

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

Complaint no. :	3165 of 2024
Date of filing complaint:	08.07.2024
Date of decision :	12.08.2025

Ramshankar Girdhari R/o: Yousuf Salam AB Nashooq House, 132, AL Horalanz Area near Sub Stn/306 House, Post Box- 11386, Dubai, United Arab Emirates.	Complainant
Versus	
M/s Vatika Limited Address: Vatika Limited, Vatika Triangle, 4 th Floor, Sushant Lok, Phase 1, Block-A, Mehrauli-Gurgaon Road- Gurgaon-122002.	Respondent

CORAM:	
Shri Arun Kumar	Chairperson
Shri Ashok Sangwan	Member

APPEARANCE:	
Mr. Garvit Gupta (Advocate)	Complainant
Mr. Venket Rao (Advocate)	Respondent

ORDER

- 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 allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name and location of the project	"Tranquil Heights", Sector-82a, Gurgaon.
2.	RERA Registered/ not registered	Registered
3.	Unit no.	HSG-020-A-2601-phase 1 admeasuring 1150.34 sq. ft. [pg. 32 of complaint]
4.	Allotment letter	25.02.2015 [pg. 24 of reply]
5.	Buyer's agreement	05.02.2016 [pg. 31 of reply]
6.	Possession clause	13. 48 months from the date of execution of agreement
7.	Due date of possession	05.08.2020 05.02.2020 + 6 months covid
8.	Total sale consideration	₹1,42,05,470/- [pg. 32 of complaint]
9.	Amount paid by complainant	₹31,11,110/- [as per SOA dated 28.10.2022 pg. 32 of complaint]
10.	Cancellation letter	21.10.2020 [pg. 36 of complaint]
11.	Completion certificate	(To be ascertained)
12.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- a. That the respondent offered for sale units in a residential group housing colony known as 'Vatika Tranquil Heights' which claimed to comprise of

units with world class layout, infrastructure, facilities, amenities and services, etc. on a piece and parcel of land situated in Sector 82, 82A, 83, 84 and 85 Gurugram in the Gurgaon Manesar Urban Complex, Gurugram, Haryana. The respondent has also claimed that the DTCP, Haryana had granted license bearing no. 22 of 2011 dated 24.03.2011 in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976 for development of the said project over a land admeasuring 11.218 acres. This project was later on registered vide registration certificate No. 359 of 2017 with the Hon'ble Authority. It is pertinent to mention herein that the registration of the project in question has been lapsed.

- b. That the complainant received a marketing call from the office of respondent in June, 2013. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured timely delivery of the unit. It is further submitted that the assertions of the respondent concerned with impeccable services and timely completion of the said project were believed by the complainant.
- c. That the complainant, induced by the assurances and representations made by the respondent, decided to book a unit in the project of the

respondent. The Complainant was coerced to sign several blank papers by the Respondent with the hope that the unit being booked for would be handed over to the Complainant within the promised time period. It was also represented by the Respondent that the respondent would be honest in its dealings with the Complainant. The Complainant on the basis of the assurances, made part-payment of ₹6,00,000/- to the Respondent on 08.11.2013 vide Cheque no. 016842 drawn on HDFC Bank.

- d. It is humbly submitted that pursuant to the booking of a unit in the project of respondent, it allotted property no. HSG-020-A-2601 having carpet area of 1150.34 sq. ft. It was further decided that the total price of the unit was ₹1,42,05,470/- including the basic sale price of ₹1,24,47,500/-. It is submitted that the Complainant on the basis of the representations made by the respondent kept on making payments as and when demanded from them and no default whatsoever was committed by the Complainant in doing so. It is pertinent to mention here that the Complainant had duly abided by the payment plan and demands as raised by the Respondent.
- e. That the complainant enquired about the status of development of the project and the execution of the Builder Buyer Agreement from the representatives of the respondent vide several telephonic conversations on several occasions but no satisfactory response was ever received from the respondent besides the assurances and further baseless representations. The complainant made it clear to the respondent that the complainant required the unit in a time bound manner for his own use and occupation and of his family members. This fact was also specifically brought to the knowledge of the officials of the respondent

who confirmed that the possession of the apartment would be positively handed over to the complainant within the agreed time frame. The respondent further assured the complainant that the possession of the unit would be positively handed over to the complainant within 3 years from the date of booking i.e by November, 2016.

- f. That it is pertinent to mention here that despite repeated assurances and representations made by the respondent at the time of booking, still the respondent miserably failed to abide by its obligations thereunder. The respondent failed to perform the most fundamental obligation of the agreement which was to handover the possession of the flat within the promised time frame, which in the present case was delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large. It is important to mention herein that despite receipt of a substantial amount, the Respondent had miserably failed to execute the Agreement with the Complainant.
- g. That the respondent kept on raising payment demands despite giving no clarification with respect to the due date to handover the possession and the execution of the Builder Buyer Agreement. The complainant despite the delay on the part of the respondent made further payments. The complainant had been in touch with the representatives of the respondent and had regularly enquired about the development status of the said project. However, the attempts of the complainant were to no avail as the respondent failed to update the complainant about the construction status and the execution of the Builder Buyer Agreement.
- h. That after several reminders and communications by the Complainant regarding the execution of the Agreement and after a lapse of more than 3 years from the date of booking, a copy of the Agreement for Sale was

shared by the Respondent with the Complainant. However, after perusing the Agreement, the Complainant realised that the Respondent has very conveniently tried to misinterpret the provisions of Real Estate (Regulation and Development) Act, 2016. Moreover, the Respondent was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the Complainant. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. The Complainant made vocal his objections to the arbitrary and unilateral clauses of the Agreement to the Respondent. It is pertinent to mention herein that prior to the signing of the Agreement, Complainant had made payments of significant amounts and since the Complainant had already parted with a considerable amount, they were left with no other option but to accept the lopsided and one-sided terms of the Agreement. Very interestingly, the due date to handover the possession, which was, at the time of booking assured to be in November, 2016 was unilaterally increased by the Respondent to further 48 months from the date of signature of the Agreement. Since, the Complainant had already made substantial payment, the Complainant felt trapped and had no other option but to sign the dotted lines. Hence the Agreement for Sale dated 05.02.2016 was executed. Copy of the Agreement dated 05.02.2016 could not be attached by the Complainant as the same has been misplaced. The fact that the unit was to be handed over within 48 months from the date of execution of the Agreement can also be ascertained from the perusal of the similarly executed agreements with other allottees of the project in

question as also relied upon in 'Nitin Khullar vs Vatika Limited (Complaint no. 5270/2022) and 'Umamaheshwari Hampi Reddy Arudappa vs Vatika Ltd, (complaint bearing no. 3327 of 2023). This Hon'ble Authority may, in exercise of its power and authority under Section 35 of the Real Estate (Regulation and Development) Act, 2016, kindly direct the Respondent to place on record the copy of the Agreement dated 05.02.2016 executed with the Complainant.

- i. That the Complainant after the lapse of the original due date of handing over of possession i.e., November, 2016 as assured by the respondent visited the site of the project in the month of December, 2016 and was shocked to see that no development activities were going on at the Project site and it was clear that the work was at standstill since long. The Respondent had been issuing demand letters against construction linked payment plan merely to create false evidences. The actual ground reality at the construction site was way different than what the Respondent had claimed to the Complainant regarding the completion of the Project at the time of booking and thereafter and contrary to all prior assurances and representations of the Respondent to the Complainant. The complainant tried to enquire about the said false representations and assurances from the respondent. The Complainant made it specifically known to the Respondent that the Complainant would not make further payments till the date, the actual ground reality was in consonance with the demand letters being wrongly issued by the Respondent. The Respondent had no right, locus or authority to raise any such construction linked payment demands when such payment demands did not correspond with the 'actual' construction as claimed by the Respondent.

- j. That the Complainant again visited the construction site in June, 2017 and was taken aback to again find no development at the project site. It is pertinent to mention here that the Complainant again specifically intimated the Respondent that the Complainant will not be making any further payments till the time the payment demands correspond with the actual developments in the project. It is pertinent to mention herein that as per the statement of account generated on 11/12/2017, the Respondent had only started the foundation of the tower in which the unit was located. The Respondent upon the said intimation by the Complainant assured the complainant that the Respondent would soon handover the possession of the unit to the complainant. Moreover, the representatives of Respondent assured the complainant that any delay in completion and in handing over of the possession would be compensated by it in the form of delayed possession charges.
- k. That the complainant has till date paid an amount of Rs 31,11,110/- out of total sale consideration of Rs 1,42,05,470/- and the said fact is evident from the Statement of Account dated 28.10.2022. That the complainant yet again, visited the project site of the Respondent in June, 2019 and found that the work has been totally abandoned in the project and that no construction of the tower/development of the township was going on. The Complainant realized that the complainant was duped of his hard-earned money paid to the respondent regarding the unit in question. Vide several telephonic conversations and by visiting the office of the Respondent requested the Respondent to refund the said amount of the Complainant. However, no heed was paid to the genuine requests of the Complainant. The demand letters were by the

respondent deliberately, mischievously, dishonestly and with malafide motives.

- l. That to the complete surprise of the Complainant, the Respondent vide letter dated 21.10.2020 unilaterally cancelled the allotment of the Complainant in the said project of the Respondent on account of alleged defaults in payments. Moreover, the Respondent while issuing the said cancellation letter demanded the payment of Rs 58,85,464/- from the complainant based on a malafide and baseless calculation attached along with the said cancellation letter. It is pertinent to mention here that the complainant had time and again sought the refund of the amount paid by the Complainant against the said unit and was assured by the Respondent that the Respondent would be making the said refund whereas the respondent instead of complying with the said assurances and initiating the said refund has demanded the payment of a substantial sum from the complainant based on an arbitrary calculation. It is evident from the said cancellation letter that the Respondent had no intention of dealing fairly with the Complainant and had rather defrauded innocent allottees such as the Complainant.
- m. That there is an inordinate delay of more than 11 years calculated from the due date of possession up to July, 2024 and till date basic requirements including handing over of possession has not been completed due to default of Respondent. The said failure is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the Respondent/promoter. The Respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the

Complainant and are unconcerned about the possession of the unit despite repeated assurances.

- n. That the respondent is enjoying the valuable amount of consideration paid by the complainant out of his hard-earned money and the complainant realizing the same demanded the refund of the paid amount from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to pay the said paid amount to the complainant leaving him with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainant is entitled to refund along with interest as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.
- o. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to handover the possession of the unit, unilaterally cancelled the unit and demanded more amount and finally about a week ago when the respondent refused to refund the paid amount. The complainant reserves his right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the total amount paid by the complainant at the prescribed rate of interest from the date of each payment till the date of realization.

- b. Direct the Respondent to not create third party rights upon the unit in question till the time, the amount as claimed is refunded back to the Complainant by the respondent.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - a. That the Respondent is a company registered and incorporated under Companies Act, 1956 having its registered office at Unit No. 002, Ground Floor, Block-A, INXT City Centre, Sector 83, Vatika India Next, NH-48, Gurugram-122012, Haryana, INDIA, and extensively involved in the business of construction and development of the real estate project(s) and largely recognized in the real estate sector for its successful projects. Correspondingly, the Respondent decided to develop the Group Housing Project under the name and style of "Tranquil Heights" situated and located at Sector-82A, Village Shikohpur, Tehsil Manesar, Gurugram, Haryana (henceforth referred as "Project") admeasuring to 11.218 acres, and had obtained requisite Approval(s) and Sanction(s) from the Competent Authority for development of the same.
 - b. That after having keen interest in the above said project launched by the Respondent i.e., "Tranquil Heights", the Complainants upon its own examination and investigation desired to purchase a Flat in the year 2013, and approached the Respondent and vide Expression Of Interest dated 08.11.2013, booked an apartment Flat/unit.
 - c. That Letter for Invitation for Offer of Allotment dated 10.09.2014 and various reminder letters dated 20.10.2014, 11.11.2014 and 25.11.2014 was issued to the Complainant but the Complainant did not pay any heed to the request of Respondent. That on 25.02.2015, the Respondent vide Allotment Letter, allotted Unit bearing no. 2601, Tower A,

admeasuring 1915 sq. ft. in the Project. Then on 16.06.2015, the Respondent sent Letter for execution of Builder Buyer Agreement, by enclosing two copies of the Agreement, further intimating the Complainants that the Agreement shall be returned within 30 days of receiving this letter, which the Complainants failed to do so.

- d. That on 19.08.2015, 13.10.2015 & 10.12.2015 the Respondent issued a reminder letter for execution of Builder Buyer Agreement and still the Complainant did not come forward to execute the Builder Buyer Agreement. That the Builder Buyer Agreement dated 05.02.2016, (hereinafter referred to as 'Agreement') was executed between the Complainants and the Respondent for the unit bearing No. A - 2601, measuring Super Area 1915 Sq. Ft. for a Total Sale Consideration of ₹1,35,96,500/-. It is submitted herein that out of the total sale consideration; the Complainants has paid an amount of ₹31,11,110/- till date.
- e. That as per Clause 13, of the Agreement in the Complaint, the due date for handing over of possession to the Complainants was within 48 months from the date of execution of the Builder Buyer Agreement. Accordingly, the handing over of possession was supposed to be delivered by 05.02.2020, however, the possession of a unit was subject to the consideration of clause 14-17 & 37 of the Agreement.
- f. That it is pertinent to bring into the knowledge of this Ld. Authority, that as per the agreement so signed and acknowledged by the Respondent herein provided and estimated time period of 48 (Forty-Eight) months for completing of the construction for the Project i.e., and the same was stopped in the mid-way due to various hindrances which were beyond the control of the Respondent.

- g. That the Respondent has not defaulted the Agreement or the Act, in any manner whatsoever, as the Respondent is not in control of the force majeure conditions, which are as under:
- That there was an unforeseeable and unexpected development of **Gas Authority of India (GAIL)** pipelines through the Project land of the Respondent. It is submitted that the township of Respondent Developer was planned prior to the notification of GAIL and thereafter, the same affected the layout of the Project.
 - Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of **Sector roads** 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely;
 - The delay in delivery of possession of the unit has also been affected by the **land dispute** which was filed by one of the land owners of the said project land;
 - Various NCT and High Court Order affecting the supply of raw materials for construction of the project, Demonetization, Covid-19. There was a complete ban on construction activities for a total of 377 days over various periods from April 2015 to February 2020.
- h. That it is pertinent to mention that the project could not be completed and developed on time due to various hindrances as stated above, which miserably affected said project beyond the control of the Respondent. That it is further pertinent to mention that the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, granted Registration Certificate bearing Registered No. 359 of 2017 dated 17.11.2017 in the above said project for approximate periods of 41 months, i.e., till 30.04.2021.
- i. That upon failure to continue the development work of the project the Respondent was bound to file a proposal bearing "In Re: Regd. No. 359 of 2017 dated 17.11.2017, for the De-Registration of the Project "Tranquil Heights", and Settlement mechanism with existing Allottees before the Registry of this Hon'ble Authority on 30.09.2022.

j. It is submitted that the Complainant herein, has not approached the Ld. Authority with clean hands as he has concealed certain vital facts of which he was aware and deliberately chose to not plead them in his complaint. The Ld. Authority shall decide the complaint in light of all the relevant facts brought by the respondent in the present reply.

6. All other averments made in the complaint were denied in toto.
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 these undisputed documents and submission made by the parties.

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

E. I Territorial jurisdiction

8. 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

9. 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.

10. 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.
11. 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."** **SCC Online SC 1044** decided on 11.11.2021 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."*
12. 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 the complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants:

F.I Direct the respondent to refund the total amount paid by the complainant at the prescribed rate of interest from the date of each payment till the date of realization.

F.II. Direct the Respondent to not create third party rights upon the unit in question till the time, the amount as claimed is refunded back to the Complainant by the respondent.

13. The complainants booked an apartment no. HSG-020-A-2601-phase 1 admeasuring 1150.34 sq. ft in the respondent's project mentioned above. This led to the execution of buyers' agreement on 05.02.2016. The complainants paid a sum of ₹31,11,110/- to the respondent against the total sale consideration of ₹1,42,05,470/-. However, the complainants by way of present complaint are seeking a refund of the paid-up amount along with interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

14. The respondent in its reply states that the project has been delayed due to force majeure conditions.

15. Clause 13 of the buyer's agreement dated 22.07.2016 provides for schedule for possession of unit in question and is reproduced below for the reference:

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 other 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 off this agreement.
Emphasis supplied

16. **Entitlement of the complainant for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 05.02.2016, the period of 48 months expired on 05.02.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 05.08.2020.
17. It is not disputed that the complainant is an allottee of the respondent having been allotted an apartment no. HSG-020-A-2601-phase 1 admeasuring 1150.34 sq. ft. in the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of ₹1,42,05,470/-. The complainant has paid a sum of ₹31,11,110/- towards the total sale consideration of the allotted unit. On 21.10.2020, the respondent cancelled the allotment citing non-payment of due instalments. However, it is observed that the parties had agreed upon a construction-linked payment plan, and the complainant discontinued payments only because the

construction progress did not correspond with the instalments being demanded by the respondent.

18. Further, in their reply, the respondent has admitted that the project could not be completed due to various reasons and that a proposal for the de-registration of the project, titled "*Tranquil Heights*", was submitted to the Regulatory Authority on 30.09.2022. As of now, there has been no progress at the project site.
19. In light of the above, the cancellation letter issued by the respondent holds no merit, as the project is no longer capable of being delivered. The payment demands made by the respondent are therefore found to be unjustified and arbitrary. Accordingly, the complainant is well within their rights to withdraw from the project and seek a refund of the amount paid, along with applicable interest, since the promoter failed to carry out construction in accordance with the agreed schedule and has effectively abandoned the project.
20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***, observed as under:

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

project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) 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 respondent-promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

22. **Admissibility of refund along with prescribed rate of interest:** 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."

23. 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.

24. 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., **12.08.2025** is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.

25. The authority hereby directs the respondent-promoter to return the amount received by it i.e., ₹31,11,110/- with interest at the rate of 10.90% (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*.

G. Directions of the Authority:

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

- a. The respondent-promoter is directed to refund the entire amount of ₹31,11,110/- 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 actual realisation of the amount.
- b. 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.
- c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up



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

27. Complaint stands disposed of.
28. File be consigned to the registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025

