

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

Complaint no. :	818 of 2024
Date of filing of complaint:	15.03.2024
Date of Order:	03.04.2025

1. Sandeep Kohli
2. Kamal Kohli

R/o: House no.-162, Phulkian Enclave,
Patiala, Punjab-147001

Complainants**Versus**

1. M/s Kashish Developers Limited
Regd. Office at: 87, Old A.G. Colony, Kadru,
Ranchi, Jharkhand-834002

2. M/s Vinman Constructions Pvt. Ltd.
Regd. Office at: 4, Battery Lane, Rishi
Apartment, Rajpur Road, Civil Lines, Delhi-
110054

3. M/s Elite Villas Private Limited
Regd. Office at: 87, Old A.G. Colony, Kadru,
Ranchi, Jharkhand-834002

Respondents**CORAM:**

Shri Vijay Kumar Goyal

APPEARANCE:

Sh. Nipun Rao (Advocate)

Sh. Om Prakash Singh (Advocates)

Member

Complainants

Respondents

ORDER

1. The present complaint has been filed by the complainants/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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Manor One", sector- 111, Gurugram
2.	Project area	14.843 Acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License no. & validity status	110 of 2011 dated 16.12.2011 valid up to 13.12.2019
5.	Name of Licensee	Vinman Construction Pvt. Ltd. and 4 others
6.	RERA Registered/ not registered	Registered vide no. 58 of 2019 dated 24.09.2019 valid up to 31.12.2021
7.	Extension of RERA registration	PROJECT CONTINUATION- RC/REP/HARERA/GGM/ 58 of 2019/7(3)/2022/11 dated 22.11.2022 valid up to 30.06.2027
8.	Plot no.	C2- 3B, 3 rd floor & Block/tower -C2 (As per page no. 21 of the complaint)
9.	Unit admeasuring	2325 sq. ft. (Super Area) (As per page no. 21 of the complaint)
10.	Date of execution of apartment agreement buyer's	18.04.2013 (As per page no. 17 of the complaint)
11.	Possession clause	3. POSSESSION a) Offer of possession: That subject to terms of this clause and subject to the apartment allotte(s) having complied with all the terms and

		<p>conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement, as prescribed by the developer, the developer proposes to hand over the possession of the said apartment within a period of thirty(36) months (excluding a grace period of 6 months) from the date of execution of this agreement. It is however understood between the parties that the possession of various blocks/towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different blocks/towers as and when the same will be completed and in a phased manner. (As per page no. 28 of the complaint)</p>
12.	Due date of possession	18.04.2016 (Note: Due date to be calculated 36 months from the date off execution of buyer's agreement i.e., 18.04.2013)
13.	Total sale consideration	Rs.1,61,40,175/- (As per payment schedule on page no. 56 of the complaint)
14.	Total amount paid by the complainant	Rs.52,75,387/- (As per receipt information on page no. 71-74 of the complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Request letter for refund of paid-up amount	28.02.2020 (As per page no. 75 of the complaint)

18.	Cancellation letter	10.01.2024 (As per page no. 87 of the complaint)
19.	Demand letter	03.06.2024 (As per page no. 22 of the reply)

B. Facts of the complaint:

3. That the complainants have made following submissions:

- i. That the respondents gave advertisement in various print as well as electronic media about their forthcoming project named "Manor One" Sector-111, Village Chauma, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements the complainants booked a unit/flat in aforesaid project of the respondent. The respondents allotted unit no. C2-3B, 3rd Floor, Block/Tower C2, having a super area of 2325 sq. ft. in Manor One to the complainants for a total sale consideration of Rs.1,61,40,175/
- ii. That thereafter a builder buyer's agreement was executed between the complainants and the respondents on 18.04.2013. At the time of execution of this agreement the complainants paid Rs.51,17,700/-. That from the booking till now the complainants paid the total money amounting to Rs.52,75,837/- for the sale consideration of the above said unit.
- iii. That as per clause 3(a) of the agreement the due date of possession was 36 months (excluding a grace period of 6 months) from the date of execution of this agreement. However, from then till now there is nothing on the ground and the project has not been conceived in between the period of the payments made in the year 2013-2024. At

the time of selling the unit it was also agreed by the respondent that they will make a sample flat and will ask all the allottees to come and visit that sample flat but nothing as such is on the ground as yet. The respondent at the time of selling the unit committed that the construction work of the said project will be done by some reputed builders such as L&T, but later upon inspection was done by the complainants and it was noticed that the contract of the construction work was given to some local contractor. As such, the terms and conditions mentioned at the time of agreement regarding the said unit were made falsely just to engage the complainants in the false promises by the respondent. As the complainants have been made to suffer and made to put under the loss when huge payment and the project was to be delivered within 36 months from the agreement.

- iv. That the complainants contacted the respondent on several occasions and were regularly in touch with the officials of the respondent company. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and was never definite about the delivery of the said possession.
- v. That the complainants kept pursuing the matter with the representatives of the respondent by visiting their offices regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some of the other reasons were being given in terms of shortage of labor, etc.
- vi. That the complainants many times contacted the Bank officials to apply for the loan against the said unit, but there the complainants got shocked to know that not even a single bank was ready to give the loan regarding the said project as the reputation of the respondent builders was not up to the mark.

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- vii. That the complainants booked the unit with high hopes and dreams that they will be able to live in a safe environment along with their family and will be able to give their family secure and comfortable surroundings to live in. However, the respondent simply refrained from adhering to his commitments, though the respondent never failed in raising payment demands irrespective of the pace of construction, but when it came to completing construction and handing over possession, they failed miserably.
- viii. That the respondent had made representations and all claims that the project will be completed on time and will be handed over after all the necessary permissions and approvals are in place. On the contrary, the respondent has failed in adhering to the representations made by him and illegally retained and used the hard-earned money paid by the complainants for so many years thereby causing wrongful loss to the complainants and wrongful gain to the respondent.
- ix. That the said unit was purchased in the year 2013 and till 2024, the complainants are still grappling in dark after paying a major chunk of their lifelong savings in such investment and hence have opted for the refund of the entire amount having lost patience and trust in the respondent, who has delayed the delivery of the unit abnormally. That thereafter on 28.02.2020 the complainants send a legal notice to the respondents requesting to refund the amount paid by the complainants at the prescribed rate of interest, but the respondents never paid any heed to the request made by the complainants.
- x. That the complainants are also deprived of the benefit of escalation on the amount paid as the amount paid i.e., Rs.52,75,837/- in the year 2013 would have been increased by 300% till now i.e., 2024. But due to the omission on the part of the respondent the complainants also



suffered this financial loss and in addition to that, lost the hope of their home.

- xi. That out of nowhere on dated 10.01.2024 the respondents deliberately and arbitrarily send a cancellation letter to the complainants, upon receiving that letter the complainants got shocked as it was the respondents who were at fault, but they intentionally made the fault of complainants in the cancellation letter.
- xii. That the respondent has been retaining the entire amount without fulfilling his commitments even despite several oral and exchange of emails, the respondent is not coming forward to make the payments to the complainants.
- xiii. That the complainants requested the respondent several times to refund the said amount of the said unit, but the interactions and altercations advanced from the side of the respondent clearly portrays that the respondent has turned malafide and having no intentions to make payments.
- xiv. That the respondent has obtained the HARERA License in the year 2019 which is much later than the due date of possession as promised by the respondent to the complainants.
- xv. That due to this omission on the part of the respondent the complainants have been suffering from disruption, mental torture, agony and also continue to incur severe financial losses. This could be avoided if the respondents had given possession of the unit on time.
- xvi. That the respondent has failed to fulfill its obligations as under builder buyer's agreement and also failed to provide any offer of possession of the said unit till now. It is clear cut case of abuse of their dominant position of the respondent in the market and such an act needs to be penalized against the respondent.

xvii. That the intension of the respondent was not clear, and all this was done in order to dupe the amount paid by the different allottees. The complainants have requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent to refund the amount along with interest on the amount deposited by the complainants, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainants.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the paid-up amount along with interest at the prescribed rate of interest.

D. Reply by the respondents:

5. The respondents have contested the complaint on the following grounds:
- That the present complaint, filed by the complainants is a bundle of lies and the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains. and hence the complaint is liable to be dismissed as it is filed on baseless grounds.
 - That at the outset, the complainants, learned about the project of the respondent titled as "Manor One" and approached the respondent repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.



- III. That the complainants decided to invest and booked a residential flat in the said project without getting induced by any sale, plan, brochure, representation/advertisements, or commitment made by the respondent either orally or in written and only solely upon his own judgement and investigation.
- IV. That the respondent vide allotment letter dated 26.09.2012, provisionally allotted a flat bearing no. C2-3B in Tower No. C2, in the aforesaid project.
- V. That time was essence in respect to the allottees obligation for making the respective payment. And, as per the agreement so signed and acknowledged that the allottees were bound to make the payment of instalment as and when demanded by the respondent.
- VI. That on 18.04.2013, an apartment buyer's agreement was executed between the complainants and the respondent wherein the said unit was allotted to the complainants for a total sale consideration of Rs.1,61,40,175/- excluding tax, statutory charges, stamp duty, delay payment & others charges in the aforesaid project.
- VII. That the complainants were well aware of the terms and conditions mentioned under the agreement and agreed to sign upon the same upon being fully satisfied with each and every term without any protest or demur.
- VIII. That the special window for Affordable and Mid Income Housing has been approved for the completion of project. The SWAMIH fund is a fund setup by the Government of India for completion of the stalled project. The government after doing all due diligence of the project has approved this fund for the project and also approved a resolution plan or completion of the project. It is pertinent to bring into the knowledge of the Authority that the respondent has already received the SWAMIH Investment Fund.

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- IX. That under the said agreement dated 18.04.2013, the complainants were bound to make timely payment of dues in accordance with the demands raised by the respondent. It is to note that the complainants have not paid the total sale consideration amount which is why it is quite hard for respondent to handover the possession to the complainants within time-bound period as agreed under the agreement. That the same can be perused from a plain reading of the Statement of Accounts.
- X. That the complainants failed to adhere the agreement and keep on delaying the payments and never made the payments as per the payment schedule duly agreed upon at the time of booking and under the agreement. It is submitted that since starting the respondent was committed to complete the construction of the project and has invested each and every amount so received towards the construction of the same. The complainants have merely paid an amount of Rs.52,75,837/- towards the total agreed sale consideration.
- XI. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
- XII. That due to the impact of the Goods and Services Act, 2017 which came into force after the effect of demonetisation in the last quarter of 2016, which left long lasting effect on real estate and development sector even in



2019. It is a matter of fact that the respondent has to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST.
- XIII. That in the recent years, various construction activities in the real estate sector was stayed due to constant ban levied by various Courts/Tribunals/Authorities/ to curb pollution in Delhi-NCR Region. It is pertinent to mention that recent years the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019. And, subsequently the EPCA vide its notification dated 01.11.2019, converted the same into a complete ban on 01.11.2019 to 05.11.2019.
- XIV. The Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" has completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Court vide its order dated 14.02.2020.
- XV. That due to the ban levied by the Competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. And, even after lifting of ban by the Hon'ble Court the construction activities could not resume at full throttle due to such acute shortage. Despite, after such obstacles on the construction activity in the real estate sector and before the normalcy could resume, the entire nation was hit by the Worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay. The current Covid-19 pandemic resulted in serious challenges for the respondent with

no available labourers, contractors etc. for the construction of the project. On 24.03.2020, the Ministry of Home Affairs, GOI vide notification recognised that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020.

XVI. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the Respondent. The complainants have not approached the Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs.

6. The complainant has filed the complaint against R1, R2 and R3 in which R1 is the developer/promoter and R2 & R3 are land owner of the project land. The flat buyer's agreement has been executed with all the respondents and the payments have been made to R1 only. Sh. Vijay Kumar Rai, is the Authorized signatory for all the companies and while filing the reply on behalf of all the companies he has not distinguished the role and responsibilities between R1, R2 and R3. The respondent no. 2 & 3 i.e., M/s Vinman Constructions Pvt. Ltd. & M/s Elite Villas Private Ltd. were granted licence by the Director, Town and Country Planning, Haryana vide licence no. 110 of 2011 to develop and construct the group housing project in Sector-111, Gurugram. Though the apartment buyer's agreement have been executed with all the respondents and payments have been made to the respondent no. 1 but the respondent no. 2 & 3 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).
7. The promoter has been defined in section 2(zk) of the Act of 2016. The relevant portion of this section reads as under:

"2. Definitions. — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) xxx

(iii) xxx

(iv) xxx

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

8. As per aforesaid provisions of law, respondent no.1, 2 & 3 will be jointly and severally liable for the competition of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers.
9. 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 submission made by the parties.

E. Jurisdiction of the authority:

10. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

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

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

13. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, orders of various courts, demonetisation, implementation of GST, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit.

Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. 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 within a period of 36 months from the date of execution of agreement. In the present case, the date of execution of agreement is 18.04.2013, so, the due date of subject unit comes out to be 18.04.2016. ***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.*** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

14. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 18.04.2016 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020



dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 18.04.2016, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to refund the paid-up amount along with interest at the prescribed rate of interest.

15. The complainants were allotted a unit in the project of respondent "Manor One" in Sector-111, Gurugram for a total sale consideration of Rs.1,61,40,175/-. The apartment buyer's agreement was executed on 18.04.2013 itself and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.52,75,387/-.
16. As per clause 3(a) of the apartment buyer's agreement dated 18.04.2013, due date of possession is to be calculated 36 months from the date of execution of the agreement. The possession clause is reproduced below for the ready reference:

3. POSSESSION

a) Offer of possession:

That subject to terms of this clause and subject to the apartment allottee(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement, as prescribed by the developer, the developer proposes to hand over the possession of the said apartment within a period of thirty(36) months (excluding a grace period of 6 months) from the date of execution of this agreement. It is however understood between the parties that the possession of various blocks/towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different blocks/towers as and when the same will be completed and in a phased manner.

(Emphasis supplied)

17. Therefore, the due date for possession is to be calculated 36 months from the date of execution of buyer's agreement. Thus, the due date for possession of the unit comes to 18.04.2016.
18. The complainants have made a request to the respondent for refund of the paid-up amount on 28.02.2020 i.e., after the due date has lapsed. Though the occupation certificate of the project is not yet obtained by the respondent, but the respondent has cancelled the unit vide cancellation letter dated 10.01.2024 on account of outstanding dues and not following the payment plan. The complainants have paid an amount of Rs.52,75,387/- i.e., 33% of the sale consideration of Rs.1,61,40,175/-. The payment plan opted by the complainants is construction linked and as per the payment plan, the payment is to be made as per the progress of construction. The complainants stopped making payments after paying an amount of Rs.52,75,387/- as the construction of the project could not take place as agreed under the buyer's agreement. The respondent has issued the cancellation letter on 10.01.2024 without raising any demand of outstanding dues or making any offer of possession. Moreover, the occupation certificate has not been obtained by the respondent-promoter till date which was confirmed by the Authorized Representative for the respondent during proceedings of the day dated 03.04.2025. Thus, in view of the aforementioned facts, the cancellation of the unit stands invalid and the complainants are entitled for full refund of the paid-up amount.
19. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit for which they have 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 allottee 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 in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (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 allottee 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 application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the respondent in respect of the unit with interest at such rate as may be prescribed.



22. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainants intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 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, —

- (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 of 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)

23. The complainants are seeking refund of the amount paid by them with interest at the 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.

24. 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.



25. 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., 03.04.2025 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) 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. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(a) of the Act, 2016.
28. The authority hereby directs the respondent to refund the amount received by him i.e., Rs.52,75,387/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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H. Directions of the Authority:

29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondents/promoter are directed to refund the amount i.e., Rs.52,75,387/- received by it respectively from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii) 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.
- iii) The respondents are further directed not to create any third-party rights against the subject unit before 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.

30. Complaint stands disposed of.

31. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.04.2025