BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 6312 of 2022
Date of filing: 11.10.2022
Date of decision: 13.02.2025

1. Vanya Varma
2. Captain Sumant Varma

Both R/o 3076, B-4, Pocket-B, Vasant Kunj, Mehrauli, New Delhi-110070. **Complainants**

Versus

M/s Vatika Limited
Office address: Vatika Triangle, 4th Floor, Sushant Lok-I, Block-A, Mehrauli Gurugram Road, Haryana-122022. **Respondent**

CORAM:

Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Shri Satya Prakash Yadav (Advocate) Complainants
Ms. Ankur Berry (Advocate) 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 memorandum of understanding 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.No.	Particulars	Details
1.	Name and location of the project	Vatika Inxt City Centre, Sector 83, Gurugram
2.	Nature of project	Commercial
3.	DTCP license no.	122 of 2008 dated 14.06.2008
4.	Unit no.	511, floor-5th, block-E (page 39 of reply)
5.	Unit area admeasuring	1000 sq. ft. (super area) (page 39 of reply)
6.	Allotment letter	20.05.2008 (page 46 of complaint)
7.	Builder buyer agreement	19.06.2008 (page 30 of complaint)
8.	Allocation of unit no.	31.07.2013 (page 39 of reply)
9.	Addendum to buyer's agreement	Undated (page 51 of complaint)
10.	Possession Clause	**6.** *The Developer shall issue notice in writing to every allottee for taking over possession.* ***All possession shall be handed over by October 1, 2010*** *subject to the payment of the entire consideration along with any other dues payable by the allottee to the developer. It is clarified that delays in handing over possession on ground of non- clearance of outstanding dues shall be dealt with as failure to takeover possession and the allottee shall be liable to pay the holding and other applicable charges for such delay more specifically described in para 7.*
11.	Committed return clause	***2.*** *Since the unit would be completed and handed over by 1st October,2010 and since the allottee has paid part/full sale consideration on signing of this agreement, the developer hereby undertakes to make a payment by way of*

		committed return during construction period, as under, which the allottee duly accepts payment from 07.04.2008 to 07.09.2010 of Rs.60,000/- every month. It is specifically clarified that the committed return would be paid by the Developer up to 30.09.2010 or in the event of any delay in completion of the project, up to the date of offer for handing over of completed unit to the allottee
12.	Due date of possession	01.10.2010 (as per the possession clause 2 & 6 of the agreement)
13.	Sale Consideration	Rs.58,38,000/- (page 32 of complaint)
14.	Amount paid by complainant	Rs.58,38,000/- (page 32 of complaint)
15.	Assured returns paid by the respondent	Rs.71,40,000/- (as per details provided by the respondent at page 40 of reply)
16.	Committed returns post completion paid by the respondent	Rs.3,60,000/- (as per details provided by the respondent at page 40 of reply)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

a. That the complainant is a peace loving and a law-abiding citizen of India and is presently residing at the address mentioned above. That the respondent is a company registered under the Company Act, 1956.

b. That the respondent is a builder company, which launched a residential project titled as Vatika Trade Centre (later on name changed to Vatika INXT City Centre) on a land parcel situated at residential plotted colony, Sector 82A, Gurugram, Haryana. The complainant herein is the purchaser of the unit no. 601, Tower A measuring 1000 sq. ft.

c. The complainant with the positive hope desired to purchase a plot in the project being developed by the respondent as the same was being advertised by the respondent as one of the best living spaces to be built in the area where the project is situated. In this effect, the respondent even assured the complainant that it has taken all the necessary permissions and approvals for the project from the competent authorities and will deliver the possession in the project till 01.10.2010 from the date of the execution of the builder buyer agreement.

d. The complainant on believing the bona fide of the respondent and the representations made by it in regards of the project decided to book a plot in the project. Subsequently, the respondent provided the complainant with a brochure detailing the terms and conditions of the allotment in the project.

