



**HARERA**  
**GURUGRAM**

Complaint No. 2370 of 2024

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

Complaint no. 2370 of 2024  
Date of filing complaint 04.06.2024  
First date of hearing 25.09.2024  
Order reserved on 02.07.2025

**Rajesh Gupta and Bhushan Gupta**  
Resident of: House no. 95, Hewo Apartments,  
Sector 15, Part 2, Gurugram-122001

**Complainants**

Versus

**Vatika Seven Elements Private Limited**  
Regd. office: Flat no. 621A, 6<sup>th</sup> Floor, Devika  
Towers, 6, Nehru Place, New Delhi - 110019  
Corporate office: 7<sup>th</sup> Floor, Vatika Triangle,  
Block A, Sushant Lok, Gurgaon-1220022

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Garvit Gupta (Advocate)

Sh. Dhananjai Jain (Advocate)

Complainant

Respondent

**ORDER**

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

**A. Unit and project related details:**

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

Sr. No.	Particulars	Details
1.	Name of the project	"Vatika Seven Elements", Sector 89A, Gurugram, Haryana (Earlier "Vatika One Express City")
2.	Nature of the project	Group Housing
3.	Project Area	14.30 acres
4.	DTCP License no. and validity status	41 of 2013 dated 06.06.2013 valid upto 05.06.2017
5.	Name of Licensee	M/s Strong Infrabuild Private Limited and Others
6.	RERA Registered or not	<b>Registered</b> Registration no. 281 of 2017 dated 09.10.2017 for area admeasuring 91345.535 sqm Valid upto 31.03.2021
7.	Unit no.	Apartment no. A-501, 5 <sup>th</sup> floor, Fifth Court Building. (BBA at page 49 of complaint) (Transferred on 30.03.2017 as earlier allotted unit was HSG-018/SACRIFICE/1 <sup>st</sup> /101/Sector 82F)
8.	Unit area admeasuring	2505 sq. ft. (Super Area) (BBA at page 49 of complaint)
	Booking Application Form	03.04.2017 (Page 33 of complaint)
9.	Date of builder buyer agreement	14.09.2017 (Page 47 of complaint)
	Addendum to builder buyer agreement	21.06.2021 (Page 75 of complaint)
10.	Possession Clause	<b>Clause 13.</b> <b>SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b> - The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said



		<p><i>Apartment 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 Clauses 14 to 17 &amp; 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.”</i> <b>(Emphasis supplied)</b> (BBA at page 57 of complaint)</p>
11.	Due date of possession	14.03.2022 (Calculated to be 48 months from the date of execution of BBA dated 14.09.2017 plus grace period of 6 months in lieu of Covid-19)
12.	Basic Sale price	Rs. 1,67,35,278.85/- (Addendum at page 76 of complaint and SOA dated 26.07.2021 at page 81 of complaint)
13.	Paid up amount	Rs. 1,37,36,920/- (SOA dated 26.07.2021 at page 81 of complaint)
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- a) That the respondent offered for sale units in a Group Housing Complex known as 'Vatika Seven Lamps' developed by the respondent which claimed to comprise of several facilities. The respondent also claimed that all the approvals have been granted to its subsidiaries companies for development of a Group Housing Colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
- b) That the complainants received a marketing call from the office of respondent for booking in the above said project of the respondent. The



complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. 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 first payment was made by the complainants in the month of July, 2014 and hence, the due date to handover the possession as per the representations of the respondent was July, 2015.

- c) That the complainants, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent and with passage of time made part-payment of Rs. 88,22,050/- out of the total sale consideration towards the allotted unit i.e HSG-018/SACRIFICE/1st/101/Sector 82F, Vatika India Next at Seven Lamps. The complainants required the same in a time bound manner for their own use and occupation and of their family members and this fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the residential unit to be allotted to the complainants would be positively handed over within the agreed time frame. Despite the specific assurance of the respondent that the unit would be handed over to the complainants by July, 2015, the respondent failed to do so and the intimation of possession was finally sent to the complainants vide letter dated 07.11.2016.
- d) That when the complainants visited the project site, post the receipt of the intimation of possession, they were shocked to see that no construction activity was going on there and the work has been at standstill. Accordingly, a meeting was conducted between the complainants and the



CRM team of the respondent wherein it was suggested by the representatives of the respondent that the complainants its other project i.e., Vatika Seven Elements. It was assured by the process and that the entire amount of Rs. 88,22,050/- as paid by the complainants for Vatika Seven Lamps would be transferred/migrated as it was, without any deductions. Accordingly, on the suggestion made by the representatives of the respondent and the delay, the complainants requested the respondent to transfer its booking in the other project of the respondent and the respondent vide its email dated 10.03.2017, 29.03.2017 offered several units to the complainants. The complainants vide their email dated 30.03.2017 confirmed their choice to be allotted Unit no. A-501 and the same was confirmed by the respondent vide its email dated 30.03.2017.

