

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

Complaint no.	3411 of 2024
Date of filing complaint	17.07.2024
First date of hearing	06.11.2024
Order Pronounced on	09.07.2025

Virender Pal Singh Parmar

Resident of: House no. M 402 JMD Garden,
Sector 33, Sohna Road, Gurugram

Complainant

Versus

M/s VS Real Projects Private Limited

Regd. office: B-76, First Floor, Defence
Colony, South Delhi, Delhi- 110024

Corporate office: Plot no. 18, Second
Floor, Sector 44, Gurugram, Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)

Sh. Ishaan Dang (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	"AMB Selfie Square", Sector-37-D, Gurugram						
2.	Nature of the project	Commercial Colony						
3.	Project Area	3.775 Acres						
4.	DTCP license no. and validity status	14 of 2014 dated 10.06.2014 Valid upto 09.06.2019						
5.	Name of Licensee	VS Real Projects Pvt. Ltd.						
6.	RERA Registered/ not registered	Registered 57 of 2017 dated 17.08.2017 Valid upto 16.08.2022						
7.	Unit and Floor no.	502, 5 th Floor (Page 43 of complaint)						
8.	Unit area admeasuring	653 sq. ft. (Super Area) 397 sq. ft. (Carpet Area) (Page 43 of complaint)						
9.	MOU	01.02.2018 (page 26 of complaint)						
10.	Assured returns clause	Article 2.1 The Developer, agrees and undertakes to pay the Allottee Assured Return as under: <table><tr><td>Amount of assured return</td><td>Payable from</td><td>Payable Till</td></tr><tr><td>35,371/-</td><td>From the date of realization of full and final payment</td><td>Till 36 months from issuance of letter of offer of possession</td></tr></table>	Amount of assured return	Payable from	Payable Till	35,371/-	From the date of realization of full and final payment	Till 36 months from issuance of letter of offer of possession
Amount of assured return	Payable from	Payable Till						
35,371/-	From the date of realization of full and final payment	Till 36 months from issuance of letter of offer of possession						

			as per Payment Plan	or first lease, whichever is earlier
11.	Date of execution of buyer's agreement	02.08.2018 (page 41 of complaint)		
12.	Possession clause	16.1 Possession of the unit. "The company, based upon its present plans estimates and subject to all exceptions, proposes to handover possession of the unit within thirty-six months computed from the date of execution of buyer's agreement excluding additional grace period of 12 months subject to force majeure circumstances and reasons beyond the control of the company..." [Emphasis Supplied] (page 56 of complaint)		
13.	Due date of possession	02.08.2022 (Calculated to be 36 months from date of agreement being 02.08.2018 plus grace period of 12 months)		
14.	Total Sale Consideration	Rs.38,21,084/- (BBA at page 48 of complaint)		
15.	Amount paid against the unit	Rs.35,71,500/- (as per receipts at page 22-24 of complaint)		
16.	Occupation certificate	Not Obtained		
17.	Offer of possession	Not offered		
18.	Request by complainant to refund amount with interest	e-mail dated 12.02.2024, 01.05.2024 (page 77 of complaint)		

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- That in 2017, the complainant being allured by the advertisements published by the respondent, had booked a commercial unit bearing no. 502 on the 5th Floor of the project "AMB Selfie Square", a commercial complex situated in Sector-37D, Gurugram, Haryana having a super area of 653 sq. ft. The said commercial unit was purchased for a total sale consideration of Rs. 38,21,084/- under the scheme of assured return and



flexi payment plan. Also, the complainant paid a sum of Rs. 5,00,000/- through cheque bearing no. 000110 dated 01.01.2018 drawn on Kotak Mahindra Bank against the unit booked by him. The respondent issued the payment receipt for the said transaction made by the complainant on 31.01.2018.