e. That upon believing the representations made by the complainant to be true, the complainant was made to part away with a total sum of Rs.58,38,000/- to the respondent company. That the complainant paid the Rs.6,00,000/- vide cheque bearing no. 235416 dated 18.03.2008 drawn on Deutsche Bank, New Delhi in the 1st instalment. That the complainant further paid a sum of Rs.6,00,000/- vide cheque bearing no. 235417 dated 18.03.2008 drawn on Deutsche Bank, New Delhi as the 2nd instalment. That further the complainant paid a sum of Rs.5,00,000/- vide cheque bearing no. 971907 dated 23.03.2008 drawn on ICICI Bank, New Delhi as the 3rd instalment. That, as final payment, the complainant paid a sum of Rs.41,38,000/- vide cheque bearing no. 391607 dated 24.03.2008 drawn on Deutsche Bank, New Delhi as the final instalment.

f. That the respondent issued an allotment letter dated 20.05.2008 in favour of the complainant in respect of the said unit booked by the complainant in the project.

g. The respondent promised the complainant that the unit booked by the complainant would be delivered by 01.10.2010 and till then the complainant was frivolously assured that it would be entitled for a return of Rs.60,000/- per month as return on complainant's investment till the complainant receive possession of the booked unit.

h. That, thereafter, vide letter dated 27.07.2011 the respondent illegally relocated the unit of the complainant in some other project with malicious and fraudulent intent and also amended the clauses of complainant's agreement without informing or obtaining consent from complainant which is clearly an offence of criminal breach of trust and misappropriation.

i. Thereafter, the builder started putting pressure upon the complainant to sign an addendum document sent to the complainant vide letter dated 08.11.2011. The complainant had no other option but to succumb to the illegal demand of the builder company and therefore the complainant signed the said document as the complainant was threatened that she would lose her hard-earned investment if she did not accede to builder's demand threats and extortions.

j. That only after a few days have that the respondent once again issued a letter dated 27.07.2011 stating that the location of the Project has been changed and has been shifted to Sikhopur having proximity to National Highway (Delhi-Jaipur Expressway) and the Dwarka Expressway and an addendum agreement related to relocation of the commercial project dated 08.11.2011 was issued by the respondent titled as Vatika INXT City Centre to the complainant.

k. That on 19.06.2008 the complainant was asked by the respondent to execute a BBA. That the complainant at the time of execution of the BBA was for the first time informed about the flat number and the tower in the project which

was allotted to the complainant. It is submitted that pursuant to the terms agreed upon between the respondent and the complainant at the time of registration, the respondent was to provide the possession of the plot to the complainant till 01.10.2010. However, the complainant was in utter shock to see that the respondent unilaterally amended the location of the project without even asking the complainant about the same and subsequently, threatened and extorted the complainant to sign on the addendum letter for relocation of the said project.

l. That since the complainant had already paid a huge amount as earnest money before the execution of BBA, the complainant was left with no other option but to sign on the dotted lines as dictated by the respondent. It is submitted that the terms of the BBA are extremely unfair, one sided, unreasonable to the advantage of the respondent.

m. The complainant submits that even a bare reading of the clause 'A' point no. 4 of the agreement points to the malafide of the respondent in never originally intending hold good to the representations and promises made by it to the complainant at the time of booking if with regards to the delivery of possession of the apartment. The aforementioned clause is so arbitrarily and vaguely drafted that a strict reading of the same would lead to a conclusion wherein the respondent seeks to accept absolutely no responsibility, liability or obligation whatsoever with regard to providing the possession of the said unit.

n. The complainant further brings to the notice of this Hon'ble Authority clause 'A', point no. 5 of the agreement, wherein the respondent has fixed a meagrely compensation to be paid in the event of delayed possession which in fact the respondent has been charging enormous interest at the rate of 24% per annum on delayed payments. The complainant submits that in light

of the 24% p.a. Interest rate charged by the respondent on the complainant for any delay in payment on their part, the compensation to be paid by the respondent amounts to a substantial unconscionability and renders clause 'A' point no. 4 of the BBA unenforceable.

o. The complainant, despite the issues as explained above, continued to make all payments as demanded and prescribed by the respondent, honouring the promises made by the complainant, and hoping that the respondent will hold good on its promises as well, especially with regards to timely possession of the plot.

p. The complainant showing faith in the bona fide of the respondent to deliver the plot, and hoping to get the dream home they worked so hard for years and years to afford, continued to make payments as and when called by the respondent.

