

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

Complaint no.: 3223 of 2024
Date of filing: 25.07.2024
Order pronounced on: 22.07.2025

Gulshan Kumar

R/o:- G/220, Naraina Vihar, New Delhi-110028

Complainant

Versus

M/s Vatika Limited

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

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri Nitin Yadav (Advocate)
Shri Venket Rao (Advocate)

Complainant
Respondent

ORDER

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

A. Unit and project related details.

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

Sr. No.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre, Sector 83, Gurugram
2.	Project area	10.718 acres
3.	Nature of project	Commercial Complex
4.	DTCP license	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	License	Trishul Industries
6.	Application form	25.02.2011 [pg. 16 of complaint]
7.	Old unit no. in Vatika Trade Centre	341, Tower-A, Floor-3 (page no. 22 of complaint)
8.	Unit admeasuring	500 sq. ft. (page no. 22 of complaint)
9.	New unit no. in INXT City centre	811, 8 th floor [pg. 46 of complaint]
10.	Date of execution of builder buyer agreement w.r.t. trade centre	01.03.2011 (page 19 of complaint)
11.	Relocation of commercial project to INXT City Centre	27.07.2011 [pg. 40 of complaint]
12.	Allocation of new unit	31.07.2013 [pg. 46 of complaint]
13.	Addendum agreement w.r.t INXT City Centre	27.07.2011 [pg. 42 of complaint]

14.	Possession clause	2. <i>The Developer will complete the construction of the said complex within 3 years from the date of execution of this agreement</i>
15.	Assured return clause	Addendum agreement dated 01.03.2011 <i>i. "Till offer of possession: ₹71.50/- per sq. ft. ii. After completion of the building: ₹65/- per sq. ft."</i>
16.	Due date of delivery of possession	01.03.2014 (calculated from the date of execution of BBA)
17.	Basic sale price	₹25,00,000/- [pg. 22 of complaint]
18.	Total amount paid by the complainant	₹25,64,375/- [pg. 22 of complaint]
19.	Assured return paid by the respondent till 01.09.2018	₹32,63,000/- [pg. 24 of reply]
20.	Legal notice for refund	10.04.2024 [pg. 47 of complaint]
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - a. The respondent as per the records of MCA is carrying out its activities from its registered office at A002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012. That the present complaint is being filed by the complainant against the respondent as the respondent has, in a pre-planned manner, cheated and defrauded the complainant of his

hard-earned money and have rendered deficient services by not providing the committed assured return and have miserably failed to deliver possession of the allotted unit till date

- b. In this regard, it is submitted that the respondent was under a contractual obligation to firstly deliver the possession of the unit on or before expiry of 36 months from the date of the builder - buyer agreement and secondly, to continue paying monthly assured returns to the complainant as per the terms of the contract till the possession of the unit allotted to it was delivered to the complainant after obtaining necessary certificates and permissions from the concerned authorities including but not limited to occupancy certificate as well as competition certificate. The material breaches committed by the respondent along with the malicious conduct has caused wrongful loss to the complainant and wrongful gains to the respondent, which has constrained the complainant to approach this Ld. Authority seeking redressal of its grievances.
- c. In regard to the aforesaid, it is submitted that sometime in the year 2010, the respondent issued an advertisement of launching of its forthcoming commercial project "Vatika Trade Centre" situated at Sector-83, Gurugram, Haryana. The complainant after seeing the advertisement, came in contact with the sales executives/representatives of the respondent who made various promises of timely completion of the project and swift delivery of possession of the unit on time.
- d. During several meetings that took place between the complainant, with the representatives of the respondent it was explicitly assured to the complainant that apart from delivering the possession of the

- unit as per the schedule the respondent shall ensure timely payments of the assured returns.
- e. That the complainant, trusting and believing completely in the words, assurances and towering claims made by the respondent, fell into their trap and agreed to book a commercial unit in the project namely "Vatika Trade Centre" of the respondent. It is submitted that an application of allotment dated 25/02/2011 was executed between the parties.
- f. It is submitted that on execution of the agreement the complainant i.e. immediately paid a sum of 25,64,375/- towards the entire sale consideration amount vide cheque no. 431035 dated 25/02/2011 drawn on HDFC Bank, which fact has been duly acknowledged by the respondent under application of allotment dated 25.02.2011 issued by the respondent.
- g. That on 01/03/2011, a builder buyer agreement ("BBA") was duly executed between complainant and the respondent wherein complainant was allotted a unit no. 341 located on 3rd Floor, tower no. A admeasuring 500 sq. feet super area (Approx.) in the project namely "Vatika Trade Centre" situated at Sector- 83, Gurugram against a total sale consideration of 25,64,375/- which was calculated at a rate of 5000/- per sq. ft. Imperatively, as per clause 2 of the BBA, the respondent had committed to complete the construction and deliver the possession of the unit within 3 years (36 months) from the date of execution of the BBA.
- h. Unfortunately, till date the possession of the unit has not been handed over by respondent to the complainant, moreover the respondent has stopped answering the calls of the complainant and

has even failed to inform the complainant as to when the possession of the unit shall be delivered.

- i. It is further submitted that as per Annexure-A of addendum to builder buyer agreement, the respondent committed and promised to pay complainant an assured return an assured monthly rent of 71.50 per sq. ft. till the completion of the building and further 65/- per sq. ft. after the completion of the building.
- j. Subsequently, on 27/07/2011, an addendum to the BBA was executed between the complainant and the respondent wherein the unit initially allotted to the complainant in terms of the BBA was relocated and shifted to another project of the respondent namely "VATIKA INXT CITY CENTRE" (hereinafter referred to as 'the project'). It is submitted that even though an addendum was executed nevertheless the terms and the conditions of the BBA which remaining unchanged continued to remain in in force and contractually bounded the parties.
- k. Subsequently, in terms of the addendum the respondent unilaterally and arbitrarily issued a purported letter dated 31/07/2013 to complainant wherein the respondent changed/ shifted the allotted unit of the complainant from unit no. 341 located on 3rd Floor in Tower no. A to unit no. 811 on 8th floor of block F (hereinafter referred to as "the unit") in the project namely Vatika INXT City Centre situated at Sector-83, Gurugram, Haryana.
- l. It was further stated in the purported letter that all the rights, title and interest of the complainant in the BBA stands transferred to new allotted unit no. 811 on 8th floor of block F. In this respect, it is submitted that the respondent in the said letter assured the complainant that the project will be operational by the second

quarter of next year, which later turned out to be nothing but a false promise and assurance by the respondent.

- m. The complainant on receipt of the letter along with the complainant immediately approached the respondent and objected to such unilateral allocation and directed the respondent to restore the original contractual understandings and arrangements. However, no heed was paid by the respondent to objections of the complainant. Consequently, the complainant in order to secure its investment had no option but to accept such reallocation. In fact, even though the reallocation was accepted, nevertheless the respondent continued to be bound by the terms and conditions of the BBA which governed the rights and obligations of both the parties.
- n. It is submitted that despite executing the BBA and representing that the possession of the unit will be delivered in the contractual period the respondent failed to deliver the possession of the unit to the complainant, thereby breaching the terms and conditions of the BBA.
- o. However, despite its failure to deliver the possession the respondent continued releasing the assured returns in terms of the BBA as well as the addendum and its annexures. At this juncture, it is relevant to mention that payment of assured returns and delivery of the possession of the unit were independent obligations and were to continue under all circumstances.
- p. Pertinently, the respondent has paid the monthly assured return till August, 2018. Thereafter from the respondent has stopped the payment of assured return and has till date not paid the assured return as guaranteed under the BBA, to the complainant.

- q. It is submitted that the complainant has time and again requested the respondent for handing over the possession of the said unit and further to pay the pending assured returns. However, all efforts and requests of the complainant have gone in vein and the respondent has been oblivious to the grievance of the complaint. On the contrary, the respondent has withheld all the contractual dues with the intention to cause wrongful loss to the complainant and wrongful gain to itself. That the complainant also served a legal notice dated 10.04.2024 to the respondent but the respondent has neglected to reply on the legal notice issued by the complainant.
- r. That the complainant also visited the project sites several times in order to ensure the stage of construction of the project but to the utter shock and surprise of the complainant, the construction of the said project was not going as per the assurance of the respondent. It is pertinent to note that at time of booking of the said unit, the respondent painted a rosy picture for the same project assuring the respondent for the timely delivery of possession of the said unit, but nothing was appearing as such and all the promises were on papers only. That the complainant had further contacted the representatives of the respondent to enquire about the delayed construction of the said project and completion / possession of the unit and pointed out the discrepancies in the project, but all the efforts of the complainant went in vain.
- s. It is stated that the construction of the project has been inordinately delayed which is clearly evident from the fact that as per BBA, the respondent had promised and was under a contractual obligation to deliver the possession of the unit within 3 years from the date of execution of BBA. However, the respondent has till date

not even completed the construction or has obtained the occupation certificate.

- t. It is further imperative to state that the license of the said project as issued by the Department of Town and Country Planning (DTCP), Haryana to the respondent was valid only till 18.11.2019 which has also expired and till date the same has not even been renewed by the respondent, which explicitly exhibits the intention of the respondent.
 - u. It is now apparent from the above that the respondent has miserably failed to complete to handover the possession of the unit till date to the complainant in accordance with the BBA and in this manner has committed grave unfair practices and breach of the agreed terms between the parties. Further, due to the aforementioned illegal acts and unfair trade practices of the respondent, the complainant has been unnecessarily mentally and financially harassed and the respondent is therefore liable to compensate the complainant. It is crystal clear all the above stated wrongful acts of the complainant are in violation of the Section 11 of the Act of 2016.
 - v. Thus, the complainant is filing the present complaint in order to seek refund of principal amount along with interest from the date of payment till the date of realization of the amount. Further the complainant is seeking the pending assured returns at the prescribed rate of interest, which is not paid back to the complainant along with interest and allotment is not cancelled by the respondent as envisaged in the BBA.
- C. Relief sought by the complainant:**
- 4. The complainant has sought following relief(s):

- a. Direct the Respondent to refund a sum of Rs. 25,64,375/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full;
 - b. Direct the Respondent to pay a sum of Rs. 5,00,000/- to the Complainant towards the cost of the litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
- a. That in the year 2010, the Complainant learned about the project launched by the Respondent titled as "Vatika Trade Centre" (herein referred to as 'Project') situated at Sector 83, Gurugram and visited the office of the Respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
 - b. That after having dire interest in the project constructed by the Respondent the Complainant booked a Unit under the assured return scheme, on his own judgement and investigation. It is evident that the Complainant was aware of the status of the Project and booked the Unit to make steady monthly returns, without any protest or demur. Subsequently, as per the Builder Buyer Agreement dated 1 March, 2011, the Respondent was allotted a Unit No. 341 on Third Floor in Tower A, having a super area of 500 Sq. Ft. in the said project. The Commercial unit was booked for a

total sale consideration of Rs. 25,00,000/- and the Complainant has paid the full amount to enjoy the steady monthly returns.

- c. Further, an Addendum to the Builder Buyer Agreement, was executed between the Complainant and the Respondent, under which the Respondent assured to provide an assured return of Rs. 71.50/- per sq. ft. till the offer of possession and Rs. 65/- per sq. ft. after completion of the building for the Unit booked by the Allottee.
- d. That the Respondent had sent a letter dated 31.07.2013 to the Complainants titled as "Allocation of Unit Number in INXT City Centre" wherein final allocations of the areas in the complex had completed and was thereafter allotted 4th Floor, Block C and pertinently the unit number was shifted from unit no. 341 on Third Floor to unit no. 811 on Eight Floor of Block F, admeasuring 500 Sq. Ft. in favor of the Complainant. It is submitted that the Respondent in terms of the allotment retained the rights to shift the allocation of the unit to another tower. Further the complainant had no particular interest with his unit being in Tower A or F as he was primarily interested in receiving his assured returns.
- e. It is submitted that the Complainant was well aware of the fact that the Unit in question was subject to be leased out post completion and the same was evidently mentioned and agreed by the Complainant in the Agreement dated 01.03.2011.
- f. It is a matter of fact, that the Unit in question was deemed to be leased out upon completion. It is imperative to note, that the Complainant had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.

- g. That the said Builder Buyer Agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainant is not a "Allottee" but investors who have invested the money for making steady monthly returns.
- h. That the Complainant is trying to mislead this Ld. Authority by concealing facts which are detrimental to this Complaint at hand. That the Complainant had approached the Respondent as an investor looking for certain investment opportunities. Therefore, the said Allotment of the said unit contained a "Lease Clause" which empowers the Developer to put a unit of complainant along with the other commercial space unit on lease and does not have "Possession Clauses", for physical possession.
- i. It is submitted that the Complainant herein had authorized the Respondent to further lease the Unit(s) upon completion of the same however, the construction of the Project was obstructed due to many reasons beyond the control of the Respondent and the same are explained in detail herein below.
- j. That this arrangement was specifically entered by the complainant on his own accord and executed the terms with his eyes wide open. That Clause 32.1(h) of the Builder Buyer Agreement dated 01.03.2011 clearly says that the once the leasing arrangement option has been exercised and incorporated in BBA the complainant would not be entitled to demand possession unless in the manner specified in the clause itself.
- k. It is further submitted that the facts surrounding the case corroborates the same as no email, notice was issued by the

complainant seeking possession of the unit until the date of legal notice seeking refund of his principal amount. It is submitted that the investment interest over the allottee perspective writs large as the complainant has been benefitted by the assured return scheme and a total sum of INR 32,63,000/- has been paid to him which over and above his investment amount.

- l. That furthermore, it may be humbly submitted that the Respondent, in accordance to BBA read with addendum dated 01.03.2011, it is an admitted fact that the Complainant has received an amount of Rs. 32,63,000/- every month as assured return right from the date of allotment. It is an admitted fact that since starting the Respondent has always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project.
- m. In the past few year's construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- n. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" 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 Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

- o. Even before normalcy could resume the world was hit by the 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 said period shall not be added while computing the delay.
- p. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to

"Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- q. Despite the above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State.
- r.
- s. That further, the Complainant in the instant complaint has harped that the Respondent has failed to offer timely possession of the respective unit. It is pertinent to note herein that the said Agreement was of the nature of an "Investment Agreement". That the same does not stipulate about Possession, in fact it clearly specified and as mutually agreed by the Complainant,
- t. That, it is evident that the entire case of the Complainant is nothing but a web of lies, false and frivolous allegations made against the Respondent. That the Complainant has not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Ld. Authority that the Complainant is guilty of placing untrue facts and are attempting to hide the true colour of intention of the Complainant.

- u. That the Complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the Complainant is sustainable before this Ld. Authority and in the interest of justice.
 - v. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction:

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

E.II Subject-matter Jurisdiction:

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.I. Direct the Respondent to refund a sum of Rs. 25,64,375/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full.

12. In the present matter the complainant was initially allotted the unit bearing no. 341, on 3rd floor, Tower A admeasuring 500 sq. ft. super area at sector 83, Gurugram in the project INXT City Centre vide BBA dated 01.03.2011. Against the total sale consideration of ₹25,00,000/- the complainant has paid an amount of ₹25,64,375. As per clause 2 of the said agreement the respondent was obligated to deliver the possession of the unit within 3 years from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 01.03.2014. The respondent thereafter re-allotted the above said unit of the complainant without his consent vide letters dated 31.07.2013 and finally was allotted unit bearing no. 811, on 8th floor, Block-F admeasuring 500 sq.

ft. super area in the same project situated in sector 83, Gurugram. Till date no BBA has been signed between the parties for the new unit. It is an admitted fact that the OC of the unit has not been received till date. The complainants vide legal notice dated 10.04.2024 upon failure of respondent to deliver the unit, requested for refund of the paid-up amount along with the prescribed rate of interest as per RERA Act, 2016. Now, the complainant has filed the present complaint on 25.07.2024 seeking refund of the paid-up amount as per proviso to section 18 (1) of the Act.

"Section 18: - Return of amount and compensation

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

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".*

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

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

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

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

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (*the rate of interest has been inadvertently mentioned as 11.10% in POD dated 22.07.2025)
16. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(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;"*
17. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the

due date as per the agreement. By virtue of clause 2 of the agreement executed between the parties on 01.03.2011, the respondent was obligated to deliver the subject unit within 3 years from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 01.03.2014.

18. It is pertinent to mention over here that even after a passage of more than 10 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
19. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

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

20. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under:

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

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire

amount paid by them at the prescribed rate of interest i.e., @ 10.90% 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 after adjustment of assured return already paid by the respondent.

F.II. Direct the Respondent to pay a sum of Rs. 5,00,000/- to the Complainant towards the cost of the litigation.

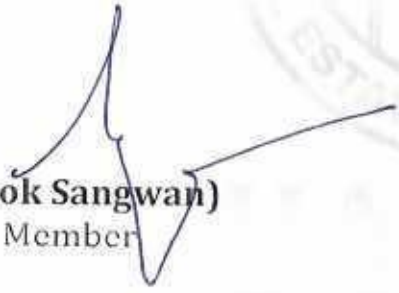
23. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer.

G. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent/promoter is directed to refund the amount of ₹25,64,375/- paid by the complainants along with prescribed rate

of interest @ 10.90% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount. The amount of assured return already paid by the respondent shall be adjusted from the amount refundable.

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



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.07.2025