- b) Thereafter, on 05.01.2018, the complainant made further two payments in favour of the respondent of Rs. 17,00,000/- and Rs. 13,71,500/- through cheque bearing no(s). 000111 and 000043 dated 05.01.2018, drawn on Kotak Mahindra Bank, Gurugram, respectively. The respondent issued the payment receipt for both payments on 31.01.2018.
- c) That on 01.02.2018, a Memorandum of Understanding (hereinafter "MOU") was executed inter-se the parties. As per Article 1 of the said MOU i.e., "Allotment of Premises", the respondent confirmed the allotment of unit bearing no. 502 on the 5th Floor of AMB Selfie Square, Commercial Complex situated in Sector-37D, Gurugram, Haryana having a super area of 653 sq. ft. in favour of the complainant. Furthermore, as per Article 2 of the said MOU i.e., "Assured Return", the respondent party agreed and undertook to pay the assured return of Rs. 35,371/- to the complainant payable from the date of realization of full and final payment as per payment plan till 36 months from issuance of letter of offer of possession or 1st lease whichever is earlier, at quarterly intervals, failing which the respondent shall pay an assured return amount of Rs. 38,195/- if the issuance of Offer of possession is beyond 24 months from the date of the said MOU.
- d) It is crucial to highlight here that as per the payment plan annexed with the MOU, the complainant was supposed to pay a sum of Rs. 30,44,809/- and 100% of EDC/IDC within 30 days of the booking. The complainant had



paid a sum of Rs. 35,71,500/- but still the respondent party did not pay any amount to the complainant on account of the Assured Return.

- e) Thereafter, on 02.08.2018, a unilateral, arbitrary, ex-facie buyer's agreement was executed inter-se the complainant and the respondent. As per the possession clause of the said BBA i.e., clause no. 16, the respondent was obligated to deliver the physical possession of the unit in question to the complainant within 36 months from the date of execution of the said BBA. The BBA was executed on 02.08.2018, hence, the due date of possession was 02.08.2021, however, the respondent has not even offered possession with respect to the complainant's unit till today itself.
- f) That the respondent party failed to provide copies of crucial documents, including the allotment letter, buyer's agreement (BBA), and Statement of Account, related to the complainant's unit, therefore, the complainant sent an email to the respondent on 31.07.2023 requesting these documents, but to no avail, as no response was received. Subsequently, the complainant sent a reminder email on 20.08.2023 to the respondent, reiterating his request for the documents. In response, the respondent finally provided the requested documents via email on 24.08.2023.
- g) That the respondent did not hand over the possession to the complainant on or before the due date of possession nor paid any assured return as agreed in the MOU dated 01.02.2018. The complainant paid several visits to the project site as well as to the office of the respondent, however, no positive response was ever received by the complainant. Despite several telephonic conversations and visits made by the complainant, the respondent has failed to honour its obligation.
- h) That since 2021, despite repeated follow-ups and requests, the complainant failed to obtain possession of his commercial unit from the



respondent/builder, therefore, exhausted and frustrated by the respondent's disregard, the complainant ultimately decided to withdraw from the project. Furthermore, the respondent party failed to pay the assured returns for the agreed-upon time period as well.

- i) That as per the applicant ledger dated 24.08.2023, the total cost of the unit in question including GST is Rs. 42,37,456/-, and the complainant has already paid a substantial amount of Rs. 37,61,500/-. The balance payment was supposed to be paid at the stage of the offer of possession which was not offered by the respondent in due time.
- j) That the complainant, deeply disappointed by the acts of the respondent party sent an email on 12.02.2024 to the respondent requesting a refund of the amount paid with interest, however, no response whatsoever was received by the complainant from the respondent's end on the said email. Thereafter, the complainant further sent a reminder email on 01.05.2024, reiterating his request for a refund. In response, the respondent finally broke their silence and sent an email on 21.05.2024 in revert and shared the updated construction images through the said email but still, the respondent did not address the complainant's refund request. It is germane to highlight here that on 24.05.2024, the complainant reiterated his request for a refund by sending another email to the respondent, however, the respondent remained unresponsive, and despite numerous requests and reminders, the respondent has failed to refund the complainant's money to date, leaving the complainant in a state of financial distress and uncertainty.
- k) That since 2022, the complainant has been tirelessly seeking a refund of his money, but his efforts have been futile. Despite numerous visits and inquiries, the complainant has been unable to obtain any information



regarding the status of his commercial unit or secure a refund. Notably, it has now been over 3 years since the initial booking, yet the respondent has failed to provide either possession of the unit or a refund, despite repeated requests from the complainant. This prolonged delay and lack of communication have caused significant distress and financial hardship for the complainant.

