

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

**Complaint no.:** 4868 of 2023  
**Date of filing:** 26.10.2023  
**Date of order:** 20.02.2025

1. Shanini Kumari  
2. Ashok Kumar  
**Both R/o** 2/104 Maupuia Road, Maupuia, Miramar,  
Wellington 6022, New Zealand

**Complainants**

Versus

M/s Vatika Ltd.  
**Office address:** Vatika Triangle, 4<sup>th</sup> Floor, Sushant Lok,  
Phase-1, Block-A, Mehrauli Gurugram Road, Gurugram,  
Haryana-122002.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Garvit Gupta (Advocate)  
Shri Venket Rao and Shri Shiva Aditya Mukherjee  
(Advocate's)

Complainants

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 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*.

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**A. Project and unit related details**

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

S.No.	Particulars	Details
1.	Name and location of the project	"Xpression by Vatika", Sector-88B, Gurgaon.
2.	Nature of the project	Residential plotted colony
3.	Project area	133.022 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 Valid upto 30.10.2019 11 of 2015 dated 01.10.2015 Valid upto 30.09.2020
5.	Name of licensee	C/o M/s Vatika Limited
6.	RERA Registered/ not registered	<b>Un-Registered</b>
7.	Unit no.	HSG-028-Sector-88B, Plot No.-11, ST. H-30, Level-2 (As per page no. 31 of the complaint)
8.	Unit area admeasuring	1700 sq. ft. (super area) (As per page no. 31 of the complaint)
9.	Allotment letter	21.04.2016 (As per page no. 27 of the complaint)
10.	Date of execution of apartment buyer's agreement	05.09.2016 (As per page no. 29 of the complaint)
11.	Possession clause	<b>13.</b> <b>Schedule for possession of the said residential floor</b> <i>"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said residential floor within a period of 48 (forty-eight) months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other..."</i>



		<i>(Emphasis supplied)</i> (As per page no. 39 of the complaint)
12.	Due date of possession	<b>05.03.2021</b> [05.09.2020 + 6 months] (Note: The due date is calculated from date of execution of buyer's agreement plus 6 months of grace period as per HARERA, Gurugram notification on account of Covid-19).
13.	Basic Sale consideration	Rs.1,01,39,097/- (As per page no. 32 of the complaint)
14.	Amount paid against the allotted unit	Rs.20,95,259/- (As per SOA dated 06.03.2024 at page no. 34 of the reply)
15.	Occupation Certificate/ completion certificate	Not obtained
16.	Offer of possession	Not offered
17.	Request for Refund Through email	06.01.2023 (As per page no. 69 of complaint)

**B. Facts of the complaint:**

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

- i. That the respondent offered for sale units in a residential plotted project known as 'Xpressions by Vatika' developed by the respondent as part of Vatika Express city which claimed to comprise of several facilities. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 94 of 2013 dated 31.10.2013 and license no. 11 of 2015 dated 01.10.2015 to its subsidiary companies for development of a residential plotted colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
- ii. That the complainants received a marketing call from the office of respondent in the month of September, 2015 for booking of an independent



floor in the project of the respondent, 'Xpressions by Vatika' being developed by the respondent in Vatika Express City in sector 88B, Gurugram. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured timely delivery of the independent floor. On the basis of the assurances and the representations made by the respondent, the complainants made payment towards the demanded amount to the respondent.

- iii. That the respondent, on the basis of the booking made by the complainants, sent an allotment letter dated 21.04.2016 vide which Unit no. 11 on the second floor on street H-30, Sector 88B with a super area of 1700 sq. ft. was allotted to them.
- iv. That the complainants made several inquiries about the execution of the builder buyer agreement with the respondent but it kept on dilly-dallying the matter. Finally, after five months from the date of issuance of the allotment letter, a copy of the builder buyer agreement was sent to the complainants which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the respondent and was totally against the interest of the purchaser, including the complainants herein.
- v. That the whole agreement was unilateral and was in the interest of the builder. It is mention in the agreement, in the case of the complainants making the delay in the payment of instalments, the respondent company is shown to be entitled to charge interest @ 18% per annum, the complainants on the other hand are shown to be only entitled to a maximum amount of Rs.7.5/- per sq. ft. of the super area as compensation of the independent dwelling unit per month for the period of delay in offering the possession of



the residential floor beyond the period stated by the respondent. It is thus clear, that the compensation to be offered to the complainants, in case of default of the respondent, has deliberately been formulated to the detriment of the complainants and the same is illegal and unsustainable.

