

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

Complaint no.	1347 of 2024
Date of filing complaint	09.04.2024
Order reserved on	22.05.2025

Himanshu Vashist

Resident of: C-226, Greater Kailash Part-I, South
Delhi - 110048.**Complainant**

Versus

M/s Vatika Limited

Regd. office: Unit no. A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next,
Gurugram.**Respondent No.1**

M/s Vatika Seven Elements Private Limited

Regd. office: Flat no. 621A, 6th Floor, Devika Towers,
6, Nehru Place, New Delhi - 110019.**Respondent No.2****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Sukhbir Yadav (Advocate)

Complainant

Shri Anurag Mishra (Advocate)

Respondents

ORDER

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

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A. Unit and project related details:

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

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Seven Elements", Sector-89A, Gurugram.
2.	Project area	14.30 Acres
3.	Nature of Project	Residential Group Housing Colony
4.	DTCP license no. and validity status	41 of 2013 dated 06.06.2013 Valid upto 05.06.2024
5.	Name of Licensee	M/s Vatika Limited
6.	Rera registered/ not registered and validity status	Registered [Phase-1] 281 of 2017 dated 09.10.2017 Valid upto 31.03.2021
7.	RERA Extension	RC/REP/HARERA/GGM/ 281 of 2017/7(3)/39/2023/16 dated 24.11.2023 Valid upto 31.01.2026
8.	Unit no.	B-01, 4th Floor, Fourth Court (as mentioned in Addendum to BBA at page 63 of complaint)
9.	Unit Admeasuring	2195 sq. ft. (super area) (as mentioned in Addendum to BBA at page 63 of complaint)
10.	Buyer's Agreement	30.04.2015 (page 68 of complaint)
11.	Addendum to buyer's agreement	30.04.2015 (page 61 of complaint)
12.	Possession Clause as per buyer's agreement	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT - The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 48 Forty Eight months from the date of execution of this Agreement unless there shall be delay or there

		<i>shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."</i> [Emphasis supplied] (page 78 of complaint)
13.	Due date of possession	30.04.2019 [Note: the due date of possession is calculated 48 months from the date execution of buyer's agreement.]
14.	Total sale consideration	Rs.1,73,03,470/- (as mentioned in BBA at page 71 of complaint)
15.	Total amount paid	Rs.66,89,283/- (including Rs.18,66,769/- being transferred from A-402) (as mentioned in SOA dated 27.03.2024 at page 149 of complaint)
16.	Occupancy Certificate	Not obtained (as confirmed by the counsel for the respondent during the proceedings dated 22.05.2025)
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a) That in 2013, the complainant was looking for a property in Gurugram, and during his search for a suitable property, the complainant came to know about the project in question i.e., "Vatika Seven Elements" being developed by the respondents through Mr. Raj Kumar a real estate agent with firm name "MindSpace" having its office at 7A, Jakaranda Marg, DF Phase-2, Gurugram. Thereafter represented that respondents are

developing a project in the name of "Vatika Seven Elements" at Sector-89A, Gurugram, Manesar Urban Complex and the same would yield very high returns in the coming future being on Dwarka Expressway which is going to be the most promising business and residential hub.

- b) That being allured by the representations and assurance, the complainant booked two units bearing no. 3BHK+S+ST/012 and 3BHK+S+ST/013 in the project of the respondents i.e., "Vatika Seven Elements" under construction linked payment plan for a total sale consideration of Rs.1,73,03,470/- by submitting a form namely "Expression of Interest for residential apartments" dated 04.04.2013, and by making two payments of Rs. 8,00,000/- each through cheque bearing no. 297488 and 297289 both dated 03.04.2013 drawn on PNB Bank, respectively against the booking amount of the said units, two payment receipts in respect to the said payments were issued by the respondents on 30.04.2013.
- c) That on 02.07.2013, the respondents sent a demand letter, and in the said demand letter(s), a demand of Rs.15,03,905/- was raised by the respondents against the allotted unit(s) of the complainant. That the complainant made two payments of Rs.15,03,905/- each against both the units of the complainant through cheque bearing no. 700763 and 700764, respectively, and the respondents issued the payment receipts for both transactions on 17.07.2013.
- d) That on 24.09.2013, the respondents issued an invitation for the offer of allotment in the name of the complainant against both of the units booked by him. That after the invitation of allotment, the complainant was allotted two units bearing no.HSG-023/B-401 and HSG-023/B-402 in the Fourth Court measuring 2195 Sq. ft super area in Seven Elements project, Sector-89A, Gurugram.

