

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

Complaint no.: 4918 of 2023
Date of filing: 30.10.2023
Date of first hearing: 07.02.2024
Date of order: 26.03.2025

Mohit A Khan through its GPA Holder Humayun Akhtar

R/o- 6865, Malton Court Centreville, VA, 201212559, USA.

Complainant

Versus

M/s Vatika Ltd.

Office address: Vatika Triangle, 4th Floor, Sushant Lok, Phase-1, Block-A, Mehrauli Gurugram Road, Gurugram, Haryana-122002.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Divyanshu Sarswat (Advocate)

Complainant

Shri Dhananjai Jain, Omita Unnarkar, Bhoop Singh and Anurag Mishra (Advocates)

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:

Sr. No.	Particulars	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at Sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2017
5.	Name of the licensee	M/S Stanway Developers Pvt Ltd. & 2 others
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	501, 5 th floor, building E (page 42 of complaint)
8.	Unit area admeasuring	2290 sq. ft. (Super Area)
9.	Date of builder buyer agreement	03.06.2015 (page 39 of complaint)
10.	Due date of possession	03.06.2019
11.	Possession clause	<p>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</p> <p><i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months 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 14 to 17 & 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 in accordance with the schedule of payments given in Annexure -I 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></p> <p style="text-align: right;">(Emphasis supplied)</p>

12.	Total sale consideration	Rs. 1,55,72,000/- [as per BBA at page 42 of complaint]
13.	Amount paid by the complainant	Rs. 70,24,785/- [as per SOA dated 21.04.2022 page 74 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

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

- a) That the complainant booked a residential space for an amount of Rs. 1,55,72,000/- at the commercial complex run by the respondent "Tranquil Heights- North" to be constructed at the piece and parcel of land situated at Sector - 82 A, Gurugram, Haryana in the year 2015 as per the booking form dated 03.06.2015.
- b) That the allotment apartment no. 501, 5th floor, building no. E admeasuring 2290 sq. ft. was allotted to the complainant as per the booking cum allotment letter dated 03.06.2015. Thereafter, a residential space and builder buyer agreement was executed on 03.06.2015.
- c) That it was agreed and settled between the parties that the possession of the unit shall be provided in the year 2019. It was assured by the respondent that in the event of delay, the complainant is entitled to receive the compensation for such delay. Hence, the respondent was duty bound and contractually liable to handover the physical possession of the unit by June 2019.
- d) That the respondent in order to extract more money from the complainant misrepresented that through the payment plan being prescribed, the complainant will be entitled to a huge discount. As per the plan, the complainant has to pay 85% of the total consideration in advance and remaining 15% at the time of offer of possession. The complainant paid an amount of Rs. 70,24,785/- towards the total sale consideration of the unit.
- e) That the respondent has failed to provide the possession of the unit, thereafter, the complainant tried to contact the respondent several times, ✓

however, the respondent gave false assurances and misrepresentations to the complainant. The respondent neither provided any updates regarding the construction of the project and nor responded to the enquiries of the complainant.

- f) That the complainant through his own findings discovered that the project has stopped after piling of basement level and the construction material has also been withdrawn. Thus, the respondent stopped the construction of the project in June, 2019.
- g) That the complainant relies upon order passed by the Authority in complaint case no. 1986 of 2018, wherein the Authority ordered the relief of refund in the favour of the complainant. The present complaint is being filed by the complainant only after exhausting all the alternatives against the respondent for its fraudulent actions and misdeeds.

C. Relief sought by the complainant:

- 4. The complainants have sought following relief(s):
 - I. Direct the respondent to refund the entire amount paid by the complainants i.e., Rs.70,24,785/- along with applicable interest and compensation.
 - II. Direct the respondent to issue interest @ 18% per annum on the amount paid by the complainant along with compensation of Rs.10,00,000/- for mental pain, torture, agony and hardships caused to complainant for delay of the unit.
- 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:
 - a) That the complaint is liable to be dismissed as the complainants has come before this Hon'ble Authority, with unclean hands and has hidden facts with an attempt to mislead this Hon'ble Authority. The complainants have tried to mislead this Hon'ble Authority by false and frivolous averments.

- b) That the "Tranquil Heights" is a residential group housing project being developed by the respondent on the licensed land admeasuring 11.218 Acres. That the license no.22 of 2011 and approval of building plan and other approvals granted for the "Tranquil Heights Project" has been obtained on 24.03.2011 by respondent and the construction whereof was started in terms thereof.
- c) Further, after establishment of the Authority the respondent applied for registration of its project and the authority registered the said project vide registration dated 17.11.2017. The challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of the project was undertaken by the respondent in right earnest and the same proceeded in full swing.
- d) That complainant booked unit no. 501, 5th floor, building no. E admeasuring super area 2290 sq. ft. vide buyer's agreement dated 03.06.2015.
- e) That as per clause 13 of the buyer's agreement executed with the complainants, the construction of the project was contemplated to be completed in 48 months from the date of said BBA subject to force majeure circumstances mentioned in clauses 14 to 17 and 37 thereof which provided for extension of time. The slowdown in construction and delay, if any, is primarily because of default in making timely payment of instalments by the buyers including the complainants.
- f) That the complainant only paid Rs.70,24,785/- towards the booking of the said unit which is around 45% of the total sale consideration. The complainant made no further payment after 2017 till date.
- g) That the OP had offered "Payment Linked Plan" and "Construction Linked Plan" to its buyers. Few of the buyers had opted for "Payment Linked Plan" however most of the buyers in the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of

construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. Most of the flat buyers including the complainants wilfully defaulted in the payment schedule which also contributed to the delay in the construction activity, affecting the completion of the project.

- h) That besides the above major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated November 8, 2016, has also affected the pace of the development of the project. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non-availability of adequate funds with the banks had further escalated this problem many folds.
- i) It is deemed that prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access/ approach roads, key distances, looked at the vicinities, physical characteristic of the project etc. and then filed an application for allotment with the OP which factum is also recorded in the buyer's agreement executed with each of the complainants. The OP also caused site visits for the prospective buyers who had made requests for visiting the project site before making application for allotment. Almost all the buyers (including the complainants) have visited the project site and were aware of the fact that the project had no direct access road and OP was working on the getting a remedy for the same.

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- j) That almost all the buyers of the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of construction and timely delivery of Apartments in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the Respondent. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers in the said project have wilfully defaulted in the payment schedule which is the main cause of the delay in the construction activity and affecting the completion of the project.
- k) It is stated that the delay, if any, is on account of reasons beyond the control of the OP (as explained herein below), therefore, there is no breach whatsoever on the part of OP. In any event, it is stated that the time stipulated for completion under the allotment / agreement is not the essence and OP is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to OP. On the perusal of below submissions, it would be clear that the complaint of the complainants with regard to delay in completion of construction of the possession is misconceived particularly for the following reasons:
- l) The factors which materially and adversely affected the project are being set out herein under:
- i. The Road construction and development works in Gurugram are maintained by the HUDA/GMDA but the NHAI has plan the development of Gurugram Pataudi-Rewari Road, NH-352 W under Bharatmala Pariyojana on 11.07.2018.
 - ii. The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr. Road (NH-352 W) near Harsaru Village shall develop &construct by the NHAI.

- iii. The GMDA has approached the Administrator, HSVP, Gurugram and request to direct HSVP/LAO to hand over encumbrance free possession of land from Dwarka Expressway i.e. junction of 88A/88B to Wazirpur Chowk to GMDA so that possession of land may be handover to NHAI on 08.09.2020.
- iv. The DTCP published a notification no. CCP/TOD/2016/343 on 09.02.2016 for erecting transit-oriented development (TOD) policy. Vatika Limited has filed an application for approval of revised building plan under (TOD) policy 05.09.2017 and paid amount of Rs. 28,21,000/- in favour of DTCP.
- v. Vatika Limited has filed another application on 16.08.2021 for migration of 18.80 Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana.
- vi. No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W.
- vii. Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
- m) That the National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2016 to December 2019. These partial and unplanned bans have also become a factor for delay in construction of the project.
- n) The world at large has witnessed COVID-19 and the Government of India imposed a lockdown on all commercial activities in the light of the ongoing pandemic situation from 22nd March 2020. Due to uncertainty and fearing sickness and the epidemic, most of the construction workers left for their home towns. The above has resulted in delays in construction of the project, for reasons that essentially lie beyond our control. Surge of covid second ✓

wave and apprehension of covid third wave is also affected the return of labourers to work sites.

- o) Declaration of Gurugram as Notified Area for the purpose of Ground Water and Restrictions imposed by the State Government on its extraction for construction purposes.
 - p) Due to the above-mentioned reasons the respondent no. 1 had no option left but to make a request for withdrawal of application for grant of license for mix land use under (TOD) policy due to change in planning. The DTCP has accepted a request for withdrawal of application under (TOD) Policy on 17.08.2021 and forfeited the scrutiny fee of Rs. 19,03,000/-.
 - q) Further, Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favour of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B.
 - r) That due to the said loss suffered by the OP in the said project, the OP had no other option but to apply for de-registration of the said project. The intention of the respondent is bonafide and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project as the project could not be delivered due to various reasons beyond the control of the respondent.
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. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. 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.

E. II Subject matter jurisdiction

10. 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.

11. 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.
12. 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. 2021-2022 (1) RCR (Civil), 357*** 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

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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."

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

F. Findings on objections raised by the respondent:

F.I. Objection regarding delay due to force majeure circumstances.

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure circumstances such as demonetization, default in making timely payment by several allottees, various orders passed by NGT, Hon'ble Supreme court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, it could not speed up the construction of the project, resulting in its delay, then handing over to NHAI, re-routing of high tension lines passing through the land of the project, etc. All the pleas advanced in this regard are devoid of merits. The passing of various orders to control pollution in the NCR region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden. Also, as far as the plea with regard to handing over the construction work to NHAI is concerned, neither any specific pleading has

been advanced by the respondent during the course of proceedings, nor any documentary evidence has been placed on record to substantiate the same. The contention made by the respondent seems to have been made in routine and are therefore, rejected.

15. The due date of possession in the present case is 03.06.2019, so, any situation or circumstances which could have an effect on the due date should have been considered before fixing a due date. Moreover, the circumstances detailed earlier did not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

16. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr.* bearing **no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020** dated 29.05.2020 has observed as under:

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

17. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 03.06.2019. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the entire amount paid by the complainants i.e., Rs.70,24,785/- along with applicable interest and compensation.

G.II Direct the respondent to issue interest @ 18% per annum on the amount paid by the complainant along with compensation of Rs.10,00,000/- for mental pain, torture, agony and hardships caused to complainant for delay of the unit.

18. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

19. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by him 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.-

(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)

20. Clause 13 of the buyer's agreement dated 03.06.2015 provides the time period of handing over possession and the same is reproduced below:

13. Schedule for possession of the said apartment

"The developer based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/apartment unit within a period of 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 to 17 and 37 or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues....."

(Emphasis Supplied)

21. As per clause 13 of the builder buyer agreement dated 03.06.2015 the unit was to be offered within a period of 48 months to the complainant-allottee. As per clause 13 of the builder buyer agreement the due date of possession comes out to be 03.06.2019. 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 she 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....."

22. It has come on record that the complainant has paid an amount of Rs.70,24,785/- against the sale consideration of Rs.1,55,72,000/-. However, the complainant contended that the due date of possession has been lapsed, and no occupation certificate has been obtained against the said project by the respondent. 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

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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."

23. 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.
24. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant cannot be compelled to take possession of the unit as he is well within his right to seek refund of the paid-up amount.
25. This is without prejudice to any other remedy available to the allottee(s) including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under Sections 71 and 72 read with Section 31(1) of the Act of 2016.
26. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with Rule 15 of the Rules, 2017 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, *ibid*. 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."

27. 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.
28. 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., 26.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
29. The definition of term "interest" as defined under Section 2(z)(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,
.....
30. Therefore, The authority hereby directs the promoter to return the amount received by it i.e., Rs.70,24,785/- 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*.

H. Directions of the authority

31. 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 i.e., Rs.70,24,785/- 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 its realization.

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.

32. Complaint stands disposed of.

33. File be consigned to the registry.

Dated: 26.03.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority
Gurugram