

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of decision: - 09.05.2025**

NAME OF THE BUILDER		BPTP LIMITED	
PROJECT NAME		"BPTP Freedom Park Life, Sector -57 "	
S. No.	Case No.	Case title	Appearance
1.	CR/64/2020	Virender Singh Yadav VS BPTP limited	Adv. Gaurav Bhardwaj (Complainant) Adv. Harshit Batra (Respondent)
2.	CR/389/2023	Virender Singh Yadav VS BPTP limited	Adv. Gaurav Bhardwaj (Complainant) Adv. Harshit Batra (Respondent)

CORAM:

Shri Arun Kumar

Chairman

ORDER

1. The order shall dispose off both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, "BPTP Freedom Park Life, Sector -57 Gurugram being developed by the same respondent- promoter i.e. BPTP limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also similar. The fulcrum of the issue involved in

both the cases pertain to failure on the part of the respondent/promoter not to handover the physical possession as per the terms of the builder buyer's agreement, seeking refund along with interest.

2. The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

S. No.	Particulars	Details CR/64/2020 w.r.t	Details CR/389/2023 w.r.t.
1.	Complaint filed on	14.01.2020	25.01.2023
2.	Reply filed on	15.03.2021	04.10.2024
3.	Allotment letter	26.10.2009 [Page 79 of Reply]	26.10.2009 [Page 18 of complaint]
4.	Unit no.	FPL-07, 15 th floor	FPL-08, 15 th floor
5.	Unit area	294 sq. ft. (super area) [page 89 of reply]	318 sq. ft. [Page 23 of complaint]
6.	Builder buyer agreement executed on	Not executed	Not executed
7.	Due date of possession	26.10.2012 [Calculated from the date of allotment dated 26.10.2009]	26.10.2012 [Calculated from the date of allotment dated 26.10.2009]
8.	Total sale price of the flat	Rs.39,13,342/- [As per Statement of Account dated at page 91 of reply]	Rs.34,77,330/- [As per Statement of Account dated 10.10.2012 at page 23 of complaint]
9.	Amount paid by the complainant	Rs.33,28,080/- [Page 91 of reply]	Rs.33,09,744/- [As per Statement of Account dated 10.10.2012 at page 23 of complaint]

10.	Occupation certificate	12.07.2010 for the residential society [Page 84 of reply] Not for commercial complex	12.07.2010 for the residential society Not for commercial complex
11.	Offer of possession	11.03.2015	11.03.2015
12.	Relief sought	Refund along with interest.	Refund along with interest.

3. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of refund along with interest.
4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of both the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/64/2020** titled as **Virender Singh Yadav VS BPTP limited** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

6. 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	BPTP Freedom Park Life, Sector -57
2.	Unit no.	FPL-08, 15 th floor
3.	Date of booking	26.10.2009
4.	Allotment letter	26.10.2009 [Page 18 of complaint]
5.	Shop no.	FPL-08 [Page 23 of complaint]
6.	Tentative area	318 sq. ft. [Page 23 of complaint]
7.	Date of execution of buyer's agreement	Not executed
8.	Due date of possession	26.10.2012 [Calculated from the date of allotment dated 26.10.2009]
9.	Total sales consideration inclusive EDC & IDC	Rs.34,77,330/- [As per Statement of Account dated 10.10.2012 at page 23 of complaint]
10.	Total amount paid by the complainant	Rs.33,09,744/- [As per Statement of Account dated 10.10.2012 at page 23 of complaint]
11.	Occupation certificate dated	12.07.2010 for the residential society
12.	Offer of possession	11.03.2015

B. Facts of the complaint

7. The complainant has pleaded the complaint on the following facts:

- That the complainant, Sh. Virender Kumar Yadav is a respectable and law-abiding citizen residing at House no. 711, Village Rajokri, New Delhi-110038.
- That somewhere around 2009, the respondent advertised about its new project namely "bptp freedom park life" located at Sector-57,

District Gurugram. The Respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project has excellent location and enjoys superior connectivity through the proposed Golf Course Extension Road, Sohna Road and NH-8 and that the Respondent has all the requisite government approvals in order to build and sale the said project. That the complainant visited the project site and believing the representations of the respondent, in October 2009, the complainant booked two adjacent shops in the project by paying an amount of Rs. 2,84,550/- and Rs. 3,07,650/- towards the booking of the said shops to the respondent.

- iii. That thereafter, on 26.10.2009, the respondent sent allotment letters thereby allotting two adjacent shops bearing no. 'FPL-07' hereinafter called as '**first unit**' admeasuring 294 sq. ft. super area and 'FPL-08' hereinafter called as '**second unit**' admeasuring 318 sq. ft. super area respectively.
- iv. That thereafter, the complainant made a payment of Rs. 20,00,000/- on 09.03.2010 and Rs. 2,84,550/- on 17.02.2010 as against first unit and Rs. 20,00,000/- on 09.03.2010 and Rs. 3,07,650/- on 17.02.2010 as against the second unit, in accordance with the demands raised by the respondent company.
- v. That after paying more than 70% of the total consideration amount, the complainant in 2011, approached the respondent company to execute the buyer's agreement, to which the latter kept falsely assuring the former that the agreement shall be executed soon.
- vi. That despite lapse of 2.5 years of booking and despite persistent requests and follow-ups, no agreement was executed by the

respondent. Accordingly, the complainant, having no other option again approached the respondent in 2012 to execute the agreement, but to no avail. On the contrary, the respondent threatened the complainant to cancel the allotment and forfeit entire money upon failure to make further payments. Having no other option, the complainant again made a payment of Rs. 10,43,530/- on 09.08.2012 as against the first unit and Rs. 10,02,094/- on 09.08.2012 as against second unit. That the complainant has paid an amount of Rs. 33,28,080/- as against the first unit, as and when demanded by the respondent, as against the total consideration of Rs. 32,14,890/- and Rs. 33,09,744/- as against the second unit, as and when demanded by the respondent, as against the total consideration of Rs. 34,77,330/-. The said amount was paid till 2012.

- vii. That it is pertinent to mention here that the payment of more than 95% of the total consideration amount stated above was taken by the respondent company prior to execution of the buyer's agreement, thereby violating Section 13 of The Real Estate (Regulation and Development) Act.
- viii. That thereafter, the complainant in December, 2012 and in March 2013 again approached the respondent to execute the agreement and inquiring as to when possession will be handed over as more than 95% payment had already been made, but all in vain as the representatives of the respondent company simply recused themselves and resorted to give vague and misleading assurances on one occasion or the other.
- ix. That the Complainant, in the year 2014, came to know that the unit site in question has been subject to dispute and since 2012, a

litigation is pending in Hon'ble High Court of Punjab and Haryana vide CWP no. 22243 of 2012 and the land in question was a part of parking areas and accordingly, it could not be sold by the builder. This clearly shows that the land was a part of the common area and could not have been sold and apparently, this seems to be the reason why respondent did not execute the buyer's agreement with the complainant for the units in question. This left the complainant completely aghast and devastated. As soon as the complainant came to know about the said fact, he immediately rushed to the respondent's office seeking refund of his money, but again to no avail.

- x. That since 2012, the Complainant has been contacting the Respondent on several occasions by way of meetings, calls, mails, to give back his money but the Respondent has miserably failed in doing the same, thereby inflicting great mental agony to the Complainant. That on 24.12.2019, the Complainant by way of mail again requested the Respondent to either handover possession or to return his money and expressed his anguish over severe exploitation at the hands of builder despite making complete payment, but all effort has been rendered futile owing to the treachery and misconduct on the part of respondent.
- xi. That the respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the complainant for so many years thereby causing wrongful loss to the complainant and wrongful gain to the respondent. That the present complaint has been filed under Section 31 read with Section 18(1) to seek refund of the principal amount of Rs. 33,28,080/- as against the first unit, and Rs. 33,09,744/- as against

the second unit, paid by the Complainant along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of payment till the date of refund, along with compensation for the financial, mental as well as physical loss suffered by the Complainant due to the fraudulent acts of the Respondent company

C. Relief sought by the complainant:

8. The complainant has sought the following reliefs:

- i. Direct the refund an amount of Rs. 33,28,080/- as against the first unit, and Rs. 33,09,744/- as against the second unit paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.

D. Reply by the respondent

9. The respondents have contested the complaint on the following grounds:

- i. That At the outset, it is submitted that the present complaint is not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") as the Complainant has failed to fulfill his own contractual obligations under the Application for Allotment and has defaulted in payment of dues. The Complainant, who is in breach, cannot invoke the jurisdiction of this Authority without coming with clean hands.
- ii. That the Respondent is a duly incorporated company under the Companies Act and has developed the project "Freedom Park Life" at Sector 57, Gurugram, Haryana, over an area admeasuring 13.878 acres, under a valid license dated 22.07.2005 issued by DTCP, Haryana.

- iii. The Occupancy Certificate (OC) for Tower F, where the commercial shop in question (FPL-08) is located, was received by the Respondent on 12.07.2010. The Complainant applied for booking of Shop No. FPL-08 (318 sq. ft. super area) on his own volition in September 2009, after going through the terms and conditions contained in the booking/application form, through his broker Dr. Davinder Gupta & Sons.
- iv. Based on his application and payment of booking amount, the Respondent issued an Allotment-cum-Demand Letter dated 26.10.2009, confirming the allotment.
- v. As per the agreed payment schedule, the Complainant was required to make payments within specific timelines. However, he defaulted and failed to remit amounts by 06.11.2009.
- vi. The Complainant made only partial payments on 17.02.2010 and 09.03.2010, upon receipt of a reminder letter dated 22.02.2010. Despite multiple reminders, including last and final opportunity notices, payments were irregular and insufficient. Final demand notices were sent on:
- o 19.12.2013
 - o 23.01.2014
 - o 06.05.2014
 - o 17.06.2014
- vii. Even Space Buyer's Agreement, sent on 14.03.2013, was not returned by the Complainant despite follow-ups on 19.08.2013, 19.09.2013, and 18.10.2013. That in CWP No. 22243 of 2012, the Freedom Park Life Residents Welfare Association filed a petition before the Hon'ble Punjab & Haryana High Court raising issues regarding use of stilt and basement areas.

- viii. By interim order dated 08.11.2012, the Hon'ble High Court directed that no third-party rights be created in the stilt area until further orders. The said interim order was modified on 25.11.2014, making it clear that any sale of common areas would be subject to the final decision of the writ, and that the building layout may require revisions per Government Policy dated 28.01.2013.
- ix. Despite legal uncertainty and default in payment, the Respondent, in good faith, offered possession of Shop No. FPL-08 on 11.03.2015, clearly stating that:
- The unit is located in the stilt area.
 - All government dues at commercial rates had been paid.
 - Conveyance deed and final handover would be subject to outcome of CWP 22243 of 2012.
- x. The Complainant was also reminded via email on 12.10.2017 and 18.06.2018 to clear VAT and other dues, which he failed to do. The Complainant, despite being in continuous default and non-cooperative conduct, has now initiated this proceeding to unjustly pressurize the Respondent.
- xi. It is further submitted that:
- The shop is a duly approved commercial unit as per sanctioned layout plan dated 23.07.2008.
 - FAR and license fees have been paid at applicable commercial rates.
 - The Complainant's failure to execute the agreement and clear dues disentitles him from any relief under the RERA Act.

- xii. In view of the above, it is most respectfully prayed that this Authority may be pleased to Dismiss the complaint as being not maintainable and devoid of merit.
10. Copies of all the documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

11. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I. Territorial jurisdiction

12. 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

13. 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) 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;

14. 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.
15. 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."

16. 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.

F. Findings on the relief sought by the complainant.

F.I Direct the refund an amount of Rs. 33,28,080/- as against the first unit, and Rs. 33,09,744/- as against the second unit paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.

17. In the present complaint, the complainant intends to withdraw from the project and is seeking refund of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act 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."

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by it along with interest prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

19. 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.
20. 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., 09.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. 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:

"(z) "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;"

22. That in the present case, the Complainant had applied for and was allotted a commercial unit bearing No. FPL-07, located on the 15th Floor, admeasuring 294 sq. ft. in the Respondent's project titled "Freedom Park Life", situated at Sector-57, Gurugram, Haryana, vide Allotment Letter dated 26.10.2009. That no Builder Buyer Agreement (BBA) was executed between the parties. Accordingly, in the absence agreement for sale, the due date of possession is calculated from the date of allotment letter dated 26.10.2009 therefore the due date of possession is 26.10.2012.
23. The Respondent has contended that an Occupation Certificate (OC) was obtained on 12.07.2010, and that possession of the unit was subsequently offered to the Complainant on 11.03.2015. On 16.08.2023, the respondent filed an application for maintainability of the complaint on ground that the complaint is barred by limitation as the complainant seeking refund after 5 years of offer of possession.
24. However, upon perusal of the document, it is observed that the said OC pertains only to the residential component of the project. The Complainant's unit is located in the commercial complex, for which no OC was obtained at the time of the purported offer of possession. As per Section 19(10) of the Real Estate (Regulation and Development) Act, 2016, an allottee is required to take possession only after issuance of the Occupation Certificate. Further, Section 2(zf) defines "Occupation Certificate" as the certificate issued by the competent authority permitting occupation of the building as per the applicable laws.

25. In the absence of a valid OC for the commercial complex, the offer of possession dated 11.03.2015 cannot be considered a lawful or valid offer of possession. Consequently, the said letter is set aside and cannot be treated as an effective date for possession under RERA.

This principle finds support in the following judgments:

- **Tushar Mittal & Anr. v. M/s Shourya Tower Pvt. Ltd. (NCDRC, 2024)**, where the Commission held that possession without obtaining the requisite Occupancy Certificate is invalid and cannot bind the allottee.
- **Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, Civil Appeal No. 12238/2018**, where the Hon'ble Supreme Court held that a builder cannot compel the allottee to take possession or pay dues in absence of OC.
- **Newtech Promoters & Developers Ltd. v. State of UP & Ors. [(2021) SCC OnLine SC 1044]**, where the Hon'ble Supreme Court reaffirmed that the allottee has an unconditional right to refund with interest if the builder fails to offer lawful possession within the stipulated period.
- **Abha Khanna v. KVG Realtech Pvt. Ltd. (UP REAT)**, where the Tribunal held that no final demand or possession can be made by the promoter without obtaining OC.

Accordingly, the Respondent's offer of possession dated 11.03.2015, being unsupported by a valid Occupation Certificate for the commercial unit, is held to be invalid in the eyes of law.

26. It is an undisputed fact that the Complainant had paid a sum of ₹33,09,744/- towards the booking of a commercial shop in the

Respondent's project as far back as 2009. Despite receipt of such a substantial consideration, the Respondent/Promoter has neither executed the Agreement for Sale nor effected registration of the said shop in favour of the Complainants to date.

27. The Respondent has also failed to hand over possession of the said shop, thereby continuing to breach its contractual obligations under the applicable laws. Accordingly, the cause of action is continuing and recurring in nature. In view of this, the Authority places reliance upon Section 22 of the Limitation Act, 1963, which provides as follows:

"22. Continuing breaches and torts. — In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

28. Applying the above principle, the Respondent continued failure to fulfill its obligations under the allotment constitutes a continuing breach, thereby keeping the complaint within the period of limitation. Hence, the objection raised by the Respondent regarding limitation is hereby rejected. Given the non-execution of the Agreement for Sale, failure to deliver possession, and continued non-performance of contractual obligations despite receipt of consideration, the Authority holds that the Complainant is entitled to a refund of the amount paid.
29. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which 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....."

30. 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."

31. 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 pay the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy



available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.

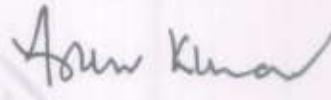
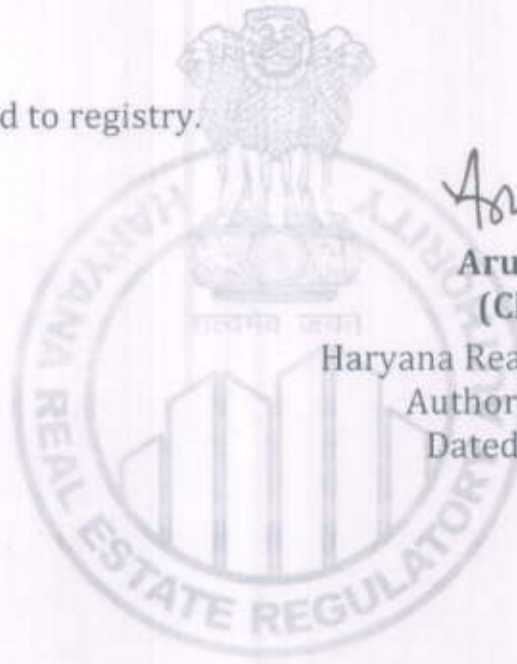
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 11.10% p.a. (the 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

33. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent is directed to refund the amount of ₹33,28,080/-, paid by the complainant along with prescribed rate of interest @ 11.10% p.a. as prescribed under section 18 (1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of realization.
 - 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up

amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.

34. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.
35. Complaints as well as applications, if any, stands disposed off accordingly.
36. File be consigned to registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 09.05.2025

HARERA
GURUGRAM