- vi. That the respondent unilaterally inserted a clause in the draft agreement by way of which it discharged itself from the obligation of sending demand notices and reminders to the complainants for payments. Thus, the respondent did not even feel the necessity of bringing it into the notice of the complainants that the payments are to be made from time to time, hence, this clause evidently signifies the malafide intentions of the respondent by clearly exercising its dominant position.
- vii. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the abuse of dominant position is all pervasive in the terms and conditions of the agreement executed by the respondent vide various clauses imposing all the liabilities on the complainants, while conveniently relieving itself from all obligations on its part.
- viii. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the builder buyer agreement to the respondent. It is pertinent to mention herein that prior to the signing of the agreement, complainants had made payment of Rs.20,95,259/- out of the total sale consideration of Rs.1,12,96,253/-. Since the complainants had already parted with a considerable amount of almost 20% of the total sale consideration, they were left with no other option but to accept the lopsided and one-sided terms of the builder buyer agreement. The complainants felt

trapped and had no other option but to sign the dotted lines. Hence the builder buyer agreement dated 05.09.2016 was executed.

- ix. That the complainants have till date made the payment of Rs.20,95,259/- out of the total sale consideration amount of Rs.1,12,96,253/- strictly as per the terms of the payment plan and no default in making timely payment towards the instalment demands have been committed by the complainants. That the respondent omitted to send any demand notices or reminders upon their deliberate will, yet, all the payments were made by the complainants without any delay.
- x. That despite having drafted the builder buyer agreement dated 05.09.2016 containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the residential floor within the promised time frame, which in the present case has been delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.
- xi. That as per clause 13, the possession of the unit was to be handed over by the respondent within a period of 48 months from the date of execution of the agreement. Thus, as per the terms and conditions of the apartment buyer's agreement, the due date to handover the possession of the allotted unit is to be computed from the date of execution of the buyer's agreement i.e., 05.09.2016. The due date of delivery of possession as per the agreed terms of the buyer's agreement has thus elapsed way back on 05.09.2020.
- xii. That the complainants throughout kept on seeking updates from the respondent with respect to the construction status of the residential floor allotted to them. That the complainants have from time to time communicated and inquired about the construction status by way of



telephonic conversations and meetings with the respondent. The respondent however has from time to time assured the complainants that the project would be completed on time and yet could not fulfil his obligation of doing the same. That the complainants were always assured by the respondent that the said project would be completed within the next few months. The respondent had vide its email dated 23.12.2020 admitted the said position and had intimated to the complainants that the possession of the unit would be tentatively handed over by end of 2021.

- xiii. On account of outbreak of Covid, the complainants could not follow-up with the respondent. However, no written construction updates were received by them from the respondent. Finally, on account of non-responsiveness of the respondent, the complainants visited the site in the month of January, 2023 and were shocked to see that the respondent has abandoned the project and there was no progress made on the said construction site. That the complainants vide email dated 06.01.2023 intimated the respondent about such visit and further reiterated that the complainants have been inquiring about the progress of the project for the last 6 years and false excuses and assurances were rendered by the respondent to the complainants.
- xiv. That the complainants now being assured that the respondent has committed breach of trust and only made false representations throughout the last 6 years sent an email dated 11.01.2023 requesting for refund of the amount paid by them owing to the fact that the respondent has failed to deliver the said project on time. That the complainants by way of the said email have also mentioned their remedy of seeking interest @12% per annum with refund in case of failure to deliver or abandonment of the project by the respondent. The said refund of the principal amount along with interest @12% per annum is guaranteed under clause 18 of the builder buyer agreement.