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- e) Thereafter, the respondent(s) party kept on raising demands for the units allotted to the complainant, and the complainant made payments against all the demands raised by the respondent(s) party. That the complainant further made two payments of Rs.87,737/- each through cheque bearing no. 700777 and 700778 dated 15.10.2013 against the complainant's both units and the respondents issued the payment receipts for the said payments on 17.10.2013. Furthermore, the complainant made another payment of Rs.8,94,970/- through a cheque dated 03.06.2015.
- f) That the complainant asked the respondent(s) party about the possession of his allotted units. That the complainant paid several visits to the construction site and there, the complainant found that the construction was not going on and there was no improvement even after a lapse of two years from the date of booking.
- g) That after noticing that the construction of the project does not seem to be completed in the near future, the complainant decided to withdraw his units from the project of the respondents due to their default in services, and when the complainant asked the respondents to do the same, then the respondent(s) party again assured the complainant that the project shall be completed by 2018 and the possession of the units shall be in the complainant's hand by 2019. That the complainant trusted the words of the respondents and decided to stay in the project with one unit only and asked the respondents to cancel his one unit i.e., HSG-023/B-402 on 4th Floor in Fourt Court and investment made against the said unit be adjusted in another unit i.e., HSG-023/B-401 on 4th Floor in Fourt Court.
- h) That on request of the complainant, the respondents asked the complainant to apply for the cancellation of his unit in writing following their standard formats and paperwork, therefore, on 13.04.2015, the

complainant submitted all the required documents as asked by the respondent(s) party at the office of the respondents' office. That the complainant had made the payment of Rs.23,90,832/- against Unit No. HSG-023/B-402.

- i) Thereafter on 30.04.2015, a pre-printed, arbitrary, unilateral builder buyer agreement was executed inter-se the respondents and complainant. That as per the possession clause no.13 of the said BBA, the respondent has to hand over the physical possession of the flat within a period of 48 months from the date of execution of the agreement, therefore, the due date of possession was 30.04.2019. That at the time of accepting the application money, the respondent represented that the possession of the unit shall be handed over within the promised time i.e. 36 months from the date of booking. That as per the said BBA, the total sale consideration of against Unit No. HSG-023/B-401 is Rs.1,73,03,470/- inclusive of BSP, PLC, EDC/IDC. Thereafter, on the same day i.e., 30.04.2015, an addendum to the said BBA was also executed inter-se the complainant and respondents, and as per the said addendum, the developer i.e., Vatika Seven Elements Pvt Ltd. was replaced to the confirming party i.e., M/s Vatika Limited for all purposes.
- j) That the respondent kept on raising demands against the unit of the complainant, however, never bothered to offer possession of the complainant's unit. That it has been more than 10 years from the date of booking, and the respondent(s) party has not obtained the OC, CC, and building plan approval from the competent authority.
- k) That the complainant in 2018, made further payments against the demands raised by the respondent(s) party and paid a sum of Rs.15,10,500/- in total in 2018.



- l) That on 04.09.2019, the respondents issued a statement of account, and the said statement of account reflects that the complainant has paid Rs.66,89,283/- out of the total consideration i.e., Rs.1,73,03,470/-. That in entry no.20 on page no. 2 of the said statement of account, the respondents have mentioned Rs.18,66,769/- instead of Rs.23,90,832/- received on account of the transferred amount from the cancellation of one unit, consequently total receipts from the complainants stand reduced to Rs.66,89,283/-, however, total amount paid by the complainant is Rs.72,13,346/-.
- m) That since 2019, the complainant has been following up with the respondents to get possession of his unit, however, the respondents kept on giving lame excuses over the date of possession and never gave any firm date of possession. That the complainant paid more than 41% of the total consideration believing that sooner or later, the respondents shall certainly give possession of his unit, however, the respondents have no intention of doing so. That the respondent(s) party kept on sending demand letters, however, never paid any heed to the reasonable demand of possession of the complainant. That the respondent(s) party did not give possession of the complainant's unit by April 2019 which is the due date of possession. That the respondents did not even offer possession of the complainant's unit because the respondents have not obtained the CC and OC from the competent authority till today itself.
- n) That the complainant made every possible effort to get possession of his unit, and when the complainant realized that the respondent's party are not willing to give possession of his unit in the near future as the due date of possession had already lapsed, so the complainant asked for the refund of his investment, however, the complainant got nothing but another

demand letter was issued in his name on 01.02.2024. That the complainant has been requesting for a refund of his money paid against the unit allotted to him since 2020, and the respondents never took any of the requests of the complainant into their consideration and kept on behaving in their own way.

- o) That on 27.03.2024, the respondent issued a statement of account in the name of the complainant, and the said statement of account reflects that the respondent has received a sum of Rs.66,89,283/- from the complainant. That the complainant has paid more than 41% of the total consideration. That in entry no.20 on page no.2 of the said statement of account, the respondents have mentioned Rs.18,66,769/- instead of Rs.23,90,832/- received on account of the transferred amount from the cancellation of one unit, consequently total receipts from the complainants stand reduced to Rs.66,89,283/-, however, total amount paid by the complainant is Rs.72,13,346/-.
- p) That due to the above acts of the respondents and the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite parties are liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- q) That for the first time cause of action for the present complaint arose in April 2015, when the buyer agreement and addendum to BBA containing unfair and unreasonable terms was, for the first time, forced upon the allottee/ complainant. The cause of action further arose in April 2019, when the respondents failed to hand over possession of the unit, and hence, the cause of action arose on various occasions, including on a) Dec 2020; b) January 2021; c) March 2021 d) August 2023) February 2024,

and on many times till date, when the protests were lodged with the respondent 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 Authority restrains the respondent 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.
- s) 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. That both the respondents are jointly and severally liable towards the complainant. 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 Authority.

D. Relief sought by the complainant:

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

- I. The respondent may kindly be directed to refund the amount of Rs.72,13,346/- paid by the complainant along with prescribed interest of interest from the date of deposit under section 18 & 19(4) of RERA till actual repayment of money.
- II. Any other relief that the Authority deems fit and proper in the facts & circumstances of the present complaint.
- III. That in interest of justice, this Authority should pass strict and stringent orders against errant promoters and developers who take huge

investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

E. Reply by the respondents.

6. The respondents have contested the complaint by filing reply on the following grounds: -

- a) That the present complaint is liable to be dismissed as the complainant has come before this Authority with unclean hands and tried to mislead this Authority by false and frivolous averments.
- b) That despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of "Seven Elements" project was undertaken by the respondent in right earnest and the same proceeded in full swing.
- c) That as per clause 13 of the agreement to sale executed with the complainants, the construction of the project was contemplated to be completed subject to force majeure circumstances mentioned in clause 16, 17 thereof which provided for extension of time. That the present complaint is pre-mature as it is the admitted position of the complainant that the respondent is required to handover the possession of the said unit. 48 months from the date of execution of the builder buyer agreement



and therefore filing a pre-mature complain is not maintainable at all the same must be dismissed on the said ground.

- d) Further, the complainant has only made payment of Rs.66,89,283/- towards the booking of the said unit which is around 40% of the total sale consideration only. Also, the complainant has not made any further payment till date. Thus, the complainant has defaulted in making the payment as per the terms of the said Agreement and therefore such frivolous complaint must be dismissed on the said ground itself.
- e) That the complainant had booked two units bearing No. HSG-023/B-401 and HSG-023/B-402 for a total sale consideration of Rs.1,73,03,470/- each admeasuring 2100 sq. ft. As on date the respondent has received a total amount of Rs.90,80,115/- towards part payment against both the said units.
- f) That the pace of construction and timely delivery of unit in a project where majority of buyers have opted for the construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If buyers of units in such projects delay or ignore to make timely payments of demands raised, then inevitable consequence is the case of construction getting affected and delayed. That most of the flat buyers including the complainants, in "Turning Point Project" have wilfully defaulted in the payment schedule which has also contributed to the delay in construction activity and affecting the completion of the project.
- g) That complainant has delayed and defaulted in making timely payments of instalments to the respondent. The said delay by complainant in payment of the timely instalments has also contributed to delay in completion of the unit in addition to other factors beyond the control of the respondent. That



obligation for payment of the instalments was first on the complainant and then obligation of the respondent was to complete and hand over the unit.

- h) That demonetization of currency notes of Rs.500 and Rs.1000 announced vide executive order dated 08.11.2016 which affected pace of development of the project. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers and media. Capping on withdrawal and non-availability of adequate funds with banks had further escalated this problem many folds.
- i) That prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access / approach roads, key distances, looked at the vicinities, physical characteristic of the Project etc. and then filed an application for allotment which factum is also recorded in the BBA executed with each of the complainants. That almost all the buyers (including the complainants) have visited the project site and were aware of the fact that the project had no direct access road and the respondent was working on the getting a remedy for the same.
- j) That since entire money so recovered from the complainants have been duly deposited to the service tax department and as soon as the concerned department will release the money, the same will be returned to the complainants.
- k) The factors which materially and adversely affected the project are being set out herein under:
- Delay in payments by majority of the buyers of the said group housing project:
 - Demonetization of currency notes having effect on pace of construction.

- Lockdown on account of Covid-19 pandemic.
- Delay in supply of cement and steel due to various agitations and Covid-pandemic-2019.
- Declaration of Gurugram as notified area for the purpose of ground water & restrictions imposed by the State government on its extraction for construction purposes.

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

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

F. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and

regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if

extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent.

G.1 Objection regarding force majeure.

15. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as demonetization, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and delay in making timely payment by majority of the allottees. But all the pleas advanced in this regard are devoid of merit. Firstly, the event of demonetization is in accordance with government policies and guidelines. Therefore, the Authority of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of contract. Secondly, the Authority has gone through the possession clause of the agreement and observed that the respondent proposes to handover the possession of the allotted unit by 30.04.2019. That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.04.2019 i.e., before 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 IAs 3696-3697/2020 dated 29.05.2020* which has observed that-

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"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."

16. Therefore, no extension on account of force majeure conditions due to outbreak of Covid-19 pandemic can be granted and as such the due date for handing over of possession remains to be 30.04.2019, which is much prior to the occurrence of Covid-19 restriction. And lastly, due to default by some allottees for not being regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to the default of some of the allottees. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

H. Findings on the relief sought by the complainant.

- H.I Direct the respondent to refund the amount of Rs.72,13,346/- paid by the complainant along with prescribed interest of interest from the actual date of deposit till actual repayment of money.
- H.II Any other relief that the Authority deems fit and proper in the facts & circumstances of the present complaint.
- H.III That in interest of justice, this Authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

17. Upon consideration of documents available on record and submissions made by both parties. The Authority observes that the complainant had applied for booking of two separate units (3BHK+S+ST/012 and 3BHK+S+ST/013) in the project namely "Vatika Seven Elements" of the respondents and was subsequently allotted two units (HSG-023/B-401 and HSG-023/B-402) each

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admeasuring 2195 sq. ft. super area vide offer for allotment letter dated 24.09.2013. Further, on 13.04.2015, the complainant has surrendered one of the allotted units bearing no.HSG-023/B-402 and requested the respondents to transfer the entire amount of Rs.23,90,832/- paid in respect of the said surrendered unit (HSG-023/B-402) towards the consideration of the retained unit no.HSG-023/B-401. However, upon receipt of such request from the complainant the respondents have transferred the amount after deduction of Rs.5,24,063/- and the balance amount of Rs.18,66,769/- was transferred to retained unit no.HSG-023/B-401. Furthermore, on 30.04.2015, the complainant-allottee and the respondent no.1 (*M/s Vatika Limited*) entered into buyer's agreement. subsequent to this, on the same day, the complainant-allottee, the respondent no.1 (*M/s Vatika Limited*) and respondent no.2 (*M/s Vatika Seven Elements Private Limited*) entered into an addendum to the builder buyer agreement.

18. In the present complaint, the complainant is seeking refund of Rs.72,13,346/-, which includes amount of Rs.5,24,063/-, which was deducted by the respondents way back in 2015. The Authority observes that the amount was deducted by the respondents, upon request of the complainant to surrender the unit and the balance amount was transferred towards the amount payable by the complainant for the retained unit. Also, the complainant did not provide any document during the pendency of the case, which may prove that the said deductions were objected by the complainant at that time and after the lapse of 09 years, the complainant is claiming refund of the deducted amount too, which cannot be allowed at this belated stage. Therefore, the total amount paid by the complainant to the respondents against the subject unit is Rs.66,89,283/- (which includes amount of Rs.18,66,769/- being transferred

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from surrendered unit no.HSG-023/B-402) against the total sale consideration of Rs.1,73,03,470/- as per buyer's agreement.

19. That prior to the execution of the BBA, the complainant has already made payment of Rs.23,90,832/- in favor of the respondent no.1 and the respondent no.2, in furtherance to the addendum transferred all its project account balance in respect of the said project in favor of the respondent no.2 vide a project transfer arrangement entered into between the respondent no.1 and respondent no.2; by virtue of same it further acquired rights inter alia to receive all the payments from the complainant, raised demands from him, issued letters/receipts etc. in the respect of the said project. Therefore, as per addendum dated 30.04.2015 vide which respondent no.2 acquired rights inter alia to receive all the payments from the complainant, raised demands from him, issued letters/receipts etc. the liability to return the said amount lays on it i.e., respondent no.2.
20. The complainant herein, intends to withdraw from the project and is seeking refund of the paid-up amount as provided under Section 18(1) of the Act. Section 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, - in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every

month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

21. Keeping in view the fact that the allottee-complainant wishes to withdraw from the project and seeking return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under Section 18(1) of the Act of 2016.
22. Clause 13 of the buyer's agreement dated 30.04.2015 provides the time period of handing over possession and the same is reproduced below:

13. Schedule for possession of the said Apartment -

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 48 Forty Eight months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."

[Emphasis supplied]

23. As per clause 13 of the apartment buyer's agreement dated 30.04.2015, the construction of the unit was to be completed and offered within a period of 48 months from the date of execution of buyer's agreement. Therefore, due date of possession was 30.04.2019. The occupation certificate of the project wherein the allotted unit of the complainant is situated is not yet received by the respondents-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 she has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo**

Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.

"...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

24. It has come on record that against the sale consideration of Rs.1,73,03,470/-, the complainant has paid an amount of Rs.66,89,283/- to the respondent-promoter. However, the complainant contended that the due date of possession has been lapsed and No occupation certificate has been obtained against the said project by the respondent. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further, in the judgment 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. 2021-2022(1) RCR (c), 357** 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, it was observed as under: -

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that **if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.**"*

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
26. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant cannot be expected to wait endlessly for taking possession of the unit and he is well within his statutory right under Section 18 of the Act of 2016, to seek refund of the paid-up amount with interest.
27. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under Sections 71 & 72 read with Section 31(1) of the Act of 2016.
28. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. 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

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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.

29. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ease uniform practice in all the cases.
30. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.
31. 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—
...(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...;"
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 no.2 is established. Therefore, the Authority hereby directs the respondent no.2 to refund of the entire paid-up amount received by them i.e., Rs.66,89,283/- with interest at the prescribed rate of 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed

under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017
ibid.

I. Directions of the Authority

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent no.2 is directed to refund the entire paid-up amount i.e., Rs.66,89,283/-received by it from the complainant along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
34. The complaint stands disposed of.
35. File be consigned to registry.

Dated: 22.05.2025


Vijay Kumar Goyal
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram