

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

Complaint no. :	1583 of 2023
Order pronounced on:	13.02.2025

Jnaneshwar Sen

R/o: 322, DDA, SFS, APTS, Hauz Khas, S.O.
Southwest Delhi- 110016

Complainant**Versus****ATS Marigold Builders Pvt. Ltd**

Regd. office: 711/92, Deepali, Nehru Place, New Delhi-110019

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Nishant Dwivedi (Advocate)
Shri Vinayak Gupta (Advocate)

**Complainant
Respondent****ORDER**

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

A. Unit and Project-related details:

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





S. N.	Particulars	Details
1.	Name and location of the project	"ATS Marigold" at Sector 89A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	RERA registration	55 of 2017 dated 17.08.2017
4.	Unit no.	3091, 9 th floor, in Tower- 3 (Page no. 18 of the complaint)
5.	Unit area admeasuring	2150 sq. ft. (Super built-up area)
6.	Allotment letter dated	10.03.2015 (Page 18 of complaint)
7.	Buyer agreement	10.03.2015 (Page no. 19 of the complaint)
8.	Possession clause	6.2 The Developer shall endeavor to complete the construction of the Apartment within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months i.e. ("Completion Date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies). (Page no. 30 of the complaint)
9.	Due date of possession	10.03.2019 (Note: - due date of possession can be calculated from the date of agreement i.e., 10.03.2015) A grace period 6 months is allowed being unconditional.

10.	Sale consideration	Rs.1,96,31,250/- (Page 49 of the complaint)
11.	Amount paid by the complainant	Rs.61,71,724/- (as per SOA at page 55 of complaint)
12.	Occupation certificate	Not Obtained (Note: OC annexed at page 66 of reply is not of Tower in which unit is allotted)
13.	Offer of possession	Not offered

B. Facts of the complaint:

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

- In the respondent is a Private Limited company, engaged in the business of Real Estate. The respondent in the year of 2014 made wide publicity in the print and electronic media for its project named "ATS MARIGOLD", promising an expanse of abundant greenery, secured gated community dotted with the choicest leisure and entertainment choice with the breathtaking amenities.
- As per assurances and promises of the respondent regarding the development of ATS MARIGOLD, and representation of the respondent to develop the project as per the representation made to the complainant within stipulated time as agreed and duly mentioned in the buyer agreement, the complainant on 03rd January, 2015 applied for allotment of apartment and car parking spaces(s) in the ATS MARIGOLD, on which the respondent *vide* its allotment letter dated 10th March, 2015 allotted the residential apartment bearing no. 3091, on the 9th floor, TOWER -3, having super built-up area of 246.19 square meter, equivalent to 2650 square feet, which includes a Built Up Area of 199.74 square meter, equivalent to 2150 square feet in ATS MARIGOLD situated at Sector – 89-A Gurugram, Haryana and 2 car parking spaces along-with easements, privileges, rights, and benefits

thereto in ATS MARIGOLD'S (hereinafter referred to as "apartment") at a total sale consideration of INR 1,96,31,250.

- c. On 10.03.2015, the complainant entered into apartment buyer agreement with respondent and made further payment as per the demand of the respondent.
- d. As per clause no. 6.2 apartment buyer agreement states that the possession of the allotted floor/apartment was to be given by 10th September, 2018 subject to force majeure conditions with an extended grace period of 6 months, thus in any eventuality the Respondent was required to deliver the possession of the flat by 10th March 2019 ("maximum delivery period/completion date"). However, even after expiry of more than 42 months plus 6-month grace period, respondent failed to deliver the possession of the flat purchased by the complainant.
- e. As per clause no. 6.3 further states that in the case of delay in handing over the possession from the promised period plus the grace period of 6 (six) months, respondent shall pay delay charges to the complainants @ INR 5 per sq. ft. of the super built-up area of the apartment per month which were never transferred to the complainant.
- f. The respondent holding a position of power and authority, has misused it and has deceived complainants by making false promise, by defaulting in delivery of timely possession of the booked property, and by misappropriating the money paid by the complainant, for its personal benefit.
- g. The respondent was responsible to fulfil their obligation towards the complainant as per the terms and conditions of the buyer agreement. However, by delaying the possession by the respondent, it has not only committed breach of the contract of apartment buyer agreement but has also violated the provision of the laws.



- h. It will not be out of place to mention here that the respondent from the very initial days i.e. since 2015–2016, delayed the development and construction of the project without any reason.
- i. To mitigate the demands of the respondent, the complainant has decided to avail the loan facility on the said allotted unit and accordingly, approached the ICICI Bank to avail the home loan facility and accordingly *vide* loan account number LBDEL00002359777 loan of INR 31,14,568/- was sanctioned and disbursed the Complainant and the same amount of INR 31,14,568/- was duly paid to the respondent *vide* cheque/demand draft no. 612213. The loan was disbursed on 26.03.2015. That the complainant, by managing funds by his savings repaid the loan amount and obtained no dues certificate on 15.09.2017.
- j. The month of March, 2019, just before agreed date of delivery of possession as per the apartment buyer agreement, when the complainant visited the project site, the complainant was shocked and surprised that the respondent has developed hardly 10 – 20% of the project while as per the agreement, the respondent was supposed to handover the possession to complainant in the month of March, 2019.
- k. The complainant, after rigorous follow ups, got to meet the team of respondent to know the actual status, wherein, respondent's team could not give any definitive date of completion of the project. During subsequent follow-ups in the years 2020 and 2021 the respondent verbally informed that the complainant's unit will be delivered in 2022.
- l. That even after giving the above representations, promises and assurances, the respondent miserably failed to keep their representations, promises and assurances. The complainants also sent numerous communications via emails, sms and phone calls to respondent about the delay regarding the possession which were never replied, satisfactorily, by the respondent. The respondent failed time and again to fulfill its promises and assurances.

- m. The complainant visited the project site in October, 2022 and was shocked to see the condition of the project, as the construction on the site was not in progress. The construction, which was to be completed by March 2019, not even 30% of that is complete till date.
- n. The complainant again visited the project site in December 2022 and was shocked to see the condition of the project, as the construction on the site was not in progress and constructed was on same stage as it was on last visit of the complainant.
- o. the complainant again raised demand for refund of the deposited amount, but it was shocked to know that the instead of refunding deposited amount with interest and paying assured rent from March 2019 at the rate 5 Rupees per square feet on monthly basis, respondent without any basis raised invoice having invoice no. ERINV00091/22-23 on 13.09.2022 for an amount of INR 80,99,063.
- p. It is pertinent to mention here that due to the unfair trade practice, the complainant has faced loss and injury which in-fact cannot be compensated in terms of the money and the complainant reverse his right to approach jurisdictional court/authority/tribunal for filing for compensation.

C. Relief sought by the Complainant:

4. The complainants have sought the following relief(s):
- Direct the respondent to refund the total amount paid by the complainant to the respondent in respect of unit along with interest as per HRERA compound interest per annum from the date of deposit till the realization of the amount.
 - Any other relief which this Hon'ble Authority deems fit and just.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondent:

6. The respondent has made following submissions in the reply:



- a. The ATS Marigold is developed over an area measuring 11.125 Acres, comprising of 287 residential units and 5 commercial units developed by respondent company registered with interim RERA, Panchkula on 17.08.2017. The registration was valid till 6 years from the date of environment clearance on 02.03.2021 (including 6 months Covid - 19), which was further extended up to 1 year under Section 6 of the Act and valid till 02.03.2022.
- b. That Ld. Authority took up abovementioned fresh application for grant of registration of the Respondent company qua the project "ATS Marigold" on 20.09.2022, whereby after hearing detailed arguments, Ld. Authority granted registration of the project to remain in force up to 29.02.2024 without prejudice to the rights of the allottees under Section 18(1) of the Act which shall continue to be governed by the BBAs signed with individual allottees.
- c. That construction industry is one of the significant contributors to the economic growth and development of India, but there are major challenges which are limiting the performance of the construction industry in India. And same applies for ATS Marigold Project. Enumerated below are some unavoidable reasons for delay in project.
- d. The delay in completion of the project occurred due to the reason due to delay in development of underpass on Dwarka Expressway and the construction of underpass is still going on. This resulted in difficulty/ delay in delivery of construction material, movement of machinery at the project site in stipulated timeline, and had effectively resulted in logistical difficulties. Attached pictures of the road adjoining the project, clearly depicts the poor accessibility to site via this road as no trucks carrying raw materials and machinery could make its way to the site, hence leading to delay.
- e. The delay in completion of the project also occurred due to dispute between Government authorities for not completing the construction of underpass within timelines. The project in question "ATS Marigold" is a stressed project which on basis of investment by "SWAMIH Investment Fund" is being



completed and allowing the prayer of refund of amount paid along with interest on delayed possession upon the respondent company will further delay the completion of project. This will put huge additional burden on the investor - "SWAMIH Investment Fund" making it more difficult to complete the project.

f. It is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

- Inability to undertake the construction for approx. 7-8 months due to central government's notification with regard to demonetization.
- Orders Passed by National Green Tribunal.
- Non-Payment of Instalments by Allottees
- Inclement Weather Conditions viz. Gurugram

g. The complaint is not maintainable for the reason that the complainant has already filed Consumer Complaint No. 59 of 2021 in Hon'ble National Consumer Disputes Redressal Commission, New Delhi and the same is pending adjudication. Complainant is Proposed Complainant No. 5 in I.A. No. 5021 of 2021. Thus, the complainant is barred by law to approach two judicial forums for seeking same relief. In a recent ruling titled as ***A Infrastructure limited v Macrotech Developers limited***, (C.C. No. 182 of 2022 decided on 20.09.2023) the National Consumer Disputes Redressal Commission (NCDRC) has held that "to avoid multiplicity of proceedings and contradictory judgments on same issue between the same parties" a complainant cannot approach both the Real Estate Regulatory Authority (RERA) and the consumer

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court over the same complaint. The court used the concept of “estoppel by election of remedy” which applies when multiple remedies are available for an issue and where the remedies might run in contradiction to each other.

- h. The complaint is not maintainable for the reason that the buyer agreement dated 20.03.2015 contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 21 of the buyer's agreement.
- i. The buyer's agreement was executed on 20.03.2015. It is pertinent to mention herein that the Real Estate (Regulation and Development) Act, 2016 was not in force when the agreement was entered into between the complainant and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.
- j. It was agreed that as per buyer's agreement, total sale consideration of the allotted unit/flat was Rs. 1,96,31,250/-. The complainant has paid only amount of Rs. 61,71,724/- out of the total payable amount.
- k. The possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 6.2 of the buyer's agreement the answering respondent was supposed to offer possession of the unit/flat by 10.09.2018 plus grace period of 6 months, suggesting therein that deem date of possession was 10.03.2019.
- l. Occupation Certificate qua tower no. 3 wherein the unit/flat in question is located issued by the Director, Town and Country Planning, Haryana on 16.06.2023.
- m. The reliefs as sought by the complainant in para no. 6 of the present complaint are absolutely incorrect, baseless and thus strongly opposed. The reliefs sought by the complainant on the basis of concocted facts are incorrect and the complainant is not entitled to any such relief from the Hon'ble Forum.
- n. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on

the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

7. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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 complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

10. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the Respondent:

F.I Objection regarding complainant is in breach of agreement for non- invocation of arbitration

11. The respondent has raised an objection that the complainant has not invoked the arbitration proceedings as per the provisions of buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

21.1 All or any dispute that may arise in respect to the terms of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the Parties shall be settled through mutual discussion and amicably settlement, failing which the same shall be settled through arbitration. The arbitration proceedings and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be appointed, then to be appointed by the court. The decision of the Arbitrator shall be final and binding on the parties.

21.2 The venue shall be at Gurgaon and only the courts at Gurgaon shall have the jurisdiction in all the matters arising out of this agreement."

12. The respondent contended that as per the terms & conditions of the agreement dated 28.10.2016 duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in

derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

13. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, there is no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding complaint is not maintainable for the reason that the complainant has already filed Consumer Complaint No. 59 of 2021 in Hon'ble National Consumer Disputes Redressal Commission, New Delhi and the same is pending adjudication. Complainant is Proposed Complainant No. 5 in I.A. No. 5021 of 2021

14. The respondent contended that the present complaint is not maintainable on the grounds that the complainant has filed a similar complaint before the Consumer Forum, thereby rendering the present complaint barred by law due to the approach to two judicial forums for the same relief. In response to the Authority's request for clarification regarding any pending proceedings, the complainant, through the proceedings dated 21.11.2024, clarified that no other case is pending except the present one.
15. As there is no pending case before any forum, the Authority is of considered view that the present complaint is nor barred by the law. Hence, the objection raised by the respondent stand redundant.

16. In light of the clarification provided, the Authority is of the considered opinion that there is no pending matter before any other forum. Consequently, the present complaint is not barred by law. Therefore, the objection raised by the respondent is deemed to be without merit and stands dismissed.

G. Findings on relief sought by the Complainant:

G.I Direct the respondent to refund the total amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

17. The complainant was allotted a unit in the project of respondent "ATS Marigold" in at sector 89A, Gurgaon vide allotment letter dated 10.03.2015 for a total sum of Rs.1,96,31,250/- and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 61,71,724/-. The complainant intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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 of 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."

18. As per clause 6.2 of the agreement provides for handing over of possession and is reproduced below:

The Developer shall endeavour to complete the construction of the Apartment within 42 (forty-two) months from the date of this

Agreement, with the grace period of 6 (six) months i.e. ("Completion Date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).

19. On consideration of the abovementioned clause, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14.16.2 of the agreement, the possession of the subject unit was to be delivered within a period of 42 months with an additional grace period of 6 months from the date of execution of the agreement or date of obtaining all licenses or approvals. The due date determined from date of execution of BBA i.e., 10.03.2015. Accordingly, the due date of possession comes out to be 10.03.2019 (calculated from date of execution of agreement + 6 months of grace period is allowed unconditionally) and there is a delay of more than 4 years on the date of filing of complaint to handover the possession of the allotted unit.
20. The occupation certificate of the buildings/towers where allotted unit of the complainants is situated is still not received till date. The complainant is seeking refund of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement and wished to withdraw from the project.
21. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
22. **Admissibility of refund at prescribed rate of interest:** The complainant intend to withdraw from the project seeking refund amount on the amount



already paid by them in respect of the subject unit at the prescribed rate of interest 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.

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.
24. 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., 02.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. 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—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

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, and the interest



payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

26. Further in the judgement of 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) 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."

27. 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). 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 they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
28. In view of all the facts and circumstances, the promoter is liable to return the amount received by it i.e., Rs. 61,71,724/- 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 Haryana Rules 2017 *ibid*.

H. Directions issued by the Authority:

29. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to refund the entire amount of Rs. 61,71,724/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
 - II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
 - III. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottees-complainants.
30. Complaint stands disposed of.
31. File be consigned to the Registry.

Dated: 13.02.2025


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