- l) That the main grievance of the complainant in the present complaint is that despite paying a substantial sum of Rs. 37,61,500/-, the complainant did not get possession of his unit nor any assured return was paid to him by the respondent. Moreover, when he requested a refund of his investment in the respondent's project, his request was ignored, and he did not receive his money back.
- m) That since 2021, the complainant regularly visited the office of the respondent as well as the construction site still the complainant has neither been able to know the actual due date of possession nor get the refund of his money when requested. It has been more than 6 years since the execution of BBA; however, the respondent did not hand over the possession to the complainant.
- n) That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, the respondent is liable to be punished and compensate the complainant.
- o) That due to the above acts of the respondent and the terms and conditions of the buyer's agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

- p) That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of the respondent which makes them liable to answer the Authority.
- q) That there is an apprehension in the mind of the complainant that the respondent is playing fraud and there is something fishy that which respondent is not disclosing to the complainant just to embezzle the hard-earned money of the complainant and others. A probe needs to be initiated to find out the financial and structural status of the project.
- r) That for the first-time cause of action for the present complaint arose in Aug 2018, when the buyer's agreement containing unfair and unreasonable terms was, was forced upon the allottee. The cause of action further arose in August 2021, when the respondent failed to hand over possession of the unit after obtaining a valid OC from the competent department., and hence, the cause of action arose on various occasions, including on Sep 2022; July 2023; Dec 2023 February 2024; July 2024, and many times till date.
- s) That as per section 11 (4) of the RERA Act. 2016, the promoter is under obligation towards allottees. Further, as per section 18 of the RERA Act. 2016, the promoter is liable to return of amount and to pay compensation to the allottees of an apartment, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- t) That as per section 19 (4) of the RERA Act. 2016, the complainant is entitled to a refund of the amount paid along with interest. Without prejudice, the present complaint is not for the compensation, the

complainant reserves the right to file a complaint to Adjudicating Officer of compensation.

- u) That the complainant wants to withdraw from the project and wants a refund of paid money along with interest as per RERA, 2016, Rules and regulations thereunder.

D. Relief sought by the complainants:

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

- I. The respondent be directed to refund the amount Rs. 35,71,500/- paid by the complainant along with the prescribed interest of interest from the date of deposit under Sections 18 and 19(4) of RERA till actual repayment of money.

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 complainant does not have the locus standi or cause of action to file the present complaint.
- b) That the complainant is not an "aggrieved party" or "allottee" as defined under the Act. The complainant is an investor who had purchased the unit in question as a speculative investment.
- c) That the complainant has misinterpreted and misconstrued the provisions of the Real Estate (Regulation and Development) Act, 2016, and the Rules and Regulations made thereunder as well as terms and conditions of agreement and allotment between the parties.
- d) That the present complaint raises several issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witness-

es for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. Thus, the present complaint deserves to be dismissed on this ground alone.

- e) That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present petition.
- f) That the respondent had applied for grant of license to Directorate of Town and Country Planning, Haryana for development of a commercial colony over land admeasuring 30 Kanal 4 Marla (3.775 Acres approximately) situated in Sector- 37D in revenue estate of village Harsaru, Gurugram. Subsequently, License bearing no. 14 dated 10.06.2014 had been issued by DTCP, Haryana, Chandigarh.
- g) That the building plans for the project had been duly approved/sanctioned by Directorate of Town and Country Planning, Haryana vide memo bearing no. ZP-976/AD(RA)/2014/15562 dated 16.07.2014. Then, the respondent commenced construction/development of a commercial colony under the name and style of "AMB Selfie Square" on the land in question.
- h) That the complainant, approached the respondent and evinced an interest in purchasing a unit in the said project. After being fully satisfied with all aspects of the project, including but not limited to capacity of respondent to undertake conceptualization, promotion, development and construction of the same, the complainant took an independent and informed decision to purchase a unit in the said project.
- i) That the complainant was provisionally allotted unit no.502 admeasuring 653 square feet (super area) approx. located on the 5th Floor of the said project. The complainant had opted for a Flexi Payment Plan in terms of which a sum of Rs 3,46,977/- was payable upon booking towards Basic sale Price (BSP), Rs 26,97,832/- towards BSP within 30 days of booking along



with 100% EDC & IDC and Rs 4,24,961/- along with 100% stamp duty, registration charges, IFMS, Sinking Fund and all other charges payable in terms of the buyer's agreement, at the time of offer of possession.