- e) That, accordingly, the complainants were made to sign the application form dated 03.04.2017 for allotment in its project 'Seven Elements'. It was informed by the respondent that the same was a mere formality as the unit was already finalized between the parties vide email dated 30.03.2017. The complainants, thereafter, further made part-payment of Rs. 2,00,000/- on 29.03.2017 and the respondent issued a receipt dated 03.04.2017 against the same. Rs. 88,22,050/- stood transferred from Seven Lamps to the new unit bearing no. HSG-023/A-501/Fifth Court/Sector-89A, Vatika Seven Elements, admeasuring 2505 sq. ft.
- f) That a copy of the buyer's 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.
- g) That while 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 and on the other hand the complainants are shown to be only entitled to a meagre amount of Rs. 7.5/- per sq. ft. of the super area of the apartment per month for the period of delay in offering the possession of the residential floor beyond the period stated by the respondent.

- h) That the above stated provisions of the buyer's agreement besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. 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.
- i) That prior to the signing of the agreement, complainants had made substantial payment towards the allotment. Since the complainants had already parted with a considerable amount of the sale consideration, they were left with no other option but to accept the lopsided and one-sided terms of the buyer's agreement. The complainants felt trapped and had no other option but to sign the dotted lines. Hence the buyer's agreement dated 14.09.2017 was executed between the parties.
- j) That thereafter, an addendum to the buyer's agreement was executed on 14.09.2017 wherein the total sale consideration of the unit was reduced from Rs.1,95,21,740.65 to Rs.1,67,35,278.85. The complainants had objection with the contents of the addendum to the buyer's agreement to the extent that it involved alleged waiving of the rights of the complainants.
- k) That the complainants till date has made payment towards the demanded amount of Rs. 1,37,36,920.34 against the sale consideration of Rs. 1,67,34,278.85/-.



- l) That as per Clause 13 of the agreement, 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.
- m) That the respondent went completely silent and for more than three years and failed to give any reply to the complainants. The telephonic calls of the complainants went unanswered and no appointment was given when the complainants visited the respondent's office premises. The complainants were running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.
- n) That since the time period to handover the possession stated by the respondent in the buyer's agreement had lapsed, the complainants requested the respondent telephonically, and by visiting the office of the respondent to update them about the date of handing over of the possession. The representatives of the respondent assured the complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over. The respondent has continuously been misleading the allottees including the complainants by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainants.
- o) That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainants in the project in a totally illegal and unprofessional manner and the respondent have been least bothered about the compliance of the terms and conditions of the allotment. The complainants have been duped of their hard-earned money paid to the respondent regarding the unit in their project.
- p) That the respondent has taken undue advantage of the helplessness of the complainants and has further exploited its dominant position. It would not



be out of place to mention that the complainants were always ready and willing to perform their part of the contract. Therefore, it is evident from the entire sequence of events that no illegality or acts can be attributed to the complainants. The respondent cannot be permitted to take advantage of its own illegal acts.

- q) That the complainants have been at the receiving end of the dilatory tactics employed by the respondent since the last few years eventually. The complainants have been forced to approach the Hon'ble authority on account of contractual and financial defaults committed by the respondent towards the complainants. The officials of the respondent had diverted the funds of the complainants and have illegally utilized the said funds for their own personal use.
- r) It is pertinent to mention herein that the fact that the respondent is indulged in illegal practices and making false representations is also evident from the fact that Vatika Seven Elements has not been constructed till date and innumerable allottees are fighting litigation against the respondent before this Hon'ble Authority. The status of the project is still listed as 'Under construction' as seen from their official website <https://www.vatikacollections.com/homesfutureready/gurgaon/> accessed on 16.05.2024 at 16:38.
- s) 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.
- t) 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 allot the unit as per the terms of the Agreement and when it failed to return the amount along with interest and finally about a week ago, when the respondent refused to refund the amount paid by the complainants along with compensation/damages and interest.

