

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

Complaint no.: 741 of 2023  
Date of filing: 22.02.2023  
Order pronounced on: 20.05.2025

Pankaj Kumar  
R/o:- 20211 ATS Advantage, Swaran Jyanati Park,  
Ahinsa Khand-2, Indrapuram Ghaziabad, UP

**Complainant****Versus**

M/s Vatika Limited  
**Regd. Office at:** - Unit no. A-002, INXT City  
Centre, Ground Floor, Block-A, Sector-83,  
Vatika India Next, Gurugram

**Respondent****CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav (Advocate)  
Shri Ankur Berry (Advocate)

Complainant  
Respondent

**ORDER**

1. This 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 provision 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 complainants, 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	INXT City Centre, Sector 83, Gurugram
2.	Nature of project	Commercial complex
3.	Project Area	10.72 Acres
4.	DTCP license	122 of 2008 dated 14.06.2008. Valid upto 13.06.2016
5.	Name of the Licensee	Trishul Industries
6.	RERA registered/ not registered and validity status	<b>Not Registered</b>
7.	Unit no.	B-06, Ground Floor, Block-B (page 28 of complaint)
	Re-numbered vide letter dated 15.06.2016	B-010A, Ground Floor, Block-B (page no. 62 of complaint)
8.	Unit admeasuring	1340 sq. ft. (super area)
9.	Allotment Letter	14.04.2016 (page no. 28 of complaint)
10.	Date of execution of builder buyer agreement	14.04.2016 (page no. 31 of complaint)
11.	Possession clause	<b>Clause 10</b> <i>The developer contemplates to complete the construction of the unit within 48 months from the date of execution of the agreement.</i>
12.	Due date of delivery of possession	48 months calculated from 14.04.2016 + 6 months on account of covid-19 14.10.2020

13.	Basic sale price	Rs.1,74,20,000/- (as per BBA page no. 33 of complaint)
14.	Total amount paid by the complainant	Rs.54,00,800/- (as per SOA dated 20.12.2022 at page no. 117 of complaint & as admitted by respondent)
15.	Occupation certificate	Not obtained
16.	Intimation of possession	22.05.2017 (page no. 66 of complaint)
17.	Letter for Execution of buyer's agreement (for unit no. B-010A)	18.02.2020 (page no. 79 of complaint)
18.	Un-executed copy of fresh buyer's agreement	Undated (page no. 81 of complaint)
19.	Emails for copy of OC	20.11.2018, 13.12.2018, 28.12.2018 and 17.01.2019 (page no. 71-74 & 77 of complaint)
20.	Reply by respondent on email	29.03.2019 (attached copy of BR-V) (page no. 75 of complaint)
21.	Request for Refund by complainant	07.02.2023 (Email forwarded on what's app) (Page 121 & 122 of complaint)

**B. Facts of the complaint.**

3. The complainant has made the following submissions in the complaint:
- That on 24.12.2015, the complainant, Pankaj Kumar booked a shop bearing no. B-06 on ground floor in tower-B admeasuring 1340 sq. ft. in the commercial project of the respondent namely "INXT City Centre" situated at Sector-83, Gurugram, and paid ₹ 5,00,000/- on account of booking amount. The commercial unit was purchased under the construction-linked plan for a sale consideration of ₹1,74,20,000/-. It is pertinent to mention here that as the time of accepting the application money, the respondent represented that

- the possession of the unit shall be handed over within 9 months from the date of booking.
- b. That on 14.01.2016, the complainant further made two more payments of ₹10,00,000/- and ₹3,17,800/- through cheque no. 001493 drawn on Axis Bank Ltd, Ghaziabad, and 947174 drawn on Punjab National Bank, New Delhi on account of the part payment of sale consideration as per the payment plan. Thereafter on 15.01.2016, the respondent issued the payment receipts for all three payments made by the complainant against the booked unit.
  - c. That on 14.03.2016, the respondent party sent an invoice of ₹36,35,531/- and asked for the payment, thereafter, the complainant made the payments against the demand raised by the respondent through cheques as showed in the statement of account dated 11.06.2016 issued by the respondent.
  - d. That on 14.04.2016, the respondent sent a letter of allotment in favour of the complainant, concerning shop no. B-06, ground floor in tower-B admeasuring area 1340 sq. ft. in the project "INXT City Centre" situated at sector-83, Gurugram. It is pertinent to mention here that the total sale consideration of the unit is inclusive of government or municipal charges/EDC/IDC at rates prevailing as of the time of booking.
  - e. That thereafter on 14.04.2016, a pre-printed, arbitrary, unilateral commercial unit buyer agreement was executed inter-se the respondent and complainant. It is pertinent to mention here that the possession clause is mentioned nowhere in the said BBA. It is pertinent to mention here that at the time of accepting the application money, the respondent represented that the possession of the unit shall be handed over within 9 months from the date of

booking. Therefore, as per the payment plan annexed herewith on page no. 24 of the BBA that the due date of possession would be the day on which the last instalment was expected to be made i.e., within 9 months of booking or on the offer of possession whichever is later. It is further pertinent to mention here that the complainant had booked a shop in the project of the respondent on 24.12.2015, therefore, the due date of possession comes out to be on or before 24.09.2016.

- f. That on 13.06.2016, the respondent sent a demand letter for the instalment due of ₹1,17,823/-, and thereafter, on 15.06.2016, a letter for change of unit was sent by the respondent to the complainant. In the said letter it was intimated by the respondent that the complainant's unit no. B-06 has been re-numbered to B-010A on the ground floor in tower-B admeasuring the same area i.e., 1340 sq. ft.
- g. That on 22.05.2017, again an invoice of ₹1,24,49,400/- and statement of account was issued by the respondent. Additionally, on the same day i.e., 22.05.2017, possession was also offered by the respondent and in the said offer of possession, the respondent again asked to remit ₹1,24,49,400/-. It is pertinent to mention here that the respondent kept raising the demands and the said demand was raised for the instalment which is expected to be deposited within 9 months or at the time of offer of possession, whichever is later. It is highly pertinent to mention here that the respondent offered possession without obtaining the occupancy certificate from the competent authority. It is further highly pertinent to mention here that the respondent has never shared the occupancy certificate of the project, therefore, the unit was not in a fit state of

occupation. It is pertinent to mention here that in the said offer of possession, the respondent asked for the execution of indemnity cum undertaking which is against the rights of allottees. It is further pertinent to mention here that the contents of said indemnity cum undertaking are arbitrary and one-sided.

- h. That on 20.11.2018, the complainant sent an email to the respondent stating that the complainant requires the occupancy certificate to take a loan for making the payment of due instalments. Thereafter, on 13.12.2018, the complainant sent a reminder email to the respondent requesting to provide the occupancy certificate so that the due payments w.r.t the complainant's unit could be made. It is pertinent to mention here that the complainant has made all the payments as per the demands raised by the respondent and wanted to make the final payment as well, however, the respondent did not allow him to do the same as the complainant sent various emails to the respondent after 13.12.2018 and in each email, the complainant requested to provide the occupancy certificate so that he could take a loan and make all the due payments. It is further pertinent to mention here that at first the respondent did not take the complainant's request into its consideration and did not give any response to any of the emails sent by the complainant
- i. Thereafter on 18.02.2020, a letter for execution of BBA along with a copy of the BBA was received by the complainant which was sent by the respondent. It is pertinent to mention here that the BBA w.r.t to the complainant's unit i.e., unit no. B-010A on ground floor in tower-B has already been executed on 14.04.2016. It is quite onerous for the complainant to understand why the respondent

has sent another BBA for signing when already a BBA for the same unit and between the same parties have been executed. It is further highly pertinent to mention here that the possession clause or the due date of possession is still missing in the said second BBA as well.

- j. That as per the statement of account dated 20.12.2022 issued by the respondent, the complainant has paid 31% of the total sale consideration i.e., ₹5400800/- + TDS of ₹52,260/- total amounting to ₹54,53,060/- as per the payment plan by 21.06.2016. That on 07.02.2023, the complainant sent an email to the respondent and asked for a refund of paid money along with interest.
- k. That since 2017, the complainant is regularly visiting the office of the respondent as well as the construction site and made efforts to get the occupancy certificate and possession of his allotted unit, but all in vain. Despite several visits, the complainant has neither been able to know the actual due date of possession nor got the occupancy certificate. It is pertinent to mention here that it has been more than 7 years since the booking, however, the respondent did not provide a copy occupancy certificate because the occupancy certificate has not been obtained by the respondent itself and also, the project of the respondent is not registered with the hon'ble authority.
- l. That at first a BBA was executed in which the possession clause is missing, thereafter, the respondent changed the unit no. from B-06 to B-010A of the complainant and after that, the respondent sent a letter for execution of another BBA. It is apparently clear that the respondent had malafide intentions to get benefited from the hard-earned money deposited by the complainant.

- m. That the main grievance of the complainant in the present complaint is that despite the complainant paid more than 31% of the actual amount and being ready and willing to pay the remaining amount, but the respondent party has failed to provide a copy occupancy certificate and physical possession of the allotted unit.
- 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. That due to the above acts of the respondent and the terms and conditions of the builder buyer 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.
- o. 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 party which makes them liable to answer this Hon'ble Authority.
- p. That there is an apprehension in the mind of the complainant that the respondent party has playing fraud and there is something fishy that which respondent party is not disclosing to the complainant just to embezzle the hard-earned money of the complainant and others. A probe needs to initiate to find out the financial and structural status of the project.
- q. That for the first-time cause of action for the present complaint arose in April 2016, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the

allottees. The cause of action further arose in September 2016, when the respondent party failed to hand over possession of the unit after obtaining a valid OC from the competent department. Further, the cause of action again arose in February 2020, when the respondent party sent another BBA for signing, and hence, the cause of action arose on various occasions, including on a) Dec 2020; b) January 2021; c) March 2021 d) February 2022; e) December 2022, and on many times till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

- r. That without prejudice, the present complaint is not for the compensation, the complainant reserves the right to file a complaint to Adjudicating Officer of compensation. 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.
- s. That the complainant is entitled to get a refund of the paid amount along with interest from the date of booking/payment to the date of refund/realization of money. The complainant is also entitled to any other relief to which he is found entitled by this Hon'ble Authority.

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

- 4. The complainant has sought following relief(s):

- a. The respondent party may kindly be directed to refund the amount ₹54,53,060/- paid by the complainant along with the prescribed interest of interest from the date of deposit under sections 18 & 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.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds:
  - a. That the present complainant has himself violated the obligations as set in within the Section 19 of the RERA Act and has further breached the terms of the BBA dated 14.04.2016. The present complaint has been filed by the complainant by hiding the true facts of the present case and by placing half-baked truths. Thus, the present complaint ought to be outrightly be dismissed with heavy costs.
  - b. That the total sale consideration for the said unit was ₹1,74,20,000/- (including EDC+IDC) however the payment plan of the complainant was not a construction-linked plan. The complainant who had approached the respondent through a broker had rather opted/chosen a payment plan as per his needs. Further there was no promise or assurance of delivery/hand over of possession within 9 months and the complainant is attempting to place false and frivolous contentions to confuse the Hon'ble Authority.
  - c. That the complainant has come before the Hon'ble Authority with un-clean hands. The complaint has been filed by the complainant

just to harass the respondents and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- d. That in the matter titled Neelkamal Realtors Suburban Pvt. Ltd. and Anr. versus Union of India and Others, Writ Petition No. 2711 of 2017, the Hon'ble High Court of Judicature at Bombay, in Para 152 held:

*"152. It needs to be emphasized that RERA law is not to be considered as anti-promoter. It is a law for regulation and development of the real estate sector. Under the scheme of the RERA, the promoter's interests are also safeguarded and there is a reason for the same. Unless a professional promoter making genuine efforts is not protected, then very purpose of development of real estate sector would be defeated".*

- e. Thus, in this regard it is pertinent to mention that the respondent company was facing umpteen roadblocks in construction and development work in projects beyond the control of the respondent such as the follows:

- Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the company was forced to change its building plans, project drawings, green areas, laying

down of the connecting roads and complete lay-out of the township, including that of independent floors.

- Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely;
- Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of ground water,
- Delay in removal/ re-routing of defunct high-tension line of 66KVA in licenses land, despite deposition of charges/ fee with HVBPNL, Haryana.
- Total and partial ban on construction due to the directives issued by the national green tribunal during various times since 2015.
- The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- Additionally, it imposed a set of partial restrictions, some of which are:
  - i. No construction activities between 6 pm till 6 am (174 days)
  - ii. Stop the usage of diesel generator sets (128 days).

- iii. Stop entry of truck traffic into Delhi.
  - iv. Close brick kilns, hot mix plants and stone crushers.
  - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
  - vi. This year, partial restrictions continued to be in place in NCR region.
- The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
  - That the respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide external development works & infrastructure development works.
- f. It is submitted that upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government authorities. The incompleteness of such development works resulted in minor alterations in timelines of the project, however the respondent yet

managed to complete the project. It is pertinent to mention that in the matter titled, Credai-NCR vs. Department of Town and Country Planning, Government of Haryana & Another before the Competition Commission of India – case no. 40 of 2017 it has been opined and well conveyed by the Hon'ble Commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended and the Respondent lacked any control in the subsequent deference of the project.

- g. That since the hurdles faced by the respondent company were beyond the control of the respondent, there was unintentional delay in completion of the project. It is further submitted that, it was never the intention of the respondent company to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.
- h. The present complaint of the complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the real estate sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by

imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- i. That it is brought to the knowledge of the Hon'ble Authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainant. That before signing the BBA the complainant was well aware of the terms and conditions as imposed upon the parties under the BBA and only after thorough reading, the said BBA got signed and executed.
- j. It is submitted, without prejudice to any rights of the respondent it is submitted that, in the present case if the Authority allows the prayer of refund in favour of the complainant, then it is a matter of right of the respondent that relief under Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulation, 11(5) of 2018 be made applicable, and the respondent be directed to refund the monies deposited by the complainant only after deduction of earnest money @ 10% of total sale consideration.
- k. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondents are nothing but an afterthought, hence the

present complaint filed by the complainant deserves to be dismissed with heavy costs.

1. That the various contentions raised by the complainant is fictitious, baseless, vague, wrong and created to misrepresent and mislead the Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the Authority:**

8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial Jurisdiction:**

9. 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.

**E.II Subject-matter Jurisdiction:**

10. 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. 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.

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

**F.I. The respondent party may kindly be directed to refund the amount Rs. 54,53,060/- paid by the Complainant along with the prescribed interest of interest from the date of deposit under sections 18 & 19(4) of RERA till actual repayment of money.**

12. In the present matter the complainant was initially allotted the unit bearing no. B-06, on ground floor, Block-B admeasuring 1340 sq. ft. super area at sector 83, Gurugram in the project INXT City Centre vide allotment letter dated 14.04.2016. Thereafter a builder buyers' agreement was executed between the parties on 14.04.2016 for a total sale consideration of ₹1,74,20,000/-. As per clause 10 of the said agreement the respondent was obligated to deliver the possession of the

unit within 48 months from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 14.10.2020. The respondent thereafter re-allotted the above said unit of the complainant without his consent vide letters dated 15.06.2016 and finally was allotted unit bearing no. B-010A, on ground floor, Block-B admeasuring 1340 sq. ft. super area in the same project situated in sector 83, Gurugram. The respondent on 22.05.2017 issued a letter for intimation of possession w.r.t. the new allotted unit. The complainant repeatedly mailed to the respondent regarding receipt of OC from the competent authority vide mails dated 20.11.2018, 13.12.2018, 28.12.2018 & 17.01.2019. In response to the said emails the respondent on 29.03.2019 attached a file naming BR-V. Furthermore, till date no BBA has been signed between the parties for the new unit. The respondent on 18.02.2020 issued a letter for execution of BBA w.r.t. the new unit. But the counsel for the respondent on hearing dated 01.10.2024 admitted the fact that the OC of the unit has not been received till date. The complainants vide mail dated 07.02.2023 upon failure of respondent to deliver the unit, requested for refund of the paid-up amount along with the prescribed rate of interest as per RERA Act, 2016. Now, the complainant has filed the present complaint on 22.02.2023 seeking refund of the paid-up amount as per proviso to section 18 (1) of the Act.

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

***"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -***

***.....  
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".***

13. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

14. 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.
15. 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., 03.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
16. 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. 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;"*

17. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the agreement executed between the parties on 14.04.2016, the respondent was obligated to deliver the subject unit within 48 months from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 14.10.2020.
18. It is pertinent to mention over here that even after a passage of more than 4 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends to withdraw

from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

19. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he 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. Further, 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 is 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 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. 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 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*.

**G. Directions of the authority**

23. 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 amount of ₹54,00,800/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules

from the date of each payment till the date of refund of the deposited amount.

- b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- c. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

24. Complaint stands disposed of.

25. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 20.05.2025