complaint only on account of failure in terms of agreement to sell or as per the provisions of the Act of 2016. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including*



*compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to take possession of the unit and they are well within right to seek refund of the paid-up amount.
23. This is without prejudice to any other remedy available to the allottees including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
24. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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



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

25. 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.
26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. 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, ...*
28. Therefore, The authority hereby directs the promoter to return the amount received by it i.e., Rs.1,61,04,652/- 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*.
29. Out of total amount so assessed, the amount paid by the HDFC bank be refunded first to the bank and the balance amount along with interest will be

refunded to the complainants. Further, respondent is directed to get the NOC from HDFC bank and give it to the complainants within a period of 30 days of this order.

30. That during the proceedings dated 02.05.2024 as well as in reply to the application for impleadment of HDFC Bank, the counsel for the complainant clarifies and confirms that the respondent has already paid only an amount of Rs.29,25,000/- in lieu of clause 8 of buy-back agreement dated 13.11.2014 to the complainants. The said amount shall be adjusted while making the payment of refund amount.
31. Further, the respondent is directed to furnish the detail/proof of payment of Rs.3,25,000/- made on account of TDS to the concerned department, if any, failing which the respondent shall be liable to refund the excess amount.

**I. Directions of the authority**

32. 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):
- The respondent/promoter is directed to refund the entire amount i.e., Rs.1,61,04,652/- received by it against the allotted unit along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
  - Out of the total amount so assessed, the amount paid by the HDFC bank be refunded first to the bank and the balance amount along with interest will be refunded to the complainants.
  - The respondent shall deduct an amount of Rs.29,25,000/- from the balanced refundable amount to the complainants.





- d. The respondent is directed to get the NOC from HDFC Bank and give it to the complainants within a period of 30 days of this order.
- e. 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.

33. Complaint as well as applications, if any, stand disposed off accordingly.

34. File be consigned to the registry.

Dated: 20.02.2025



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

**HARERA**  
GURUGRAM