- xv. That the respondent after the perusal of the email dated 11.01.2023 sent an email dated 12.01.2023 vide which the respondent admitted its delay in delivering the said project on time and thus it assured the complainants that in case the complainants wish to withdraw from the project then it would refund the total amount paid in 4-6 equal instalments. The same amounts to admission on the part of the respondent and it is bound, not only by the terms of the agreement in question but also by way of their own undertaking and admission made to the complainants.
- xvi. That since the due date to handover the possession of the residential floor had lapsed, the complainants vide their email dated 29.01.2023 and email dated 04.02.2023 again made it clear to the respondent that on account of complete breach of trust by the respondent, the complainants do not wish to continue with the reallocation in lieu of the abandoned project and that they would exercise their right to cancel the booking and opt for refund of the already paid amount along with interest.
- xvii. That yet again, the respondent vide its email dated 29.05.2023 admitted its liability and delay and offered the refund of the amount in 4-5 instalments. The complainants, again, exercised its right and claimed refund of the amount without any delay vide their email dated 31.05.2023.
- xviii. That despite already making it clear by their communications that the complainants are seeking refund along with interest the respondent has till date not initiated the same. That respondent from time to time kept assuring the complainants that it would delivery the dream independent floor of the complainants to them on time. However, all the assurances of the respondent turned out to be false. However, the respondent failed to adhere to its obligations as per the terms of the agreement and thus the complainants are well within their rights to cancel their booking and claim refund against the same. That it has failed to deliver the project on time rather it from time to



time attempted to offer another unit in lieu of the current one which was clearly denied by the complainants.

- xix. That the complainants all this while were ready and willing to honour their contractual obligations of making payment towards the remaining sale consideration towards the unit in question. However, the respondent deliberately, fraudulently and with malafide motives did not abide with their contractual obligations and instead are now offering another unit to the complainants instead of initiating the refund.
- xx. The complainants requested the respondent several times to refund back the principal amount along with interest but the respondent has been dillydallying the matter. The complainants further, reserves their right to claim compensation against the respondent from the Hon'ble Adjudicating Officer.
- xxi. That the respondent has acted not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainants at its mercy wherein and the complainants' questions have been left un-answered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017.
- xxii. That the respondent has violated several provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017 and is liable for the same. That as per Section 18 of the RERA Act, 2016, the respondent is liable to return the amount and to pay compensation to the complainants for delay and failure in handing over of such possession as per the terms and agreement of sale.
- xxiii. That the above-mentioned acts of the respondent are also in violation of Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. That as per Section 12 of the RERA Act, 2016, the promoter/respondent is

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liable to return the entire investment along with interest to the complainants for giving incorrect, false statement.

- xxiv. That the complainants hereby make a submission before this Hon'ble Authority under Section 34(f) of RERA Act, 2016 to ensure compliance/obligations cast upon the promoter/ respondent as mentioned above.
- xxv. That the respondent in utter disregard of its responsibilities has left the complainants in the lurch and the complainants have been forced to chase the respondent for seeking relief. Thus, the complainants have no other option but to seek justice from this Hon'ble Authority.
- xxvi. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to handover possession and compensation for the delay on its part.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
- Direct the respondent to refund to the complainants the principal amount paid by them along-with interest specified in the agreement or at the prescribed rate of interest as per the provisions laid down in Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the date of realization.
  - Pass an order imposing penalty on the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the Complainants.
  - Any other relief as may be deemed fit by this Hon'ble Authority.

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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 That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed.
- ii. That the complainants had filed the present complaint under section 31 of the Act of 2016, with oblique motive of harassing the respondent and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
- iii. That the complainants herein have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter.
- iv. That the complainants had not approached the Ld. Authority, with clean hands and has suppressed the relevant material facts. That the complaint under reply is devoid of merits and the same should be dismissed with cost.
- v. That in around the year 2015, the complainants learned about the residential project launched by the respondent titled as "Xpressions by Vatika", situated at sector 88B, Gurugram, and visited the office of the respondent to know the details of the said project. The complainants further inquired about the specifications and veracity of the project and were satisfied with every proposal demanded necessary for the development.
- vi. That after having keen interest in the project being developed by the respondent and post being satisfied with the specifications of the project, the complainants decided to book a unit vide application form dated 08.10.2015.

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- vii. The respondent vide invitation for allotment letter dated 04.04.2016, invited the complainants for taking the allotment of the unit in the aforesaid Project, on 20.04.2016.
- viii. Thereafter, the respondent vide allotment letter dated 21.04.2016, allotted a unit bearing no. 11, Level 2 Floor, Street No. H-30, admeasuring 1700 sq. ft., in the aforesaid project.
- ix. That the respondent vide letter dated 08.06.2016, served two copies of the builder buyer agreement, for execution and requested the complainants to return the signed copy of the same for further execution within 30 days within dispatch of the agreements, which the complainants failed to do so.
- x. After non-receipt of the agreement, the respondent again had to send a reminder letter dated 28.07.2016, reminding the complainants about the said agreement and requesting the complainants to return the signed copy of the same within 30 days. That the delay in execution of agreement was due to the fault of the complainants as the respondent sent the agreement for signing as per the provisions of RERA, 2016.
- xi. That after much pursuance on account of the complainants, on 05.09.2016, builder buyer agreement, was executed for the unit in question having basic sale price of Rs.1,04,39,097/-. That complainant's herein has only paid an amount of Rs.20,95,259/- (inclusive of taxes) against the total sale consideration of the unit.
- xii. That the complainants were aware of terms and conditions under the agreement and post being satisfied with every clause of the agreement and also with the payment plan and total sale consideration agreed to sign upon the same at his own judgement and investigation. As per clause 8 of the agreement, the complainants were responsible for making timely payments as per the agreed payment schedule, which the complainants failed to do so.

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- xiii. That, the complainants have defaulted in making payments from the initial stages of booking. The respondent herein has raised the invoices dated 14.11.2015, asking for the instalment due within 45 days of the booking, then on 11.12.2015, for the instalment due within 90 days of booking and lastly on 29.03.2016, for the instalment due within 180 days from the booking, as per the agreed payment schedule. However, the complainants have delayed in making payments and have not paid the instalments as and when demanded by the respondent in accordance with the payment schedule.
- xiv. Also, as per clause 13 of the agreement, the possession of the Unit was proposed to be handed over subject to force majeure conditions within a period of 48 months from the date of execution of the agreement unless there shall be delay or there shall be failure due to reasons beyond the control of developer or due to government rules, orders etc or due to failure of allottee(s) to pay in time the price of the residential unit along with all other charges and dues in accordance with the schedule of the payment. That the date of offering possession was to be calculated from the date of execution of the agreement and the respondent herein shall be entitled for extension for such period of delay caused due to *force majeure* circumstances, which were beyond the control of developer.
- xv. That according to clause 16 of the agreement, if there are unforeseen circumstances faced by the respondent in the mid-way of the development of the subject project, then extension time would be granted for the completion of the project. The factors which materially and adversely affected the project are being set out herein under:
- The company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the Township owing to the initiation of the unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Initially HUDA has to develop the major sector roads for the connectivity of the project on the licensed land. But no development for the connectivity and movement across the sectors, for

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ingress or egress was done by HUDA for a long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana Government had transferred the land to new highway 352 W. Therefore, in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs.

- That the respondent has already laid down its facilities before such upliftment. As a result, respondent was constrained to uplift the project land and re-align the facilities. Thereafter, GMDA handed over the possession of the land properties/land filling in NH 352 to NHAI for construction and development of NH 352 W. All this process has caused considerable amount of delay and thus hampered the project in question which are beyond the control and ambit of developer, which also contributed to the inevitable change in the layout plans.
  - The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45(1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act, 2017), transferred the properties falling within the ambit of NH 352W acquired by HUDA to GMDA for development and construction of NH 352 W.
  - That the GMDA vide its letter dated 08.09.2020 had handed over the possession of the said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of the project.
  - That also, the construction was affected due to re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.
- xvi. That the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019.
- xvii. That the respondent was bound to adhere with the order and notifications of the courts and the government. The details of the ban on construction activities vide various directions of the National Green Tribunals or the Statutory Authorities etc.



- xviii. That the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date to offer possession to the complainants.
- xix. Subsequently, upon removal of the covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the project. Despite facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the Project.
- xx. That the complainants vide email dated 06.01.2023, informed the respondent that they were no longer interested in the booking and had also requested to refund the amount paid. That upon receiving the request for refund the respondent upon adopting customer centric approach has also invited and offered to share the re-allotment options with the complainants in other projects.
- xxi. Furthermore, the respondent again vide email dated 29.09.2023, had again apprised the complainants that respondent had few units in the project in question and the respondent could share the options with the complainants and further invited the complainants to respond with the suitable time or visit the office of the respondent.
- xxii. It may be noted, that in case the allottee wishes to withdraw from the project then the same shall be subject to the necessary deductions i.e., the earnest money amount which may be deducted from the refundable amount. Moreover, in case the relief so prayed by the complainant is allowed then the respondent may be at liberty to deduct the earnest money amount.

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xxiii. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

**E. Written submission by the respondent:**

8. The counsel for the respondent has filed written submissions on 27.02.2025 but no additional facts apart from reply and submissions during proceedings have been states in written submission.

**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 the Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**F. II Subject matter jurisdiction**

11. 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.*

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 the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant 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. 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."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to

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entertain a complaint seeking refund of the amount and interest on the refund amount.

**G. Findings on objections raised by the respondent:**

**G.I. Objection regarding delay due to force majeure circumstances.**

9. 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, implementation of GST Act 2017, demonetization and Covid-19, 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 due date of possession as per clause 13 of the builder buyer agreement dated 05.09.2016, the unit was to be offered within a period of 48 months to the complainants-allottees. Which comes out to be 05.09.2020. Further, as per HARERA notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 05.09.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 05.03.2021 (including grace period). Secondly, 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. And lastly, the event of demonetization was in accordance with government policy and guidelines. Therefore, the authority is of the view that the order of demonetization cannot be used as an excuse for non-performance of a contract for which the deadline was much before the order itself. In the instant complaint, the due date of handing over of possession comes out to be 05.09.2020 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

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.

#### **H. Findings on the relief sought by the complainants.**

**H.I. Direct the respondent to refund the entire amount of Rs.20,95,259/- along with interest per annum as per RERA rate of interest from the date of each payment till realization.**

**H.II. Pass an order imposing penalty on the builder on account of various defects under RERA Act, 2016 and the same be ordered to be paid to the complainants.**

**H.III. Any other relief this Hon'ble Authority deems fit for deciding the present complaint.**

16. 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.

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

18. Clause 13 of the buyer's agreement dated 05.09.2016 provides the time period of handing over possession and the same is reproduced below:

*13 Schedule for possession of the said residential floor*

*"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)"***

19. As per clause 13 of the builder buyer agreement dated 05.09.2016 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 05.09.2020. Further, as per HARERA notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 05.09.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes

out to be 05.03.2021 (including grace period). Though, via email dated 06.01.2023 (i.e., after lapse of due date including grace period of 6 months) the complaints requested for refund of amount paid against the allotted unit. Upon this via email dated 12.01.2023, the respondent itself given option for reallocation of unit in other project or we will be able to refund the amount paid by you in tentatively 4-6 equal instalments. Thereafter, via separate emails dated 29.01.2023 and 04.02.2023, the complainant chooses to cancel the allotment and requested for refund, which the respondent-promoter till date no refunded. 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....."*

20. It has come on record that against the sale consideration of Rs.1,01,39,097/-, the complainants have paid an amount of Rs.20,95,259/- 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."*

21. 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.
22. 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.
23. 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.



24. **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.”*

25. 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.

26. 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., 20.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

27. 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, ...*

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28. Therefore, The authority hereby directs the promoter to return the amount received by it i.e., Rs.20,95,259/- 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*.

**I. Directions of the authority**

29. 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.20,95,259/- received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
- 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.

30. Complaint as well as application, if any, stands disposed off accordingly.

31. File be consigned to the registry.

Dated: 20.02.2025

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