q. It is submitted that the respondent has abjectly failed to deliver the possession as promised within 30 months i.e., October, 2010. It is submitted that because of the aforesaid default, the complainant has suffered huge losses since there is a sharp downward revision in the market price of the said flat. It is submitted that the said loss is clearly attributable to the respondent.

r. It is submitted that the complainant on not receiving any word from the respondent about the offer of possession of apartment, enquired the same from the respondent but once again the respondent assured the complainant that the project work is being done as per the timeline and the possession will be offered to the complainant at the earliest. That when the respondent failed to offer possession after the deadline for offering possession as per the BBA, the complainant started enquiring about the same from the respondent,

however the respondent kept on avoiding the same on one pretext or the other.

s. The complainant is greatly aggrieved by these 144 months delay caused by the respondent in delivering the apartment, and seeks a refund from the respondent for the delay in delivering possession of the plot, which, till date has not been delivered to the complainant.

t. The complainant had deposited with the respondent payments to the tune of Rs.58,38,000/- as per the memorandum customer ledger provided by the respondent itself.

u. The complainant is greatly aggrieved by this144 months delay caused by the respondent in delivering the plot, and seek the same quantum of interest from the respondent for the delay in delivering the possession of the plot at prescribed rate i.e. MCLR + 2% or such higher rate permissible under the law.

v. It is further submitted that the complainant also verily believes that there is no water, sewage or electricity connection and consequently the offer of possession will be still premature and bad in law.

w. It is submitted that the complainant had earlier filed a complaint bearing No. CR No.668/2021 before this Hon'ble Forum, wherein the complainant was informed that a notice shall be served via email containing date of hearing, however the said complaint was dismissed in default without any email from the authority. As such the present complaint is being filed as the earlier complaint was not considered on merits.

x. In such circumstances, the complainant herein has got no other option but to seek back his entire hard-earned money from respondent and also adequate compensation as mandated under the statutory provisions of RERA Act.

y. That the respondent had cheated the complainant from the very beginning and submitted false documents to induce the complainant to pay instalments which includes;

i. The respondent sold flat without approvals.
ii. Failed to provide timely possession of the unit.
iii. Raised various illegal demands and extorted money from complainant.
iv. Relocated the project and re-amended the clauses of the agreement without any concerns of the complainant

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

i. The allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.
ii. Cost of litigation be awarded in favour of complainant.
iii. Impose exemplary cost upon the respondent for pressurizing the complainants to accept unilateral change of terms and conditions under various frivolous pretexts thereby causing immense psychological trauma and anxiety.

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 by way of written reply made the following submissions:

a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law, and is filed without a cause of action, hence is liable to be rejected on this ground alone.

b. That the complainant has approached the Hon'ble Authority with unclean hands. That the claims of the complainant are not genuine, and have been outreached and concocted, thus, by reason of approaching the Hon'ble Authority with unclean hands and suppressing material facts. That the

complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

c. That the complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is raising false. frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

d. That at the outset, it is submitted that the concerned unit has been booked by the complainant, i.e., Ms. Vanya Verma being one of the allottee along with other co-allottee, i.e., Mr. Sumant Verma. That the buyer's agreement was also executed by both co-allottees. In view of this, the co-allottee, Mr. Sumant Verma is a proper/necessary party to the case. The complainant has misdirected herself in filing the above-captioned complaint before this Hon'ble Authority as he has failed to add the other co-allottee as the party to this case. Hence, the complaint is liable to be dismissed for non-joinder of parties. Thus, the relief claimed as such is illegal, misconceived, erroneous and cannot be said to even fall within the realm of jurisdiction of this Hon'ble Authority. That making any determination over the rights of the co-allottee in her absence will amount to a grave misuse of process of law and cannot be done. Thus, on this ground alone, the complaint is liable to be rejected.

e. That the complainant has gravely erred in filing the present complaint and misconstrued the provisions of the RERA Act. That it is an admitted fact that by no stretch of imagination it can be concluded that the complainant herein is an "Allottee/Consumer". That the complainant is simply an investor who approached the respondent for investment opportunities and for steady committed returns and rental income. That the complainant being an investor in the project has no locus standi to file the present complaint.

f. That moreover, it is also pertinent to note that the complainant has a habit of harassing the respondent. The complainant had earlier filed a complaint before the Ld. Authority vide C. No. 668 of 2021and failed to appear and hence, the case was dismissed for want of prosecution. That no leave was granted to the complainant in the previous complaint to approach the Ld. Authority later. and the present complaint has been filed incomplete in complete abeyance of the procedural rules and regulations.

g. That in the year 2008, the complainant along with the first buyer, learned about the commercial project launched by the respondent under the name and title Vatika Trade Centre (now, Vatika INTX City Centre) ("project" and repeatedly visited the office of the respondent to know the details of the said project.

h. That after having an interest in the commercial project being developed by the respondent, the complainant tentatively booked a unit bearing no.601, 6"Floortentatively admeasuring 1000 Sq. ft. for an amount of Rs. 58.38,000 on free will and consent, without any demur whatsoever. Thereafter, considering the future speculative gains, the complainant, in March, 2008, at her own will made the due payment towards the agreed sale consideration of the said unit with the sole intention of making income from the same.

i. The respondent vide allotment letter dated 20.05.2008, allotted a unit bearing no. 601, 6th floor tentatively admeasuring 1000 Sq. ft. in the earlier project. That thereafter, a builder buyer agreement dated 19.06.2008 was executed between the complainant and the respondent for the unit allotted in the project. It is pertinent to mention that complainant was aware of terms and conditions under the aforesaid agreement and only upon being satisfied with each and every term, agreed to execute the same with free will and consent.

j. That an addendum to the buyer's agreement was executed between the complainant and the respondent wherein the complainant was made aware of the relocation of her unit along with other charges resultant to the change in unit and the said position was duly accepted by the complainant without any protest. It is pertinent to note that as per clause 5 and 7 of the addendum to the buyer's agreement, the complainant has satisfied herself in all aspects and has consented for relocation of the said unit. It is submitted that the complainant raised no objection in regard to any provision of the addendum to the agreement and is abided by the terms and conditions as envisaged in the said addendum.

k. That the unit of the complainant was tentative and subject to change, as was categorically agreed between the parties in terms of the agreement. consequently, the complainant was allocated the unit no. 511 on 5th floor. block-E admeasuring 1000 sq. ft. ("Unit") vide letter dated 31.07.2013. The said letter categorically mentioned that the builder buyer agreement shall stand amended with respect to the unit number. That it is a matter of fact and record that the complainant had duly, willingly and happily accepted the same.

l. That at this stage, it is categorical to highlight that the complainant is trying to mislead this Hon'ble court by concealing facts which are detrimental to this complaint at hand. That the agreement executed between the parties on 19.06.2008 was in the form of an "Investment Agreement". That the complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession. Hence, the embargo

of the Real Estate Regulatory Authority, in totality, does not exist. That it is also most humbly submitted that the present complaint is not maintainable and the complainant herein has no locus standi. The complainant merely seeks to earn profits.

m. That in any case whatsoever, the aspect of leasing of the unit and the investment of the complainant cannot be dealt with by this Hon'ble Authority. Regardless, at the utmost bonafide, the Hon'ble Authority is most humbly appraised by the fact that the respondent had been rightly obliging with the payments of committed returns to be made by it.

n. That before the Hon'ble Authority that the respondent was always prompt in making the payment of assured returns as agreed under the Agreement. It is not out of the place to mention that the respondent herein had been paying the committed return of Rs.60,000/-for every month to the complainant without any delay since 07.04.2008 till 30.09.2018, It is to note that as on 30.09.2018, the complainant herein had already received an amount of Rs.71,40,000/- as assured return as agreed by the respondent under the aforesaid agreement. However, post October 2018, the respondent could not pay the agreed assured returns due to change in the legal position and the illegality of making the payment of the same.

o. That the respondent duly informed the complainant about the suspension of all return-based sales as the respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme".

p. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And in case the construction of the said commercial unit was delayed due to such 'force majeure' conditions the

respondent was entitled for extension of time period for completion. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/ directions passed by various authorities/ forums/courts.

i. Ban by NGT vide order dated 07.04.2015 for 30 days.
ii. Ban by NGT vide order dated 19.06.2016 for 30 days.
iii. Ban by NGT vide order dated 08.11.2016 for 7 days.
iv. Ban by Environment Pollution (Presentation and Control Authority) vide order dated 07.11.2017 for 90 days.
v. Ban by NGT vide order dated 09.11.2017 & 17.11.2017 for 9 days.
vi. Ban by NGT vide order dated 01.11.2018 to 11.11.2018 for 10 days.
vii. Ban by NGT vide order dated 24.06.2019 for 30 days.
viii. Ban by Commissioner, MCG vide order dated 11.10.2019 for 81 days.
ix. Ban by Hon'ble Supreme Court of India vide order dated 04.11.2019 for 102 days
x. Covid-19 Pandemic for 3months in 2019 and 103 days in 2021.

q. That from the facts indicated in the table in reply and documents appended, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities.

r. That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Authority.

s. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favor of the complainants. The allegations levied by the complainants are totally baseless. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.

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.

8. During the proceedings dated 23.05.2024, the counsel for the complainants filed an application for amended memo of parties to implead co-allottee (i.e., Captain Sumant Varma) as complainant no.2 along with power of attorney and affidavit on behalf of co-allottee (i.e., Captain Sumant Varma) and the same was taken on record.

E. Written submission made by both the parties.

9. The complainants have filled the written submission on 02.07.2024 and the respondent has filed the written submission of 25.07.2024 and the same are taken on record and no additional fact apart from complaint and reply have been states in written submission.

F. Jurisdiction of the authority

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

F. I Territorial jurisdiction

11. 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

12. 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.

13. 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.

14. 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 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."*

15. 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.

G. Findings on the objections raised by the respondent.

G.I Objection regarding maintainability of present complaint.

16. The respondent's counsel has raised an objection, stating that the present complaint is not maintainable under Order 9 Rule 9(1) of the Code of Civil Procedure, 1908. They argue that the complainants had previously filed a complaint for a refund before this Authority in 2021 (complaint no. 668 of 2021), which was dismissed for want of prosecution vide order dated 25.03.2021.

17. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) as such are not applicable to the proceedings under the Act of 2016, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice and equity. Although, the earlier complaint was dismissed in default for non-appearance besides the complaint was neither heard and nor decided on merits. Also, the same issue was already dealt by Hon'ble Apex Court in paragraph 16 of ***"New India Assurance Co. Ltd. Vs R. Srinivasan [(2000) 3 SCC 242]"***.

> *"... the case was not decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and, therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default."*

18. Further it was also held by the Hon'ble Supreme Court of India in ***"Civil Appeal No.557 of 2016"*** that *"in view of the decision rendered by this court, with which*

we have no reason to disagree, we are of the opinion that the second complaint filed by the appellant was maintainable on the facts of this case."

19. Furthermore, it is evident that the respondent-promoter has not refunded the amount paid by the complainants-allottees. Herein, the complainant is seeking refund of the entire amount paid, along with interest, as the respondent has failed to provide the promised assured returns up to the date of offering possession of the completed unit. Also, the unit has still not been completed, and possession has not been handed over. Therefore, the complainants continue to have an active and valid cause of action, as the respondent's failure to complete the unit, deliver possession and pay the agreed assured return constitutes a continuing wrong.

20. The Hon'ble Apex Court, in the case of ***Balkrishna Savalram Pujari & Others v. Shree Dnyaneshwar Maharaj Sansthan & Others (Civil Appeals nos. 220 to 223 of 1953 decided on: 26.03.1959***) explained the concept of a "continuing wrong." The Hon'ble Apex Court held that if a wrongful act results in injury, and the harm continues over time, it is considered a continuing wrong. In such cases, the wrongdoer remains accountable for the ongoing harm. This principle applies when the wrongful act does not just cause one-time damage but causes harm that persists. Therefore, in cases where the injury continues due to ongoing actions or omissions, the cause of action is not limited to a single event but is seen as an ongoing issue. The relevant portion of the said order is reproduced herein below:

> *It is then contended by Mr. Rege that the suits cannot be held to be barred under art. 120 because s. 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under s. 23 ? That is the question which this contention raises*

for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants ? In dealing with this argument it is necessary to bear in mind that s . 23 refers not to a continuing right but to a continuing wrong. ***It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong.*** *In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.*

21. Additionally, the Real Estate (Regulation and Development) Act of 2016 has been framed to protect the interest of the consumers in the real estate sector and as per section 19(4) of the Act, 2016, it is the right of allottee to seek refund of amount paid along with interest, if the promoter fails to comply in accordance with the terms of agreement. The said section is extracted below:

> *"19(4)**The allottee shall be entitled to claim the refund of amount paid along with interest** at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, **if the promoter fails to comply** or is unable to give possession of the apartment, plot or building, as the case may be, **in accordance with the terms of agreement for sale** or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."*

22. In light of the above, the objection raised by the respondent is dismissed as the complainants' continue to have a valid cause of action due to the ongoing harm caused by the respondent's failure to fulfill the terms of the agreement.

G.II Objection regarding delay in project due to force majeure circumstances.

23. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, adverse effects of Covid-19 etc. and

others force majeure circumstances but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 19.06.2008 and as per clause 2 and 6 of buyer's agreement dated 19.06.2008, the due date to handover the possession to the allottees by 01.10.2010, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The authority put reliance judgment of 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 (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020*** which has observed that-

> *"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."*

24. Secondly, the events taking place such as orders of NGT in NCR on account of the environmental conditions, and others force majeure circumstances which occurred much after the due date of completion and are for short duration, which does not make such a huge impact on project which can cause and justify the inordinate delay of 14 years. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons 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 to refund the entire paid up amount of Rs.58,38,000/- to the complainants along with interest.

25. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by her 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)***

26. Clause 6 of the buyer's agreement dated 19.06.2008 provides the time period of handing over of possession and the same is reproduced below:

> *6.... The Developer shall issue notice in writing to every allottee for taking over possession. **All possession shall be handed over by October 1, 2010 subject to the payment of the entire consideration** along with any other dues payable by the allottee to the developer. It is clarified that delays in handing over possession on ground of non- clearance of outstanding dues shall be dealt with as failure to takeover possession and the allottee shall be liable to pay the holding and other applicable charges for such delay more specifically described in para7...*
>
> ***(Emphasis supplied)***

27. However, as per clause 2 and 6 of buyer's agreement dated 19.06.2008, the unit was to be completed and handed over to the complainants-allottees by 01.10.2010. 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....."

28. It has come on record that against the sale consideration of Rs.58,38,000/-, the complainants-allottees have paid an amount of Rs.58,38,000/- 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 promoter till date. Hence, in case if allottees wishes 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 falls 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."

29. The respondent-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 respondents have failed to complete or unable to give possession of the unit in accordance with the terms of memorandum of understanding. Accordingly, the respondents are 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.

30. There has been an inordinate delay in the project which cannot be condoned. Thus, in such 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.

31. This is without prejudice to any other remedy available to the allottee 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.

32. **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."

33. 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.

34. 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., 13.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

35. 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 allottees 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 allottees shall be from the date the promoter received the amount or ant part thereof till the date the amount or part thereof and interest thereon is refunded...***

36. Therefore, The authority hereby directs the respondent to return the amount received by it from the complainants-allottees i.e., Rs.58,38,000/- 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.

37. That during the proceedings dated 13.02.2025, the respondent submitted that the respondent has already paid an amount of Rs.71,40,000/- on account of

assured return up to April, 2018 and Rs.3,60,000/- on account of committed returns to the complainants. The said amount shall be adjusted while making the payment of refund amount.

H.II Cost of litigation be awarded in favour of complainant.

H.III Impose exemplary cost upon the respondent for pressurizing the complainants to accept unilateral change of terms and conditions under various frivolous pretexts thereby causing immense psychological trauma and anxiety.

38. 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.

39. The complainants are seeking above mentioned relief w.r.t. compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra),*** has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

I. Directions of the authority

40. 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):

a. The respondent is directed to refund the entire paid-up amount of Rs.58,38,000/- received by them from the complainants along with interest at the rate of 11.10% per annum 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.

b. The amount of assured return and committed returns paid by the respondent to the complainants shall be adjusted/deducted from the payable amount.

c. 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.

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

42. File be consigned to registry.

Dated:13.02.2025

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