- j) That the parties executed a Memorandum of Understanding (MOU) dated 01.02.2018 pertaining, inter alia, to payment of assured returns in terms of the payment plan opted by the complainant. A buyer's agreement dated 02.08.2018 was executed by the complainant and the respondent. The buyer's agreement was willingly and consciously executed by complainant after duly understanding and accepting terms and conditions therein and without raising any objections. The terms and conditions of the buyer's agreement dated 02.08.2018 are binding upon the complainant with full force and effect.
- k) That subsequently, due to the prevalence of Covid-19 pandemic, ban on construction activities in the NCR on account of orders passed by the NGT and the unforeseen delays and complications beyond the power and control of the respondent, the same constituted a force majeure condition which has delayed completion of the project as originally planned.
- l) That, the Authority had published circular dated 27.03.2020 wherein it had been duly mentioned that the completion date of projects registered with this Authority had been extended till 30.06.2020. Thereafter, the Authority had published order bearing no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 wherein it was duly mentioned that the completion date of the projects registered with this Authority would automatically stand extended for 6 months on account of the outbreak of Covid-19. Furthermore, the outbreak of Coronavirus Pandemic would be considered a force majeure event and the developers would not need to file any application regarding invocation of force majeure clause.

- m) That the construction of the project is being carried out in full swing and is nearing completion. However, approach road from Dwarka Expressway is yet to be constructed by the Government. The Government has acquired the land from the respondent for the purposes of constructing the Dwarka Expressway and Service Road through which access to project is supposed to be given. Thus, even if possession of units in the project is offered to the allottees, until and unless the service road is not constructed and approach is not provided by the Government, the allottees cannot access the unit/project. The respondent, on its part has been following up the matter with the Government for the said purpose but no definite time frame has been promised by the Government as on date.
- n) That clause 16 of the buyer's agreement executed by complainant provides that the respondent shall endeavour to give possession of the unit within 36 months computed from the date of execution of the unit/space buyer's agreement, excluding additional grace period of 12 months, subject to force majeure circumstances and reasons beyond the power and control of the respondent and subject to timely payment of instalments by the allottee.
- o) That it is submitted that the respondent is committed to completion of the project and delivering the project subject to force majeure conditions and timely payment of instalments and compliance of the terms and conditions of the agreement between the parties.
- p) Therefore, it is obvious from the entire sequence of events that no illegality can be attributed to the respondent. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by the Authority. Thus, the present complaint deserves to be dismissed at the very threshold.

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 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."** (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 maintainability of complaint on account of complainants being the investors.**

15. The respondent took a stand that the complainant is an investor and not the consumer and therefore, he is not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 buyer's agreement, it is revealed that the complainant is a buyer and had paid a considerable amount to the respondent-promoter towards purchase of unit 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" in relation to 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 buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him 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 a "promoter" and an "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottee being the investor is not entitled to protection of this Act stands rejected.

G.II Objection regarding force majeure.

17. The respondent promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by NGT, approach road from Dwarka Expressway yet to be constructed by the Government, lockdown due to outbreak of Covid-19 pandemic. But all the pleas advanced in this regard are devoid of merit. 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 02.08.2021, subject to unqualified grace period of 12 months.
18. The Authority notes that an unqualified grace period of 12 months had already been granted to the respondent promoter under the terms of the buyer's agreement (BBA) and it is nothing but obvious that the project of the respondent is already delayed. Further, COVID-19 pandemic cannot be used as a blanket excuse for non-performance or delay by promoter, particularly when the promoter didn't mitigate delays and has acted negligently. Moreover, the respondent promoter has already been given grace period in terms of the BBA, hence, additional leniency on account of COVID-19 cannot be granted. The Authority is weighing responsibility and intent, not just the existence of the pandemic. In view of the same, no further grace period can be allowed on account of the COVID-19 pandemic.

H. Findings on the relief sought by the complainants.

H.I The respondent be directed to refund the amount Rs. 35,71,500/- paid by the complainant along with the prescribed interest of interest from the date of deposit under Sections 18 and 19(4) of RERA till actual repayment of money.

19. Upon consideration of documents available on record and submissions made by both parties, the Authority observes that the complainant had applied for booking of unit in the project "AMB Selfie Square" situated at Sector 37D, Gurugram being developed by the respondent. In pursuance of the same, a



unit no. 502, 5th floor, admeasuring 653 sq. ft. super area and 397 sq. ft. carpet area was allotted to the complainant. A memorandum of understanding (MOU) was entered into between the complainant as well as the respondent on 01.02.2018. The complainant had paid an amount of Rs.35,71,500/- against the total sale consideration of Rs.38,21,084/-. It is pertinent to mention here that clause 2.1 of the MOU dated 01.02.2018 provides for assured return and the same is reproduced as under for ready reference:

"2.1 The Developer, agrees and undertakes to pay to the Allottee Assured Return as under:

Amount of monthly Assured return	Payable from	Payable till
72,250/-	01.10.2020	Till issuance of letter of offer of possession

(Emphasis supplied)"

20. Thereafter, a builder buyer agreement was executed between the parties on 02.08.2018. As per clause 16.1 of the builder buyer agreement the possession of the unit was to be offered within 36 months from the date of the execution of the buyer's agreement excluding further grace period of 12 months. Hence, the due date of possession comes out to be 02.08.2022, including unqualified grace period of 12 months. Since the respondent promoter has already been given grace period in terms of the builder buyer agreement, therefore, additional leniency on account of COVID-19 pandemic cannot be granted as the Authority is weighing responsibility and intent, not just the existence of the pandemic.

21. Herein, the complainant intends to withdraw from the project and is seeking refund of the amount paid by her in respect of subject unit along with interest as provided under Section 18(1) of the Act, 2016, ibid and 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. -

(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."

(Emphasis supplied)

22. Keeping in view the fact that the allottee-complainant 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)(a) of the Act of 2016.
23. It is a matter of record that the complainant has paid an amount of Rs.35,71,500/- against the total sale consideration of Rs.38,21,084/- to the respondent. The due date of possession was 02.08.2022 and occupation certificate of the building/tower where allotted unit of the complainant is situated is not yet received by the respondent. 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....."

24. 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.**"*

25. 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 allottee, as he wish 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.

26. This is without prejudice to any other remedy available to the allottee 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.

27. Admissibility of refund along with prescribed rate of interest: The complainant is 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.

28. 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.

29. 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., 09.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.

30. The definition of term 'interest' as defined under Section 2(z) 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. Section 2(z) of the Act is reproduced below for ready reference:



“(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;”*

31. 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 complainant is entitled to refund of the entire amount paid by them i.e., Rs. 35,71,500/- 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*.

I. Directions of the Authority

32. 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. 35,71,500/- received by it from the complainant 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.

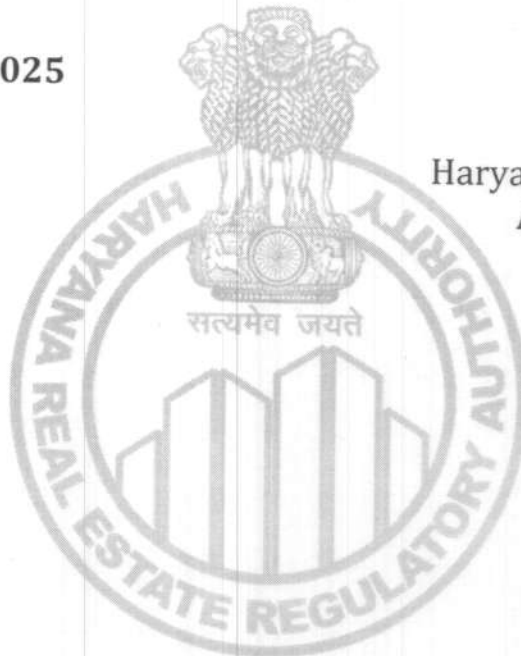


II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

33. The complaint stands disposed of.

34. File be consigned to registry.

Dated: 09.07.2025



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM