

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

Complaint no.	2308 of 2022
Date of filing complaint	18.05.2022
First date of hearing	24.08.2022
Date of decision	09.04.2025

1. Rohit Balyan

Resident of: D 14/23, 2nd Floor, Exclusive
Floors, DLF Phase 5, Gurugram

2. Vijay Kumar Malik

Resident of: C-42, La Lagune Golf Course Road,
Sector-54, Gurugram-122002, Haryana

Complainants

Versus

M/s Vatika Limited

Regd. office: A002, INXT City Centre, Ground
Floor, Block- A, Sector- 83, Vatika India Next,
Gurugram- 122012

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Gaurav Bhardwaj and Ms. Surbhi Garg
Bhardwaj(Advocates)

Complainants

Mr. Venket Rao and Mr. Pankaj Chandola
(Advocates)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottee(s) 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.

A. Unit and project-related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"The Seven Lamps" Sector-82, 82A, 83, 84 and 85, Gurugram
2.	Nature of the project	Group Housing Colony
3.	RERA Registered/ not registered	Not Registered
4.	Date of booking	15.09.2012
5.	Unit no.	603, 6 th floor, Power (BBA at page 20 of complaint)
6.	Unit area admeasuring	2423.17 sq. ft. super area (BBA at page 20 of complaint)
7.	Date of execution of builder buyer agreement	27.05.2013 (Page 17 of complaint)
8.	Possession Clause	Clause 14 of BBA <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 3(three) years from the date of execution of this agreement unless there shall be a delay or there shall be a failure due to reasons mentioned in Clauses 17, 18 and 42 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with the Schedule of payments given in Annexure-III or as per the demands raised by the Developer from time to time or any failure on part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."</i> (BBA at page 31 of complaint)
9.	Due date of Possession	27.05.2016 (Calculated to be three years from the date of execution of builder buyer agreement)
10.	Total sale consideration	Rs.1,43,66,325/-

		(As per SOA dated 24.12.2015 at page 72 of complaint)
11.	Amount paid by the complainant	Rs.75,42,210/- (As per SOA dated 24.12.2015 at page 72 of complaint)
12.	Occupation Certificate	17.10.2017 (In compliance of POD dated 21.02.2024, copy of OC placed on record by the respondent by way of application dated 02.04.2024)
13.	Intimation of Possession	12.10.2015 (Page 83 of complaint)
14.	Termination-cum-refund letter	09.08.2016 (Page 76 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions:

- a) That around 2012, the respondent advertised about its new group housing project namely "The Seven Lamps" which is adjacent to the integrated township "Vatika India Next" situated at Sector 82, 82A, 83, 84 and 85 in Gurugram, Haryana.
- b) That believing in the representations of the respondent and in lookout for an affordable abode for himself and his family, on 15.09.2012, the complainants applied for allotment of a 4BHK + Study apartment bearing size 2423.17 sq. ft. by paying an amount of Rs.6,40,000/- towards the said booking.
- c) That the respondent sent a buyer's agreement after delay of more than 8 months from the date of booking in the said project. The buyer's agreement was executed between the parties on 27.05.2013 for unit no. 603 on 6th floor in building "Power" having super area of 2423.17 sq. ft. for a total consideration of Rs.1,43,64,729/-.
- d) That as per clause 14 of the said agreement dated 27.05.2013, the respondent undertook to complete the construction and handover possession within a period of 36 months from the date of execution of agreement but the respondent failed to handover the possession of the said unit within stipulated period as agreed in the buyer's agreement.

- e) That the complainants paid an amount of Rs.75,42,210/- as per the demand raised by the respondent and as per the payment plan against the total consideration of Rs.1,43,66,325/-.
- f) That the complainants received communication from the respondent vide its letter dated 12.10.2015 bearing title "Intimation of Possession" but did not offer possession nor did it mention any date on which the respondent is likely to handover the possession of the unit.
- g) That the complainants also visited the project site and were stunned to see that the respondent's project is nowhere near completion and also not in a position to offer the same. The complainants vide its e-mail dated 20.10.2015 objected to the illegal acts of the respondent regarding sending an intimation of possession dated 12.10.2015 and demanding balance consideration which was supposed to be paid at the time of offer of possession. The respondent after receiving the said e-mail accepted the fault of raising the final demand.
- h) That the respondent vide its communication dated 24.12.2015 and 12.02.2016 again sought the payment and sent a payment reminder notice to the complainants but failed to give any date for possession. The complainants adhered to the payment plan and made the payments within the time specified in the buyer's agreement.
- i) That complainant no. 1 requested the respondent vide e-mail dated 20.10.2015 to show the completion certificate, occupation certificate, fire NOC, environment clearance, airport authority NOC etc. The respondent denied the complainants request and threatened the complainants that if they failed to pay the balance amount, then the deposited amount shall be forfeited by the company and nothing will be refunded.
- j) That thereafter, the respondent issued a refund letter dated 09.08.2016 along with a cheque bearing no. 0001166 dated 15.09.2016 amounting to Rs. 26,97,621.54/- drawn on HDFC Bank, village Wazirabad, Gurgaon Branch, Gurgaon in favour of the complainants towards the full and final refund of the

aforesaid booking. The complainants paid an amount of Rs. 75,42,210/- against the purchase of the said unit as per payment plan but the respondent refunded only a sum of Rs. 26,97,621.54/- and the same was accepted by the complainants under protest. Subsequently, the complainants approached the respondent seeking payment of the remaining amount of Rs. 48,44,588.46/- as the respondent had clearly defaulted in constructing the said unit within the agreed period and further illegally demanded the balance sale consideration by merely sending an Intimation of Possession dated 12.10.2015 to the complainants, however the unit was not ready for possession on 12.10.2015.

k) That clause 19 of the buyer's agreement provides for remedy to the allottees in case of failure to deliver the possession by the respondent. It provides that the maximum compensation payable to the respondents shall be at maximum of Rs. 5/- per sq. ft. of the super area of the apartment per month for delay after the expiry of 60 days of the stipulated date for delivery of possession. Further, in case the respondents abandon the project, then the respondent's liability shall be limited to refund of the amounts paid by the allottees with simple interest @8% p.a. for the period such amounts were lying with the respondents and to pay no other compensation whatsoever, subject to allottees having been in default and subject to the deduction of interest paid/ payable and other non-refundable charges. Thus, the said condition of the builder is totally biased, unreasonable and one sided.

l) That as clause 19 being in existence and accepted by the respondents, the amount so deducted by the respondents towards brokerage, service tax, interest and earnest money is totally unjustified, unilateral and unacceptable decision. The respondent has wrongfully and without any reasonable cause deducted the brokerage amount of Rs.8,09,338/- which is paid to the broker and not to the developer or the allottees and must be equally borne by the both parties. It is further to note that the brokerage shall not be charged more

than 1% of the total basic price of the unit. The respondents are liable to refund the brokerage amount as well.

- m) That the complainants booked the said unit at a total sale consideration of Rs. 1,43,66,325/- but at the time of cancellation of the said unit due to failure to provide the requisite information as sought by the complainants, the respondent while refunding the said deposited amount escalated the unit price from Rs.1,43,66,325/- to Rs. 1,90,00,000/-, thereby escalating the sale consideration by around Rs.47,00,000/-. The same act of the respondent clearly shows its malafide intention in order to defraud the innocent complainants.
- n) That the misconduct of the respondent has forced the complainants to send a legal notice to the respondent on 23.12.2016 for refund of the unlawful deduction of amount for the said flat, but to no avail. The complainants after receiving the said amount of Rs. 26,97,621.54/- approached the respondent to seek the remaining amount of Rs. 48,44,588.46/-, but the respondent clearly refused to make the payment of said amount on one pretext or the other. Hence, the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
- I. Direct the respondent to refund the remaining amount of Rs.48,44,588.46/- along with interest at the prescribed rate from the date of receipt of payment till now.
 - II. Direct the respondent to pay Rs.55,000/- on account of litigation expenses.
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 contested the complaint on the following grounds vide its reply dated 03.04.2023:

- a) That in around 2012, the complainants herein learned about the project launched by the respondent titled as "Vatika Seven Lamps" situated at Sector 82, 82A, 83, 84 and 85 in Gurugram, Haryana and approached the respondent repeatedly to know the details of the project. The complainants enquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
- b) That after having keen interest in the project constructed by the respondent, the complainants desired to invest and booked unit on 15.09.2012 and paid an amount of Rs.6,40,000/- for further registration.
- c) That the claim of the complainants is barred by the law of limitation and is liable to be dismissed on this ground alone. The complainants are in constant default in paying instalment as and when demanded by the respondent after the date of booking. Even after offering the possession way back in the year 2015, the complainants have failed to make any payment. Owing to the default of the complainants, the respondent was constrained to cancel the unit on 07.06.2016.
- d) That the respondent had already offered refund of the amount paid by the complainants by cheque dated 15.09.2016 after making necessary deductions. The complainants herein have received full and final refund of the amount paid to the respondent way back on 15.09.2016. It is a settled law that as per the Limitation Act, 1963 the period of limitation for any due amount is 3 years. In case suit is filed post to the expiry period of limitation, i.e., three years then the same shall be considered as barred by law. Therefore, the period of limitation for claiming the booking amount after adjusting the earnest money was till 15.09.2019. However, the complainants herein approached the authority on 17.05.2022, after a period of three years of expiry of limitation period.
- e) That the complainants were sleeping for almost six years and filed this complaint which is merely an afterthought of the complainants. Since inception the respondent was committed to complete the construction of the project and ✓

in due compliance of the obligations, the respondent on 13.12.2012 had served two copies of the builder buyer agreement to the complainants and requested them to return one signed copy of the same.

- f) That even after serving upon the complainants, the builder buyer agreement and requesting them to execute and return the signed copy of the agreement of the respective unit and on 12.02.2013, the respondent was bound to issue a reminder for execution of buyer's agreement reminding and requesting the complainants to execute the agreement.
- g) That after much pursuance on 27.05.2013, a buyer's agreement dated 27.05.2013 was executed between the parties for unit no. 603, 6th floor, ad-measuring 2423.17 sq. ft. for a total sale consideration of Rs.1,43,64,729/-. The timely payment of instalment was of essence for completion of the project in terms of clause 11 of the agreement. On 15.11.2012, the respondent was bound to issue payment reminder letter for payment of Rs.19,82,948/- as due within 60 days from the date of booking.
- h) That on 30.11.2012, the respondent was constrained to issue another payment reminder calling upon the complainants to clear the outstanding dues of Rs.17,19,875/- as due and payable within 3 months from the date of booking. Further, on 05.01.2013 and 28.01.2013, the respondent was forced to issue another payment reminder for clearing outstanding dues of Rs.37,02,824/- within 3 months from the date of booking. Another payment reminder dated 27.08.2013 was issued requesting the complainants to clear dues of Rs.31,99,387/- as due and payable for the unit. A reminder dated 07.04.2014 was also issued to clear dues of Rs.52,54,063.58/- pending long from the date of booking.
- i) That the complainants only paid an amount of Rs.75,42,210/- against the total sale consideration of Rs.1,38,20,075/-. The complainants are mere investors who had approached the respondent for profitable investment options and had purchased the unit in question with the intent to re-sale the same to other ✓

developers or buyers in the public at large. Vide e-mail dated 05.09.2014, the respondent intimated the complainants that they run their own real estate sales firm under the name and style "R-Zone Investments and CMD Developers and Promoters" and further requested to oblige them by not levying any interest upon delayed payment which they were bound to pay in terms of the agreement.

- j) That on 04.11.2014 too, the complainants intimated the respondent that they belong to the real estate industry only. The complainants are therefore not the actual allottees and fail to come under the provisions of Section 2(d) of the RERA Act, 2016 but are merely investors. Hence, the complaint is liable to be dismissed.
- k) That the respondent had completed the project way back in 2015 and had already offered possession vide offer of possession letter dated 12.10.2015 and had requested the complainants to take possession post clearing dues for their respective unit. On 24.12.2015, the respondent vide reminder letter dated 24.12.2015 again reminded and called upon the complainants to take possession of the respective unit and clear the dues. A final opportunity letter dated 12.02.2016 in this regard had also been issued to the complainants to clear the outstanding dues of Rs.87,23,543/-.
- l) That the respondent was constrained to issue a termination cum refund letter dated 07.06.2016 intimating the complainants that their unit was cancelled due to non-payment, further requesting them to take the residual amount left after making necessary deductions. Further, on 09.08.2016, the respondent offered the complainants to take refund of the remaining amount left after making necessary deductions which the respondent is entitled to deduct on account of default of the complainants.
7. 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 based on these undisputed documents and submission made by the parties.

E. Written Submissions on behalf of the respondents:

8. The complainants made following additional submissions vide written submissions dated 13.02.2024:
- a) That the complainants vide their e-mail dated 03.09.2015 intimated their inability to pay the instalments and requested the respondent to help them exit the investment as the complainants do not wish to continue with the project.
 - b) That vide the same e-mail dated 03.09.2015, the complainants had already authorised the respondent to sell the unit in question in resale or as a fresh booking and apprised that in case they had the investment, the complainants would have continued in the project.
 - c) That the respondent had followed the terms of the agreement and had completed the construction of the project and obtained occupation certificate on 17.10.2017 from the competent authority.
 - d) That the Permanent Lok Adalat is dressed with appropriate jurisdiction to adjudicate upon the issues pertaining to housing and real estate sector and the said fact had been substantiated by the Department of Law and Justice vide notification no. SO495 dated 16.02.2016 wherein it had been notified that the matters relating to Housing and Real estate services, such as the present case fall under Section 22A of the Legal Services Authorities Act, 1987, as the same would be included in the definition of public utility services, and thereby, fall under the jurisdiction of all Permanent Lok Sabha to the matter.
 - e) That the complainants approached the PLA, Gurugram in the year 2018 to adjudicate upon the same issues and the same cause of actions vide Application no. 2312 of 2018, titled as "Rohit Balyan versus Vatika Limited." The same was dismissed vide order dated 17.02.2022, for the reason being dismissed in default as the applicant avoided to appear despite being provided several opportunities of being heard and it is a settled law that a matter being dismissed in default does not give right to party to file subsequent claim as the

cause of action gets dismissed by away of the said order being dismissed in default.

- f) That by virtue of the provision of Order 9, Rule 8 and Rule 9, of the Code of Civil Procedure 1908, in cases, where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, and where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. A fresh suite can only be instituted upon an order to set the dismissal aside.
- g) That the alleged claim happens to be subjudiced before the Permanent Lok Adalat as under Order IX Rule 9 Order 9, Rule 9 of the Code, the complainants if aggrieved may have approached the Permanent Lok Adalat and not the Authority. It may be noted that the complainants herein after wilfully accepting the refundable amount in full and final settlement has resorted to forum shopping by first approaching the Consumer Forum then withdrawing the case for the reason best known, then the complainants approached the Permanent Lok Adalat.

F. Jurisdiction of the authority:

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

F. I Territorial jurisdiction

10. 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.

F. II Subject matter jurisdiction

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

13. 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. (Supra)*** 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."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 complainant being an investor.

15. The respondents have taken a stand that the complainants are the investor and not a consumer, therefore, they are not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that a preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer and have paid a price of Rs. 75,42,210/- to the promoter towards the purchase of an apartment in its project, at this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" about a real estate project, means the person to whom a plot, apartment, or building, as the case may be, has been allotted, sold (whether as freehold or leasehold), or otherwise transferred by the promoter, and

includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

16. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between promoter and complainant, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having the status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in **Appeal no. 0006000000010557 titled as "M/s Srushti Sangam Developers Pvt Ltd. Vs. Sarvapriya Leasing (P) Ltd. Anr."** has also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of a promoter that the allottees being the investors are not entitled to protection of this act also stands rejected.

G.II Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.

17. The respondent contends that the complaint is not maintainable as it is barred by limitation, citing that the unit of the complainants was terminated vide Termination cum Refund Letter dated 09.08.2016 and a cheque of the refundable amount was also sent to the complainants on the same date. It was further submitted by the respondent that the period of limitation for challenging the cancellation is 3 years. In the present complaint, booking was terminated on 09.08.2016, so the period of limitation for filing complaint against the respondents comes out to be from 09.08.2016 till 09.08.2019. The complainants herein failed to file the complaint against the respondent within the statutory time period and is therefore barred by the period of limitation. Further, for the purpose of applicability of Section 14(2) of the Limitation Act, 1963, the suit must be filed against the same party and for the same relief before the court having jurisdiction. Further, the respondent submitted that

the present complaint was to be filed in the court of appropriate jurisdiction, i.e., before the Permanent Lok Adalat wherein the case of the complainants was dismissed-in-default due to non-appearance, instead of filing it before this Authority.

18. Further, the cause of action to file the present case arose in August, 2016 i.e., when the respondent issued the termination cum refund letter in favour of the complainants and refunded an amount of Rs.26,97,621.54/-, thereby cancelling their allotment in the project being developed by it. Aggrieved with the same, the complainants approached the Hon'ble Permanent Lok Adalat, Gurugram by filing an application no. 2312 of 2018 for the recovery of money in the year 2018 itself, i.e., before the expiry of limitation period of three years wherein the Hon'ble PLA vide order dated 17.02.2022 dismissed the said application for want of prosecution. The complainants herein are seeking the relief of refund of remaining amount paid by them to the respondent as the application filed by the complainants before the Permanent Lok Adalat had been "dismissed as withdrawn" vide order dated 06.08.2024.
19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights.*" Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Sua Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded

for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

21. In the present matter, the cause of action arose in August, 2016. The complainants filed the present complaint in April, 2023 which is 6 years and 7 months from the date the cause of action arose. As per Section 14 of the Limitation Act, 1963, the period for which the plaintiff has been prosecuting in the court of wrong jurisdiction or other cause like nature, then such period shall be excluded from the limitation period of such suit when filed in court with appropriate jurisdiction. Therefore, the Authority is of the view that the period between August 2018 till February 2022 (3 years and 5 months) i.e., while the case was subjudice in Permanent Lok Adalat is to be excluded for the purpose of computation of the period of limitation in terms of Section 14 of the Limitation Act, 1963. Therefore, after taking into consideration the exclusion period from August 2018 till February 2022, it is determined that the present complaint is within limitation being filed on 18.05.2022. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

H. Findings on relief sought by the complainants.

H.I Direct the respondent to refund the remaining amount of Rs.48,44,588.46/- along with interest at the prescribed rate from the date of receipt of payment till now.

22. Briefly, the facts of the case are that the unit bearing no. 603, 6th floor, tower 'Power' was allotted in favour of complainants by the respondent and thereafter the buyer's agreement was executed between the complainants and the respondent on 27.05.2013. The complainants have paid an amount of Rs. 75,42,210/- against the sale consideration of Rs.1,43,66,325/-. As per clause 14 of the agreement, the respondent was required to hand over possession of the unit within a period of 3 years from the date of execution of the buyer's agreement. Therefore, the due date of possession comes out to be 27.05.2016. Subsequently, the possession of the subject unit was offered to the ✓

complainant on 12.10.2015 without obtaining the occupation certificate from the competent authority. Thereafter, the respondent has issued various reminder/demand letters to the complainant and requested to pay the outstanding dues. Thereafter, due to non-payment of the outstanding dues, the respondent has cancelled the unit vide termination-cum-refund letter dated 09.08.2016 and refunded an amount of Rs.26,97,621.54/- to the complainants by way of cheque, thereby forfeiting Rs.48,44,588.46/-.

Now, another question before the authority is whether cancellation of allotment of the complainants is valid or not?

23. The respondent submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Reminders dated 24.12.2015 and 12.02.2016 were sent to the complainants to clear the outstanding dues against on reaching the stage "On offer of possession" . A final opportunity was also given to the complainants vide letter dated 07.06.2016 and thereafter the unit was cancelled vide letter dated 09.08.2016. The contention of the respondent is that the complainants failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.
24. The Authority has gone through the payment plan which was duly agreed between the parties and the same is reproduced below for ready reference:

I. Deferred Payment Plan	
At the time of Booking	5% of BSP
Within 2 months from the booking date	15% of BSP
Within 3 months from the booking date	10% of BSP + 100% PLC
Within 12 months from the booking date	20% of BSP + 50% (EDC/IDC+Car Park)
On Offer of Possession	50% of BSP + 50% (EDC/IDC+Car Park)+ Club Membership + IFMS + Stamp Duty and registration charges + Escalation in construction cost(if any)

25. It is matter of record that the complainants booked the aforesaid unit under the above-mentioned payment plan and paid an amount of Rs.75,42,210/- ✓ towards total consideration of Rs.1,43,66,325/- which constitutes 52.49% of

the total sale consideration. However, 50% payment was payable at the time of offer of possession. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 17.10.2017. However, offered possession was made by the respondent to the complainants on 12.10.2015.

26. It is necessary to clarify whether intimation of possession dated 12.10.2015 made to complainant-allottees tantamount to a valid offer of possession or not? The authority is of considered view that a valid offer of possession must have following components:

- a. Possession must be offered after obtaining occupation certificate.*
- b. The subject unit should be in a habitable condition.*
- c. The possession should not be accompanied by unreasonable additional demands.*

27. In the present matter, the respondent has issued intimation of possession with respect to the allotted unit on 12.10.2015 i.e., before obtaining occupation certificate from the concerned department on 17.10.2017. Therefore, no doubt that the offer of possession has been sent to the complainants but the same is for fit outs. Thus, the offer of possession dated 12.10.2015 is an invalid offer of possession as it triggers component (a) of the above-mentioned definition.

28. The respondent further cancelling the allotment of the complainants vide cancellation letter dated 09.08.2016 is also invalid, there being no default in making payment by the complainants to the respondent towards the said unit in question. However, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act 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."

29. Admissibility of refund along with prescribed rate of interest: The complainants are seeking refund the amount paid by them at the prescribed rate of interest. The allottees herein intend to withdraw from the project and are seeking refund of the amount paid by them 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.

30. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, 2017 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 ease uniform practice in all the cases.

31. Consequently, as per the 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., 09.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10% per annum. ✓

32. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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 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—

- i. 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;*
- 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, 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;"*

33. Keeping in view the fact that the complainants 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 or inability of the respondent to issue a valid offer of possession of the unit in accordance with the terms of builder buyer agreement. The matter is covered under Section 18(1) of the Act of 2016.

34. The Hon'ble Supreme Court of India in the cases of ***"Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)"*** 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*** 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."

35. 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 allottees as per the allotment letter 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 allotment letter. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the respondent in respect of the unit with interest at such rate as may be prescribed.
36. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them i.e., Rs.75,42,210/- at the prescribed rate of interest i.e., @ 11.10% p.a. (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*. Further, it is important to note that the respondent had already refunded an amount of Rs.26,97,621.54/- on 09.08.2016, same is admitted by the complainants in their pleadings. Hence, the amount already refunded be adjusted.

H.II Direct the respondent to pay Rs. 1,50,000/- on account of litigation expenses.

37. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the

adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

J. Directions issued by the Authority:

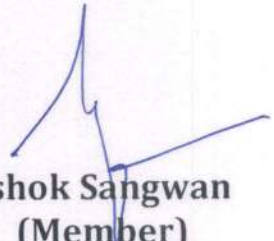
38. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent/promoter is directed to refund the entire amount received by it from the complainants i.e., Rs.,75,42,210/- along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount within the timelines provided in Rule 16 of the Haryana Rules, 2017.
- II. The respondent is directed to adjust the amount already refunded i.e., Rs.26,97,621.54/- in the total amount to be refunded along with interest as mentioned above.
- III. 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.

39. Complaint stands disposed of.

40. File be consigned to the Registry.

Dated: 09.04.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram