

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

Complaint no. : 3168 of 2024
Date of complaint : 26.07.2024
Order pronounced on: 13.11.2025

Madhumita Roy

Resident of: Officers Colony, Behind Tehsil
Mahuwaria, Mirzapur

Complainant

Versus

M/s VS Real Projects Private Limited

Registered office: Ground Floor, Plot No.15, Sector-44,
Gurugram-122002.

Respondent**CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

Chairman**Member****APPEARANCE:**

Shri Anuj Chauhan, Advocate

Shri Ishaan Dang, Advocate

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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*.

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 of the project	"AMB Selfie Square", Sector-37-D, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project Area	3.775 Acres
4.	DTCP license no. and validity status	14 of 2014 dated 10.06.2014 Valid upto 09.06.2019
5.	Name of Licensee	VS Real Projects Pvt. Ltd.
6.	RERA Registered/ not registered	Registered 57 of 2017 dated 17.08.2017 Valid upto 16.08.2022
7.	Unit and Floor no.	Provisional unit no.26 on ground floor (as mentioned in payment receipts and unsigned copy of BBA annexed with complaint)
8.	Unit area admeasuring	288 sq. ft. (Super Area) (as mentioned in payment receipts and unsigned copy of BBA annexed with complaint)
9.	Application form	01.11.2014 (page 32-34 of reply)
10.	Allotment letter	Not Provided
11.	Date of execution of buyer's agreement	Not executed (page 38-72 of complaint)
12.	Possession clause (as per unexecuted BBA)	16.1 Possession of the unit. "The company, based upon its present plans estimates and subject to all exceptions, proposes to handover possession of the unit within thirty-eight months computed from the date of execution of buyer's agreement"

		excluding additional grace period of 12 months subject to force majeure circumstances and reasons beyond the control of the company..." [Emphasis Supplied] (page 57 of complaint i.e., unexecuted BBA)
13.	Due date of possession	01.11.2017 <i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."</i> In view of the above-mentioned reasoning, the date of the application from dated 01.11.2014 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 01.11.2017.
14.	Total Sale Consideration	Rs.34,27,344/- (as mentioned in unsigned BBA at page 49 of compliant)
15.	Amount paid against the unit	Rs.21,34,648/- (as per receipts at page 33-37 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained (As confirmed by the counsel for the respondent during proceedings dated 09.10.2025)
17.	Offer of possession	Not offered

18.	Demand letter	06.05.2021 (page 74 of complaint)
19.	Pre-cancellation letter	11.06.2021 (page 50 of reply)
20.	Intimation for Termination letter	16.07.2021 (page 52 of reply)
21.	Forfeiture Letter	07.08.2021 (page 53 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the present complaint pertains to the commercial project "AMB Selfie Square", situated at Sector- 37D, Dwarka Expressway, Gurugram, which was promoted and is being developed by V S Real Projects Private Limited, under the license number 14 of 2014, granted by DGTCP Chandigarh.
- II. That the respondent, while promoting the project, painted a rosy picture of the project making various false and flimsy claims and promises and approached the complainant for booking a unit in the said project.
- III. That the complainant, believing the fake promises and flimsy assurances made by the respondent regarding the project, booked two units i.e., unit no. 26 admeasuring 288 sq. ft. and unit no.27 admeasuring 430 sq. ft. in the said project developed by the respondent.
- IV. That the complainant had filed a complaint dated 18.04.2022, bearing no.RERA-GRG-1785-2022 before the Hon'ble Authority, Gurugram, pertaining to both the units in dispute and praying for complete refund along with interest at prescribed rates, in which the Authority passed an order dated 16.08.2023 (uploaded on 17.11.2023), deciding the said matter only for unit no.27 and further directing the complainant to file

a fresh complaint for refund of amount paid against the booking of unit no.26.

