

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

Complaint no.: 332 of 2024
Date of filing: 31.01.2024
Date of order: 13.02.2025

1. Vivek Kumar
2. Shilpi Kumar

Through Power of Attorney holder Mr. Binay Kumar S/o
Ayodhya Prasad, R/o Flat no.602, Tower-5, Sea Breeze,
Sector-16, Nerul West, Navi Mumbai-400706.

Both R/o 19, Mount Airy Drive, Morrisville
Pennsylvania, USA-19067.

Complainants

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 Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Utkarsh Thapar (Advocate)

Shri Anurag Mishra (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	"Tranquil Heights" - Vatika India Next at Sector-88B, Gurugram.
2.	Project area	5.125 acres (previously 11.218 Acres out of which 6.093 migrated to license no. 19 of 2024)
3.	Nature of Project	Residential Group Housing Colony
4.	DTCP license no. and validity status	22 of 2011 dated 24.03.2011 Valid upto 23.03.2017
5.	Name of Licensee	M/s Vatika Limited
6.	Rera registered/ not registered and validity status	Registered Vide registration no. 359 of 2017 dated 17.11.2017 Valid upto 30.04.2021
7.	Unit No.	604, 6 th Floor, Tower-E, (page 12 & 17 of complaint)
8.	Unit area admeasuring	2290 sq. ft. (Super Area) (page 12 & 17 of complaint)
9.	Allotment letter	08.10.2014 (page 12 of complaint)
10.	Date of buyer agreement	19.11.2015 (page 14 of complaint)
11.	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 construction of the said building/apartment 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 clauses 14 to 17 & 37 or due to failure of allottee(s) to pay in</i>

		<i>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 allottee(s) to abide by any of the terms or conditions of this agreement."</i> (Emphasis Supplied)
12.	Due date of possession	19.11.2019 (calculated from the date of execution of buyer's agreement)
13.	Sale Consideration	Rs.1,66,48,300/- (page 17 of complaint)
14.	Amount paid by complainants	Rs.72,68,548/- (as per SOA dated 25.10.2019 at page 47 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer for possession	Not Offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - i. That in the year 2013, the complainants came across the respondent project, namely "Tranquil Heights" situated at Sector 82A, Gurugram, which was advertised in a very impressive and stellar way. That respondent made a representation to the complainants that the project would meet all standards of ultra-modern lifestyle sensibilities and the flats would be built with impeccable precision and offer a serene living experience to the residents and that the project would have good accessibility to NH8 as well as the Dwarka Expressway.
 - ii. That complainants were also informed that the construction of the project was going to commence very soon that it shall be complete within 3 years and thus believing the representations, promises and personal guarantees put forth by the respondent to be genuine and by extending their complete faith in respondent, complainants decided to purchase a 3 BHK apartment in

the project. That thereafter, the respondent projected the total cost of the apartment to be approximately Rs.1,66,48,300/- out of which a payment of Rs.8,00,000/- was made by the complainants on 19.11.2013 via RTGS/NEFT as token sum/advance payment.

- iii. Following that, complainants dispersed payments via RTGS/NEFT on 19.03.2014, 20.03.2014, and 30.05.2014 totalling Rs.27,37,135/- towards the total projected cost of the unit and as per the payment plan, and the said payments were made by the complainants in a timely fashion.
- iv. That on 18.10.2014 the complainants were provided an allotment letter vide which the complainants had been allotted a 3 BHK apartment bearing unit no. 604 in Tower-E having a super built-up area of 2290 sq. ft.
- v. Thereafter on 19.11.2015 a builder buyer agreement was executed between the respondent and the complainants. It is important and pertinent to mention that according to clause 13 of the BBA the respondent contemplated to complete the construction of the project within 48 months from the execution of the BBA i.e. by or before November, 2019.
- vi. That subsequently the complainants kept making timely payments towards the total protected cost of the unit as and when demanded by the respondent and waited for the completion of the project.
- vii. That thereafter, when the complainants visited the project site, they were completely taken aback to see that despite the passage of several years since the advance payment/booking amount had been done, the project's construction had barely begun and the site was entirely undeveloped and far from completion. Concerned about the same, the complainants expressed their worries to respondent, but they received the respondent's assurance that the construction would be finished on schedule.
- viii. That to the misery of the complainants, the respondent failed to deliver the possession within the stipulated time period and even after the elapse of the



48 months as provided in the builder buyers agreement and, contrary to clause 13 of the builder buyers agreement, which stated that the respondent would complete the construction of the project by or before November, 2019 at the latest and thereafter, proceed with the delivery of the possession.

- ix. That despite numerous follow-up visits to the respondent's office and communications with the officials of the respondents concerning the delivery of apartment possession, the complainants never received a specific response from the respondent regarding the date of possession. This failure on part of the respondent caused the complainants great mental anguish, harassment, and financial hardship.
- x. That despite numerous follow-ups, respondent did not provide any customer assistance to complainants, and that the complainants did not anticipate such a well-respected builder as the respondent acting in such a careless and abrupt manner. That after following up with the respondent about the possession of the apartment multiple times but never receiving a response from respondent, the complainants ultimately decided to request a refund of their money.
- xi. However, the respondent flatly refused to give the complainants a refund of the money and said that in the event the complainants cancelled the booking of their apartment they would not be provided any refund and moreover failed to provide the complainants with a timeframe on when the construction would be completed and possession of the would be offered, leaving the complainants completely in the dark.
- xii. That at this moment, the complainants felt completely helpless and were compelled to continue and could not cancel the apartment. The complainants dreamed of having a lovely home and saved up all their life to be able to fulfil their aim, but they were unaware that the long-cherished dream would soon turn into a nightmare and their hard-earned money would become stranded.



That subsequently despite numerous follow-ups concerning the delivery of apartment possession, the complainants never received a specific response from the respondent regarding the date of possession. That even though the respondent failed to offer the possession of the apartment in a timely fashion, the respondent made no efforts to make amends for the unacceptable delay and provide the complainants with delay compensation charges.

- xiii. That the complainants have till date have paid an amount of Rs.72,68,548/- but have not received the possession even till date despite a delay of more than 3 years. As a result of the respondent not honouring the promises and the terms of the builder buyer agreement and by completely ignoring the complainants and not being responsive at all complainants have suffered grave mental agony, financial suffering and harassment.
- xiv. That on 07.05.2023, the complainants also sent the respondent a legal notice this legal notice providing the respondent with an opportunity to correct respondent's wrongdoings and unlawful conduct by providing the complainants with the refund of the unit along with delayed possession charges in tune of the unjustifiable delay caused on respondent's part, however, unfortunately, the respondent never acknowledged complainant's notice.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount of Rs.72,68,548/- along with interest per annum as per RERA rate of interest from the date of first payment till realization.
 - Any other relief this Hon'ble Authority deems fit for deciding the present complaint.

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 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.
- ii. 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.
- iii. Further, after establishment of the Haryana Real Estate Regulatory Authority the respondent applied for registration of its project and the authority registered the said project vide registration dated 17.11.2017.
- iv. It may be noted that despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of Tranquil Heights Project was undertaken by the respondent in right earnest and the same proceeded in full swing.
- v. That the complainant had booked Unit bearing No. HSG-020-E-604-Phase-1, admeasuring super area 2290 sq. ft. vide Builder Buyer Agreement dated 19.11.2015.
- vi. That as per clause 13 of the buyer 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

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circumstances mentioned in clauses 14 to 17 & 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.

- vii. 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, in the Tranquil Heights project have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.
- viii. It is submitted that beside 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. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wage's labourers. 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.

- ix. 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 builder buyer agreement executed with each of the complainants. Not only this, basis the individual requests, the OP also caused site visits for the prospective buyers who had made requests for visiting the project site before making application for allotment. It is submitted that 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 the OP was working on the getting a remedy for the same.
- x. 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. That most of the flat buyers in the said group housing 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.
- xi. 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:

- xii. The factors which materially and adversely affected the project are being set out herein under:
- a. 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.
 - b. 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.
 - c. 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.
 - d. 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 favor of DTCP.
 - e. 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.
 - f. 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.
 - g. Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
- xiii. 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.

- xiv. The world at large has witnessed COVID-19 pandemic 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 affecting the return of laborers to work sites.
- xv. Declaration of Gurugram as Notified Area for the purpose of Ground Water & Restrictions Imposed by The State Government on its extraction for construction purposes.
- xvi. 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 & forfeited the scrutiny fee of Rs. 19,03,000/-.
- xvii. Further, Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favor of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B.
- xviii. 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. That 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

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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 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 orders/



restrictions of the NGT in NCR as well as competent authorities on account of environmental clearance, ban on construction by the orders of the courts, 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, demonetization and default in making timely payment by several allottees. All the pleas advanced in this regard are devoid of merits. Firstly, the events such as NGT in NCR on account of the environmental conditions, ban on construction and other force majeure circumstances do not have impact on the project being developed by the respondent. As the events mentioned above are for short period and are routine in nature happening annually and the promoter is required to take the same into consideration while fixing due date of possession. Secondly, the event of demonetization was in accordance with government policy and guidelines. Therefore, the authority is of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. And lastly, due to default by some allottees for not being regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to the default of some of the allottees. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrongs.

15. 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.

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 respondent was liable to complete the construction of the project and handover the possession of the said unit by 19.11.2019. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was 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 complainants.

G.I. Direct the respondent to refund the entire amount of Rs.72,68,548/- along with interest per annum as per RERA rate of interest from the date of first payment till realization.

G.II. Any other relief this Hon'ble Authority deems fit for deciding the present complaint.

18. 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.



19. 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.-

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)

20. Clause 13 of the buyer's agreement dated 19.11.2015 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 19.11.2015 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 19.11.2019. 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 against the sale consideration of Rs.1,66,48,300/-, the complainants have paid an amount of Rs.72,68,548/- 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. 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."

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 complainants cannot be compelled to take possession of the unit and they are well within 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 & 72 read with section 31(1) of the Act of 2016.

26. **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."

27. 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.

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., 13.02.2025 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(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, ...

30. Therefore, The authority hereby directs the promoter to return the amount received by it i.e., Rs.72,68,548/- 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):

- a. The respondent/promoter is directed to refund the entire amount i.e., Rs.72,68,548/- received by it along with interest at the rate of

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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.

- b. 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 as well as application, if any, stands disposed off accordingly.

33. File be consigned to the registry.

Dated: 13.02.2025




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

HARERA
GURUGRAM