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

4. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire amount paid by the complainants along with interest.
  - II. Direct the respondent not to create third party rights on the unit till the time, the amount sought/directed is refunded back to the complainants by the respondent.
  - III. Pass an order imposing penalty on the builder on account of various defaults under the RERA Act.
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) (a) of the Act to plead guilty or not to plead guilty.

**E. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds: -
- a) That the present complaint is liable to be dismissed as the complainants have come before this Authority with unclean hands and tried to mislead this Authority by false and frivolous averments.
  - b) That despite the challenges on account of huge default by the buyers and demonetization affecting the development of the project, the construction of "Seven Elements" project was undertaken by respondent in right earnest and the same proceeded in full swing.
  - c) That the complainants had unit bearing no. HSG-023/A-501/Fifth court/Sector 89A for a total sale consideration of Rs.1,67,34,278/- ad-measuring 1639.23 sq. ft.
  - d) That as per Clause 13 of Agreement to Sale executed with the complainants, construction of the project was contemplated to be completed subject to



various force majeure circumstances mentioned in clause 16, 17 thereof which provided for extension of time. It is further submitted that the present complaint is pre-mature as it is the admitted position of the complainant that the respondent is required to handover the possession of the said unit within 48 months from the date of execution of the builder buyer agreement and therefore filing a pre-mature complaint is not maintainable at all and the same must be dismissed on the said ground.

- e) That complainants have only made a payment of Rs.1,37,62,273.88/- towards the booking of the said unit which is around 35% of the total sale consideration. Also, the complainants have not made any further payment till date.
- f) That it is denied that the construction work on the site had not initiated. The said statement is made by the complainants just to create a bias in the eyes of this Authority. The complainants have not annexed any photographs to prove its baseless allegation regarding the construction of the site being incomplete. The fact of the matter is that the complainants were not having financial resources to make timely payments of the dues and outstanding as per the construction linked planned that had been accepted by it under the BBA and therefore the complainants were trying to find faults in the agreement to come out of the said agreement. The said intention of the complainants can be demonstrated from admission made by complainants in its complaint wherein complainants admit that they asked respondent to adjust the amount the total amount paid by the complainants against both the units to the account of only one unit bearing no. HSG-023/A-501/Fifth court/sector 89A.
- g) That the buyer's agreement was executed only in the year 2015 and as per the terms of the said agreement the date of handover of possession of the



said unit was after 48 months subject to any force majeure situation as mentioned in clause 16 & 17 of the said agreement. Thus, respondent never has given any false assurances to the complainants nor has deceived the complainants in any regard. The respondent has timely issued receipts of all the payments made by the complainants to the respondent. There has been no fault made in this account and therefore there arises no question of any deceit to the complainants.

- h) That the complainants decided to withdraw from the said booking due to his own financial issues. The complainants have made the payment of the initial booking amount only till the year 2021 although the complainants had accepted construction linked plan.
- i) That the OP had offered "Payment Linked Plan" and "Construction Linked Plan" to its buyers. Few of the buyers had opted for "Payment Linked Plan" however most of the buyers in the Project had agreed for "construction link payment plan". The pace of construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of Apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers including the complainants, in the Turning Point project have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.
- j) That demonetization of currency notes of Rs.500 and Rs.1000 announced vide executive order dated 08.11.2016 which affected pace of development of the project. The effect of such demonetization was that the labourers



were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers and media. Capping on withdrawal and non-availability of adequate funds with banks had further escalated this problem many folds.

- k) That prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access / approach roads, key distances, looked at the vicinities, physical characteristic of the Project etc. and then filed an application for allotment which factum is also recorded in the BBA executed with each of the complainants. That almost all the buyers have visited the project site and were aware of the fact that project had no direct access road.
- l) That since entire money so recovered from complainants have been duly deposited to service tax department and as soon as concerned department will release the money, the same will be returned to the complainants. The factors which materially and adversely affected the project are being set out herein under:
- Delay in payments by majority of the buyers of the said group housing project:
  - Demonetization of currency notes having effect on pace of construction.
  - Lockdown on account of Covid-19 pandemic.
  - Delay in supply of cement and steel due to various agitations and Covid-pandemic-2019.
  - Declaration of Gurugram as notified area for the purpose of ground water and restrictions imposed by the State government on its extraction for construction purposes.

7. All other averments made by the complainant were denied in toto.

8. Copies of all the relevant documents have been filed and placed on record.

Their authenticity is not in dispute. Hence, the complaint can be decided on

the basis of those undisputed documents and oral as well as written submissions made by the parties.

#### **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 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 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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

##### **Section 11**

.....  
(4) The promoter shall-  
(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 the 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 cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**G.I Objection regarding force majeure.**



15. The respondent promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as demonetization, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. But all the pleas advanced in this regard are devoid of merit. The various orders passed by other authorities cannot be taken as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 14.09.2021. ***That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 14.09.2021 i.e., after 25.03.2020. Therefore, extension on account of force majeure conditions due to outbreak of Covid-19 pandemic can be granted and as such the due date for handing over of possession becomes 14.03.2022.

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

**H.I Direct the respondent to refund the entire amount paid by the complainants along with interest.**

**H.II Direct the respondent not to create third party rights on the unit till the time, the amount sought/directed is refunded back to the complainants by the respondent.**

16. Upon consideration of documents available on record and submissions made by both parties, the Authority observes that the complainants had applied for booking of unit in the project "Vatika Seven Lamps" being developed by the respondent. In pursuance of the same, a unit no. HSG-018/SACRIFICE/1st/101/Sector 82F, Vatika India Next was allotted to the complainants. Thereafter, the unit allotted to the complainants was relocated in another project of the respondent i.e., "Vatika Seven Elements" being developed by the respondent. The complainants were allotted unit no. A-501,

5<sup>th</sup> floor, Fifth Court Building in the project "Vatika Seven Elements", Sector 89A, Gurugram, Haryana of the respondent/builder. The builder buyer agreement was executed between the parties on 14.09.2017. The complainants had paid an amount of Rs.1,37,36,920.34/- against the total sale consideration of Rs.1,67,35,278.85/-. As per clause 13 of the builder buyer agreement the possession of the unit was to be offered within 48 months from the date of the execution of the buyer's agreement. 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/due date on or after 25.03.2020. Hence, the due date of possession comes out to be 14.03.2022.

17. Herein, the complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under Section 18(1) of the Act. Section 18(1) proviso reads as under.

**"Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. - 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. Keeping in view the fact that the allottee-complainants wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of



agreement for sale or duly completed by the date specified therein. The matter is covered under Section 18(1) of the Act of 2016.

19. It is a matter of record that the complainants have paid an amount of Rs.1,37,36,920.34/- against the total sale consideration of Rs.1,67,35,278.85/- to the respondent. The due date of possession was 14.03.2022 and occupation certificate of the buildings/towers where allotted unit of the complainant is situated is not yet received by the respondent. The allottee has become entitled to his right under Section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter has failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by it from the allottees in respect of the subject unit with interest at the prescribed rate.

20. Moreover, 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."**



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 allottees as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

22. This is without prejudice to any other remedy available to the allottees including compensation for which allottee may file an application for adjudging compensation with the Adjudicating Officer under Sections 71 and 72 read with Section 31(1) of the Act of 2016.

23. **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 as provided under Rule 15 of the Rules, *ibid*. 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.*

24. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

25. 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., 02.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.

26. The definition of term 'interest' as defined under Section 2(z a) 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;"***

27. 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. 1,37,36,920/- 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*.

**H.III Pass an order imposing penalty on the builder on account of various defaults under the RERA Act.**

28. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case.

29. The above said relief was not pressed by the counsel for the complainants during the arguments in the course of hearing. Also, the complainants failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainants do not intend to pursue the above relief sought by them. Hence, the authority has not rendered any findings pertaining to the above-mentioned relief.

**I. Directions of the Authority**

30. 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):

- I. The respondent is directed to refund the amount i.e., Rs. 1,37,36,920/- received by it from the complainant along with interest at the rate of 11% 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.
- II. 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.



**HARERA**  
**GURUGRAM**

Complaint No. 2370 of 2024

31. The complaint stands disposed of.
32. File be consigned to registry.

**Dated: 02.07.2025**

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory  
Authority, Gurugram



**HARERA**  
**GURUGRAM**