- V. That the complainant booked unit no.26 on the ground floor, admeasuring 288 sq. ft. in the project, vide booking application form dated 01.11.2014, with basic selling price of Rs.30,24,000/- and total sale consideration of Rs.34,27,344/-. That the complainant made a payment of Rs.3,13,613/-, as the booking amount of the said unit, which was acknowledged by the respondent vide payment receipt no. SS/37D/REC/00174, dated 03.11.2014.
- VI. That the complainant opted for "construction linked plan", in pursuance to which, paid an amount to the total of Rs.21,34,648/-, which was duly acknowledged by the respondent vide various payment receipts and the demand letter dated 06.05.2021 sent by the respondent.
- VII. That a copy of buyer's agreement, in lieu of the said booking, was shared by the respondent which was consequently signed by the complainant but, the respondent evaded his obligation by not executing the signed copy of the said agreement.
- VIII. That the due date of possession, as per the above-mentioned provision was 01.11.2017 (calculated from the date of application form), which the respondent has surpassed, and has till date, been in-capacious in providing a valid offer of possession of booked unit.
- IX. That even after the advent of the Real Estate (Regulation and Development) Act, 2016, the respondent still did not execute any buyer's agreement with the complainant hence, violating the rights of the complainant as an allottee.
- X. That the complainant made all the payments as per the agreed payment plan, but the respondent defaulted at each and every stage of the construction since the inception of the builder-buyer relationship.

- XI. That after continuous defaults in construction and several irregular and illegal demands by the respondent, the respondent issued another unjustifiable, unreasonable and an illegal "pre-cancellation letter" dated 29.07.2020, demanding irregular payments and in violation to the agreed payment plan, just to pressurize the complainant to extract monies illegally.
- XII. That the complainant received an illegal demand letter dated 06.05.2021 raising an illegal demand of Rs.6,34,290/-, which, as per the agreed payment plan, was to be due and payable on the complainant at the last stage of construction i.e., "On completion of 36 months or commencement of plumbing works" (whichever is later) but, at the time of issuance of the said illegal demand letter, the respondent was unable to start the 9th floor slab or the electrical or plumbing work at the project site and therefore, the demand raised was completely illegal. That the complainant also raised objections to the said illegal demand raised vide various emails but not satisfactory reply was ever received from the respondent.
- XIII. That the illegal and unjustifiable demands raised in the aforementioned demand letter dated 06.05.2021 were not in consonance to the actual status of construction of the project and hence, in violation of the agreed payment plan. That the status of the construction of the project at the time of issuance of the said illegal demand letter can be matched from the architect certificate for the quarter 01.04.2021 to 30.06.2021, uploaded at the RERA portal, wherein the status of electrical and plumbing work reflects "NIL". That the status of construction can also be perused from the construction update as on 02.06.2021 received from the respondent wherein, it is clear that the 9th floor slab was not commenced and further electrical and plumber works were not started.

- XIV. That the respondent, even after failing miserably to construct the project on time and relentlessly defaulting as per the terms and conditions of the agreement, illegally cancelled the Unit, thus infringing the rights of the complainant as an allottee, withing the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.
- XV. That as per Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, the complainants have fulfilled their responsibilities in regard to making the necessary payments within the specified time schedules as were stated in the agreement, and further has not breached any term or condition of the agreement, hence, the default lies solely on the part of the respondent.
- XVI. That due to the inconsistent and lethargic approach of the respondent towards conducting his business and their lack of commitment in completion the project in time has caused the complainant suffer great financial as well as emotional loss, due to which, the complainant was left with no other option but to file the present complaint before this Authority seeking complete refund of the total amount paid along with interest.
- XVII. That as per Section 18 of the Real Estate (Regulation and Development) Act, 2016, when there is a material violation on the part of the builder in not handing over the possession of the unit withing the stipulated time frame, the allottee is not bound to accept the offer even if the same is made at a belated stage and on the other hand can seek refund of the entire amount.
- XVIII. That in furtherance and without prejudice to the grounds mentioned above, the refund of the amount shall be paid with interest for the period between the date when the payment or any part therefrom, was made by the allottee till its actual realization.

- XIX. That this Authority has complete jurisdiction to deal with the present matter and the present complaint has been filed within the prescribed period of limitation.
- XX. That no other complaint pertaining to the subject unit and the stated concerns and issues, is pending or disposed of by this Authority or any other competent authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- Seeking refund of the amount of Rs.21,34,648/- received by the respondent in respect of the allotted unit along with interest at the prescribed rate from the date of payment till the date of actual realization.
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 by filing reply on the following grounds: -
- That the present complaint is not maintainable in law or on facts. That the present complaint is not maintainable before this Authority. The Authority does not have the jurisdiction to grant the reliefs sought by the complainant. The complaint is not maintainable under the Real Estate (Regulation and Development) Act, 2016 read with Haryana Real Estate (Regulation and Development) Rules, 2017. The present complaint is liable to be dismissed on this ground alone.
 - That the complainant has got no locus standi or cause of action to file the present complaint. That the complaint is barred by limitation.

- III. That the complainant is not an “aggrieved party” or “allottee” as defined under the Act. The complainant is an investor who had purchased the unit in question as well as another unit in the same project in question as an investment.
- IV. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present petition. Furthermore, the complainant has not disclosed the real and true facts of the case, which are detailed in the succeeding paras of the present reply.
- V. That the respondent had submitted an application for grant of license to DTCP, Haryana, Chandigarh for development of a commercial colony over land admeasuring 30 kanal 4 Marla (3.775 Acres approximately) situated in Sector- 37D in revenue estate of village Harsaru, Gurugram. Subsequently, License bearing no. 14 dated 10.06.2014 had been issued by DTCP, Haryana, Chandigarh.
- VI. That building plans for the project in question had been duly approved/sanctioned by DTCP, Haryana, Chandigarh vide memo bearing no. ZP-976/AD(RA)/2014/15562 dated 16.07.2014. Thereafter, the respondent commenced construction/development of a commercial colony under the name and style of “AMB Selfie Square” on the land in question.
- VII. That the complainant approached the respondent and evinced an interest in purchasing two units in the said project. That only after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the respondent to undertake conceptualization, promotion, development and construction of the same, the complainant took an independent and informed decision to purchase two units in the said project.

- VIII. That application form dated 01.11.2014 had been submitted by the complainant after duly understanding and accepting the terms and conditions forming part of the application form. The complainant had been allotted unit bearing no.26 admeasuring 288 square feet (super area) located on the ground floor of the said project which is the subject matter of the present complaint. The complainant had also been allotted unit bearing no.27 admeasuring 430 square feet (super area) located on the ground floor of the said project for which a separate application form had been submitted by the complainant. The complainant had opted for a construction linked payment plan for both the units.
- IX. That draft buyer's agreements for both the units had been sent by the respondent to the complainant for execution. However, for reasons best known to her, the complainant did not return the fully executed buyer's agreements to the respondent. That till date, no buyer's agreements have been executed between the complainant and the respondent in respect of both the units.
- X. That the copies of buyer's agreements appended by the complainant with her complaint are both unsigned and undated. However, the aforesaid fact has been intentionally concealed by the complainant from this Authority. In fact, the complainant is illegally relying upon the terms and conditions incorporated in the unsigned buyer's agreements. The frivolous and misconceived complaint filed by the complainant is liable to be dismissed on this ground alone.
- XI. That the respondent has registered the said project under the provisions of the Act and the period of registration has been granted up till 16.08.2022. In other words, the respondent was committed to completion of the project and delivering the unit in question to the complainant by August 2022, subject to force majeure conditions and

timely payment of instalments and compliance of the terms and conditions of the application form and buyer's agreement by the complainant. However, even before this date, the complainant institute complaint no.1785 of 2022 before this Authority.

- XII. That moreover, this Authority had published circular dated 27.03.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Authority had been extended till 30.06.2020. Thereafter, this Authority had published order bearing no. 9/3-2020 HARERA/GGM(Admin) dated 26.05.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Authority would automatically stand extended by a period of 6 months on account of outbreak of Covid-19. Furthermore, it had also been stipulated in the aforesaid order that the outbreak of coronavirus pandemic would be considered a force majeure event and the developers would not need to file any application regarding invocation of force majeure clause.
- XIII. That however, the complainant had delayed in making timely payment of the instalments on various occasions. The delayed payment charges amounting to Rs.1,84,297/- had been levied upon the complainant by the respondent in respect of unit bearing no.26 on account of the defaults in making timely payment committed by the complainant. That the complainant had delayed in making timely payment of the instalments on various occasions for unit no.27 as well.
- XIV. That the respondent was constrained to send multiple payment reminder letters to the complainant on account of the repeated failure of the complainant to make timely payment of instalments for both units and to clear her long outstanding dues as per the payment plan. Furthermore, the outstanding payments had not been cleared by the

complainant despite receiving several reminders letters from the respondent.

- XV. That furthermore, the respondent was constrained to issue several pre-cancellation notices and intimation of termination letters to the complainant in respect of unit bearing no.26 on account of the defaults committed by her. It is submitted that pre-cancellation notice dated 10.01.2017, forfeiture notice dated 08.02.2017, pre-cancellation notice dated 16.09.2017, pre-cancellation notice dated 29.07.2020, intimation of termination notice dated 27.08.2020 and pre-cancellation notice dated 30.03.2021.
- XVI. That eventually, the respondent was constrained to issue pre-cancellation notice dated 11.06.2021 in respect of unit no.26 to the complainant wherein it had been specifically mentioned that in case the complainant did not make payment of the outstanding amount, in that event the respondent would be liable to forfeit the earnest money component as mentioned in the application form duly executed by the complainant. However, the complainant did not make payment of the outstanding amount even after receiving the aforesaid reminders from the respondent.
- XVII. That thereafter, the respondent was constrained to issue termination letter dated 16.07.2021 vide which the allotment of the complainant pertaining to unit bearing no.26 had been cancelled on account of non-payment of the outstanding amount. It had been duly mentioned in the aforesaid letter that as per the relevant provisions of the application form, the earnest money amount along with brokerage and interest was liable to be forfeited in the event of termination. It had also been specifically mentioned that the complainant would not have any right, claim, entitlement or lien whatsoever of any nature in unit bearing no.26

after the termination of her allotment. Moreover, the respondent had also given a breakdown of the amount which had been forfeited by it.

- XVIII. That it would not be out of place to mention that the complainant did not come forward to collect the balance amount from the respondent. On account of the same, the respondent had issued memorandum of forfeiture dated 07.08.2021 vide which the complainant had been called upon to contact the customer relations team of the respondent to collect the refundable amount on account of cancellation of allotment of unit bearing no.26.
- XIX. That similarly the payment reminder letters and notices were sent by the respondent to the complainant in respect of unit no.27 as well. Furthermore, the respondent was constrained to issue several pre-cancellation notices and intimation of termination letters to the complainant in respect of unit bearing no.27 on account of the defaults committed by her. Eventually, the respondent was constrained to issue pre-cancellation notice dated 11.06.2021 in respect of unit no.27 to the complainant wherein it had been specifically mentioned that in case the complainant did not make payment of the outstanding amount, in that event the respondent would be liable to forfeit the earnest money component as mentioned in the application form duly executed by the complainant. However, the complainant did not make payment of the outstanding amount even after receiving the aforesaid reminders from the respondent and the respondent was constrained to issue termination letter dated 16.07.2021 vide which the allotment of the complainant pertaining to unit bearing no.27 had been cancelled on account of non-payment of the outstanding amount.
- XX. That the complainant filed complaint no.1785 of 2022 before this Hon'ble Authority in respect of both units, unit no.26 (which is the

subject matter of the present complaint) as well as unit no.27. The counsel for the respondent took an objection, amongst others, that the complainant ought to have filed two separate complaints for each unit. Accordingly, the counsel for the complainant stated at the bar that the Hon'ble Authority may proceed with unit no.27 only and that a fresh complaint would be filed for the other unit, complaint no. 1785 of 2022 was disposed off by order dated 16.08.2023.

- XXI. That after cancellation of the allotment of both the units, the two units have already been sold to other allottee(s) by the respondent.
- XXII. Therefore, it is obvious from the entire sequence of events that no illegality can be attributed to the respondent. The allotment has been rightly cancelled by the respondent in accordance with the agreement between the parties. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by the Authority. The present complaint is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
7. 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.

E. Jurisdiction of the authority

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

E.1 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 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 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.

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 complainant at a later stage.
12. 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. 2021-2022 (1) RCR (Civil), 357*** 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."

13. 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 objections raised by the respondent.

F.I Objection regarding maintainability of complaint on account of complainant being investor.

14. The respondent took a stand that the complainant is not an allottee and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter, if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the application from, it is revealed that the complainant is a buyer, and she had paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the application form, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the complainant-allottee being investor is not entitled to protection of this Act also stands rejected.

F. II Objection regarding complaint being barred by limitation: -

16. The respondent/promoter raised the contention that the present complaint is barred by limitation, as the unit if the complainant was cancelled due to non-payment of outstanding dues on 16.07.2021 and the complainant has filled the present compliant on 26.07.2024.
17. So far as the issue of limitation is concerned the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016. However, the Authority under Section 38 of the Act of 2016, is to be guided by the principle of natural Justice. It is a universally accepted maxim that the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation, a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However, this shall not apply to the provisions of Section 14 where specific period has already been defined.
18. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose

of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

19. In the present case the period of three (3) year of delay in filing of the case is also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 and the same would fall on 28.02.2025 [16.07.2021 plus 3 years (period as per Limitation Act, 1963) plus 7 months 12 days (period exempted by Hon'ble Supreme Court of India vide Suo-moto order dated 10.01.2022)] and the present was filed by the complainant on 26.07.2024. Also, it is an admitted fact that after the cancellation, the paid-up amount is not yet refunded to the complainant. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.III Objection regarding force majeure conditions:

20. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as adverse effects of Covid-19 but the plea advanced in this regard are devoid of merit. The Authority observes that no buyer's agreement was executed between the parties. As per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018*** Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract." In view of the above-mentioned reasoning, the date of the application from dated 01.11.2014 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 01.11.2017

in absence of possession clause, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The Authority put reliance judgment of *Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020*, which has observed that-

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

21. Thus, the respondent cannot be given any leniency on based of aforesaid reasons. That the lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit out of his own wrong"***. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining an occupation certificate. Thus, in such a situation the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

G. Findings on the relief sought by the complainant.

G.1 Direct the respondent to refund the entire amount of Rs.21,34,648/- received by it in respect of the allotted unit along with interest at the prescribed rate from the date of payment till the date of actual realization

22. In the present complaint, on 01.11.2014, the complainant applied for a commercial unit in project "AMB Selfie Square" being developed by the respondent. She was allotted a provisional unit bearing unit no. 26 at ground floor, having area of 288 sq. ft. (super area) in the above said project, as mentioned in payment receipt issued by the respondent itself as well as unsigned copy of buyer's agreement. The subject unit was allotted to the

complainant on the basis of application form dated 01.11.2014. No buyer's agreement was executed between the parties till date. It is evident from the application form dated 01.11.2014 as well as unsigned buyer's agreement that the complainant has opted for construction linked payment plan. The complainant has paid amount of Rs.21,34,648/- against the total sale consideration of Rs.34,27,344/-, which constitutes around 62.28% of the sale consideration. The respondent has raised various demands and reminder letters for making payment of outstanding dues but the complainant has not made the payment as per the demands and reminders and has raised various queries through mails. Thereafter, the respondent has cancelled the unit of the complainant vide cancellation letter dated 16.07.2021, as per the application form. Now the question arises before the Authority whether the cancellation is valid or not, in the eyes of law?

23. On the consideration of documents available on the record and submissions made by both the parties, firstly, the Authority observes that though the unit allotted to the complainant was cancelled by the respondent after issuing a demand letter on 06.05.2021 for making payment of outstanding dues but the complainant has not made the payment as per the demand letter and has raised various queries through mails. Further the respondent has issued pre-cancellation letter on 11.06.2021, and thereafter, finally the respondent has cancelled the unit of the complainant vide an intimation for cancellation letter dated 16.07.2021 and vide forfeiture letter dated 07.08.2021, the respondent requested the complainant to collect the refunded cheque amounting to Rs.14,23,523/- i.e., balanced amount after deduction of the earnest money, brokerage and interest dues.
24. Secondly, the Authority observes that vide application form dated 01.11.2014, the complainant opted for construction linked payment plan and the same is reiterated as under:

Payment Plan

Construction Linked Payment Plan (for all Floors)	
<i>On Booking</i>	<i>10% of BSP</i>
<i>Within 3 months of booking</i>	<i>10% of BSP</i>
<i>On completion of 06 months or commencement of 2nd Basement slab*</i>	<i>10% of BSP + 50% EDC & IDC</i>
<i>On completion of 12 months or commencement of Ground floor slab*</i>	<i>10% of BSP + 50% EDC & IDC</i>
<i>On completion of 15 months or commencement of 3rd floor slab*</i>	<i>7.5% of BSP + 50% PLC</i>
<i>On completion of 18 months or commencement of 6th floor slab*</i>	<i>7.5% of BSP + 50% PLC</i>
<i>On completion of 21 months or commencement of 9th floor slab*</i>	<i>7.5% of BSP + 50% right to use car parking</i>
<i>On completion of 24 months or commencement of 12th floor slab*</i>	<i>7.5% of BSP + 50% right to use car parking</i>
<i>On completion of 27 months or commencement of Top floor slab*</i>	<i>7.5% of BSP</i>
<i>On completion of 30 months or commencement of Facade*</i>	<i>7.5% of BSP</i>
<i>On completion of 33 months or commencement of Electrical work*</i>	<i>5% of BSP</i>
<i>On completion of 36 months or commencement of Plumbing work*</i>	<i>5% of BSP</i>
<i>On offer of possession</i>	<i>5% of BSP + Stamp Duty + Registration Charges + IFMS + Sinking Fund + All other additional charges</i>
<i>*Whichever is later</i>	

25. It is contended by the complainant that the construction work in the project was stalled since 2017 and construction was again commenced by the respondent in the year of 2020. Further contended that the respondent in its demand letter dated 06.05.2021, demanded for the payment for commencement of milestone for "on completion of 33 months or commencement of electrical work" and "on completion of 36 months or commencement of plumbing work, whichever is later". Moreover, as per the QPR submitted by the respondent before the Authority, the respondent has not commenced the above mentioned work for which the respondent has raised an arbitrary demand on 06.05.2021.

26. Also, as per section 19(2) of the Act, 2016 it is the right of the allottee to know the stage wise completion of the construction of the project by the promoter.

The relevant para of section 19(2) of the Act is reproduced hereunder: -

"19 (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale."

27. After perusal of quarterly progress report (QPR) submitted by the respondent with the Authority. It is evident from the quarterly progress report (QPR) 02 of 2021 for the period 01.04.2021 to 30.06.2021, month ending June, 2021, the status of electricity work as well as plumbing work is shown as 'nil' and the same is available at the official website of the Authority.
28. The Authority observes that in the demand letter dated 06.05.2021 raised by the respondent was not as per the agreed payment plan. It is observed that the respondent has raised demand as per payment plan upto the milestone *"on completion of 33 months or commencement of electrical work"* and *"on completion of 36 months or commencement of plumbing work, whichever is later"*. Thus, it is evident from the above that the respondent has not raised the demands as per the agreed payment plan. This casts a doubt on the credibility of the respondents as demand letters dated 06.05.2021 to clear the outstanding dues amounting to Rs.6,34,290/- issued in favour of the complainant, is without following the payment plan agreed between the parties.
29. It is further observed by the Authority that even after 1 (one) year from the cancellation of the unit on 16.07.2021, the respondent has not initiated the electricity work and plumbing work at the project and the same is evident from the quarterly progress report (QPR) 03 of 2022 for the period 01.07.2022 to 30.09.2022, as the respondent has mentioned the progress of electricity work and plumbing work as "Nil".

30. Also, as per clause 9.2 para (i) of Model Agreement for sale as prescribed in the rules, if the promoter defaulted in providing the possession or failed to complete the project within the stipulated time period, the allottee is entitled to stop making any further payment to the promoter, until the promoter corrects the situation by completing the construction. Relevant clause 9.2 (i) is reproduced hereunder: -

"9.2 (i) Stop making further payments to promoter as demanded by the promoter. if the allottee stops making payments, the promoter shall correct the situation by completing the construction/development milestones and only thereafter the allottee be required to make the next payment without any interest for the period of such delay; or"

31. In light of the above findings, the cancellation of the unit vide letter dated 16.07.2021 is deemed invalid in the eyes of law and is hereby set aside.
32. Herein, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same 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.-
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)

33. **Due date of possession:** In the present complaint, buyer's agreement was not executed between the parties. Therefore, the Authority is of the considered view that as per the Hon'ble Supreme Court in the case of **Fortune**

Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018 observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*

34. In view of the above-mentioned reasoning, the date of signing of application form i.e., 01.11.2014, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 01.11.2017.
35. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."

36. 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.

37. 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., 13.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

38. The definition of term "interest" as defined under section 2(za)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. 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, ...

39. During the proceedings dated 09.10.2025, the counsel for the respondent had confirmed that the occupation certificate of the project has not been obtained by the respondent from the competent authority till date.

40. 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....."

41. It has come on record that against the sale consideration of Rs.34,27,344/-, the complainant had paid an amount of Rs.21,34,648/- to the respondent. 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 judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 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:

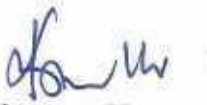
"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right 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."

42. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. 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 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 the unit with interest at such rate as may be prescribed.
43. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant cannot be compelled to take possession of the unit and they are well within right to seek refund of the paid-up amount. Therefore, The Authority hereby directs the promoter to return the amount received by it i.e., Rs.21,34,648/- with interest at the rate of 10.85%

(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 Rules *ibid*.

H. Directions of the authority

44. 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 cancellation letter dated 16.07.2021 is not valid and is bad in eyes of law and is hereby set aside. Therefore, the respondent is directed to refund the entire paid-up amount of Rs.21,34,648/- to the complainant along with an interest @10.85% 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 each payment till its actual 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.
45. Complaint stands disposed of.
46. File be consigned to registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.11.2025