

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

Complaint no.: 4583 of 2024
Date of complaint: 04.10.2024
Date of order: 16.10.2025

Anil Kumar Siddana

R/o: - J-4, F-Floor, Kailash Colony, New Delhi.

Currently at: PO Box 3788, RUWI-112, Musacat, Oman.

Complainant

Versus

M/s Vatika Landbase Private Limited

(Now Known as M/s Vatika Limited)

Office address: Vatika Triangle, 4th Floor, Sushant Lok
Phase I, Block A, MG Road, Gurugram – 122002.

Also at: 621-A, 6th Floor, Devika Towers, 6, Nehru
Placee, New Delhi, Delhi, India-110019

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Anshul Yadav (Advocate)

Complainant

Shri Venket Rao and Shri Shivaditya Mukherjee
(Advocates)

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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount of 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	"Vatika Inxt City Center" at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial Complex
3.	Project Area	10.72 Acres
4.	DTCP license	122 of 2008 dated 14.06.2008 Valid upto 13.06.2016
5.	Name of the Licensee	Trishul Industries
6.	RERA registered/ not registered and validity status	Un-registered
7.	Unit no.	2108, 21st floor, Tower-A in " Vatika Trade Centre " (page 18-19 of complaint)
8.	New unit no.	319, 3rd floor, Block F in " Vatika Next City Centre " (as per the letter for allocation dated 31.07.2013 of unit at page no. 62 of reply)
9.	Unit area	500 sq. ft. (super area) (page 18-19 of complaint & page 62 of reply)
10.	Allotment Letter	10.09.2010 (page 16 of complaint)
11.	Date of execution of buyer's agreement	10.09.2010 (Page 17 of complaint)
12.	Completion Clause	2. Sale consideration <i>"The developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement....."</i>

13.	Due date of Possession	10.09.2013 (Note: The due date of possession is calculated 3 years from the date of execution of buyer's agreement, as per the clause 2 of buyer's agreement).
14.	Addendum to the buyer's agreement <i>(for assured return clause)</i>	10.09.2010 (page 49 of reply)
15.	Assured return clause	This addendum forms an integral part of builder agreement dated 10.09.2010 A. Till completion of building: Rs.71.50/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft. (page 49 of reply)
16.	Allocation of unit no. in INXT City Centre.	31.07.2013 (page 51 of reply)
17.	Total sale consideration	Rs.24,00,000/- (page 20 of complaint)
18.	Amount paid	Rs.24,61,800/- (as per receipts at page 38-3- of complaint)
19.	Assured return paid	Rs.34,34,275/- (till September, 2018) (as per details provided at page 52-53 of reply)
20.	Completion of construction of Block-F, INXT City Centre	27.03.2018 (page 54 of reply)
21.	Offer of possession	Not offered
22.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - i. That the complainant is a peaceful and law-abiding citizen of India. The complainant works from and stays at the address mentioned above.
 - ii. That the complainant based on promises made by the respondent applied to the company for possession of the commercial space in the project and an

application for allotment dated 10.09.2010 was executed between the parties. That the respondent on the basis of the same allotted unit bearing No. 2108, Vatika Trade Centre, measuring 500 sq. ft. in the said complex.

- iii. That the complainant made payment of entire sales consideration of Rs.24,00,000/- at the time of allotment of the said unit. That the complainant even made another payment towards the same unit Rs.61,800/- cheque bearing no."021467" dated 01.06.2011.
- iv. That the respondent unilaterally changed the booked unit no. 2108A on 21st floor Vatika Trade Centre to unit 319F on 3rd Floor of the Vatika INXT City Centre.
- v. That after the said transfer respondent issued letter of allotment dated 31.07.2013 to the complainant and an addendum agreement dated 13.08.2019 was executed between the complainant and the respondent. That the respondent on the basis of the same allotted a unit bearing No. 319 F, Vatika INXT City Centre, measuring 500 sq. ft. in the said complex.
- vi. That before the execution of the above said builder buyer agreement the complainant had already paid an amount of Rs. 24,61,800/- to respondent for old project Vatika Trade centre and later the same amount was adjusted with the unit in new project Vatika INXT City Centre for the above-mentioned commercial space.
- vii. That the above said complete payments (more than 100% payment) as mentioned in para 5 were taken before signing of the agreement to sell/ builder buyer agreement. That the intentions of the builder were clear from the initial phase of the transaction when the above said payments of more than 10% of the cost of the unit were taken by the builder from the respondent without getting the agreement for sale registered. That the complainant has made all the payments before time as demanded by the builder in accordance with the terms and conditions agreed between

the parties at the time of signing the said documents. That for the sake of brevity the particulars of the said dwelling unit are not mentioned here and the same are clearly mentioned in the above said buyer agreement executed between the parties.

- viii. That as of the terms and conditions mentioned in clause (iv) of "allotment letter" annexure - A, it was promised by the respondent that the possession of the said old unit will be delivered to the complainant by 30.09.2012. That the respondent has cheated the complainant here by tweaking the facts to harass the innocent complainant and got a fresh addendum agreement signed with the complainant by promising him instant handover in another project. That the said new unit was allotted by the respondent to the complainant vide the relocation letter.
- ix. That the complainant has made upfront payments as asked by the respondent but the respondent has failed to keep the promises made by him as per the terms and conditions of the said agreement. That the respondent has failed to deliver the possession of the said flat by September, 2012.
- x. That in year 2019, the complainant was telephonically called by the builder's team, who exhorted the complainant to come to the respondent's office and sign the new unit agreement to which the complainant already having a needle of suspicion, refused to do so unless and until the copies are supplied to him for their study. The entire act on the part of the defendant, smacks of their dishonest and manipulative intentions. That the complainant herein, was disheartened and shocked to find the new unit agreement to sale, allotment letter as an arbitrary, absolutely one-sided, indicative of dishonest manipulations by the defendant and under coercion as he had already grabbed a good chunk of money from the complainant, unequivocal; having balance of equity titled totally in favour of the respondent and to the prejudice of the complainant herein.

- xi. The contents of the same may please be taken into consideration for proper adjudication of this present complaint. That the said new unit agreement clearly shows the dishonest and manipulative intentions of the respondent, and ill motives for extracting more payments under threat and coercion, which ostensibly is to the disadvantage and prejudice of the complainant herein. That in the meanwhile the defendant kept on this pressurising the complainant to sign up the additional documents waiving off his rights for delay caused by the respondents in handing over the possession and the complainant all the time spoke of the arbitrariness to the respondent and requested the respondent to send an explicit and specific documents which is evenly poised and is not prejudiced to the rights of either the defendant or the complainant but all efforts of the complainant were in vain.
- xii. That the complainant has time and again requested the respondent to handover the possession, assured return, monthly rent or refund the amount paid by the complainant, but the respondent being affluent and an influential player in real estate choose not to respond or take any action regarding the said requests. The complainant was given assurances by the officials of the respondent that the possession will be handed over timely and the construction is going at a good pace.
- xiii. That the respondent has not yet offered the possession of the said unit. That it is pertinent to mention here that the handover was promised by the builder to be complete till September, 2012.
- xiv. That all the pleas of the complainant to the respondent to refund the payment of the amount paid to the builder of the said unit fell on the deaf ears of the officials of the respondent. The uncalled conduct of the officials of the respondent is causing a lot of mental agony and harassment to the complainant. When despite all the efforts of the complainant no concrete

action was taken by the respondent, the complainant had no other option except approaching this Authority, hence this application.

- xv. That no similar application has been filed or pending or decided by any competent court of law regarding the same cause of action.
- xvi. That the cause of action for filing present complaint first arose when the respondent denied to refund the amount paid by the complainant of the said unit after delay of almost 14 years and the cause of action is still continuing and subsisting one as the respondent has failed to provide the complainant with the refund of the amount so paid.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
 - a. The respondent be directed to refund the entire amount of Rs.24,61,800/- paid by the complainant along with interest for the rate as applicable as per prescribe under the Real Estate (Regulation and Development) Act, 2016.
 - b. To pay a sum of Rs.30,000/- as cost of litigation to the complainant.
 - c. To pay a sum of Rs.5,00,000/- for the harassment and mental agony suffered by the complainant.
 - d. Any other relied which the Hon'ble Authority may deem appropriate in favour of the complainant and against the respondent.
5. On the date of hearing, the authority explained to the respondent/ promoters 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: -
 - i. That the respondent is a company, registered under the Companies Act, 1956 having its office at Unit No A-002, INXT City Centre Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram – 122012, Haryana, India.

- ii. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 20.02.2012, as shall be evident from the submissions made in the following paras of the present reply.
- iii. That the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before this Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority. That upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'assured return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent having not taken registration from SEBI board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
- iv. Thus the 'assured return scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs.28,82,387/- till September, 2018. The complainant has not come with clean hands before this Authority and has suppressed these material facts.
- v. That as per Section 3 of the BUDS Act all unregulated deposit scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting

participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) collective investment schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

- vi. That further the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of BUDS Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing. That in the said matter the Hon'ble High Court has already issued notice and the matter is to be re-notified on 16.08.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has already notified the appointment of competent authority under the BUDS Act, thus it flows that till the question of law i.e., whether such deposits are covered under the BUDS Act or not, and whether this Hon'ble Authority has the jurisdiction to adjudicate upon the matters coming within the purview of the special act namely, BUDS Act, 2019, the present complaint ought not be adjudicated.
- vii. That in the matter titled Naresh Prasad vs M/s Vatika Ltd. & Anr, in CS No. 338 of 2022, the Ld. Additional Civil Judge (Senior Division), Gurugram vide order dated 19.04.2022 in para 49, 50 & 52 held as follows - *"49. Further, this Court is of the considered view that if any Company wishes to continue with such assured return schemes, then it has to be register itself with the Securities*

and Exchange Board of India, being part of the collective investment schemes...

52. Further, even in BUDS Act, 2019 the provisions have been provided for redressal of grievance of the depositors' wherein designated Courts have been created, so that the depositors can put up their claims before that designated courts."

- viii. That further the Rajya Sabha, parliamentary committee on subordinate legislation on 24.03.2021, presented report no.246. That vide the said report, the committee observed upon the objectives of coming up with a special and comprehensive law i.e., to check illicit deposit schemes. The committee also focused on bringing clarity upon the deposit that constitute legitimate business transactions and thus fall within the "normal course of business." The committee further expressed its dismay, on the fact that most of the States/UTs had shown lax and nonchalant attitude in implementation of the crucial legislation. The casual approach of the State/UT in not issuing the notification of the designated courts and their jurisdiction. The report of the parliamentary committee is noteworthy since the importance of Jurisdictional designated court/authorities for implementation of BUDs Act, 2019 and the ambit of definition of "DEPOSIT" would be brought to light only upon institution of proper rule and duly designated/jurisdictional Court to adjudicate upon issues of assured return schemes/collective investment schemes/other similarly founded schemes.
- ix. That the commercial unit of the complainant was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by the complainant is not meant for physical possession and rather is for commercial gain only.

- x. That in the matter of *Brhimjeet & Ors vs. M/s Landmark Apartments Pvt. Ltd.* (Complaint No. 141 of 2018), this Hon'ble Authority has taken the same view as observed by Maharashtra RERA in Mahesh Pariani. Thus, the RERA Act, 2016 cannot deal with issues of assured return and hence the present complaint deserves to be dismissed at the very outset. That further upheld its earlier decision of not entertaining any matter related to assured returns.
- xi. That further in the matter of *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (complaint no.58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken the same view of not entertaining any matter related to 'collective investment scheme' without the approval of SEBI.
- xii. That the complainant has come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant has instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 20.02.2012 and issued completion of construction letter on 26.03.2018. That for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- xiii. It is submitted that the complainant entered into an agreement i.e., BBA dated 20.02.2012 with respondent owing to the name, good will and reputation of the respondent. That it is a matter of record and admitted by the complainant that the respondent duly paid the assured return to the

complainant till September, 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the Respondent managed to complete the construction and duly issued letter of completion on 26.03.2018.

- xiv. The present complaint of the complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the real estate sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while section 11 to section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.
- xv. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Inframworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter

as well as the allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.

- xvi. That the complainant is attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent and hence, the complaint deserves to be dismissed, since the claim/relief of the complainant for pending assured return is *ipso facto* void.
- xvii. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the Complainant deserves to be dismissed with heavy costs.
- xviii. The prayer of refund combined with the relief of arrears of assured return would cause the respondent to suffer from double jeopardy and the Hon'ble Authority, in the interest of justice and in terms of law of the land, ought not do it.
- xix. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That none of the relief as prayed for by the complainant is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Written submission made by the complainant.

8. The complainant has submitted a copy of written submission on 14.10.2025 and the same are taken on record. No additional facts apart from complaint and reply has been stated in the written submission.

F. Jurisdiction of the Authority

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

F. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 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."

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

G. Findings on objections raised by the respondent:

G.I. Objection regarding non-payment of assured return due to implementation of BUDS Act.

15. The respondent-promoter raised the contention that the payments of assured return were stopped due to implementation of BUDS Act. All the pleas advanced in this regard are devoid of merits. In the present matter the complainant has amended the relief claimed by filing an application for amendment in relief and is only claiming refund of paid amount and litigation cost. Therefore, the Authority is of the view that the objection raised by the respondent is automatically become ineffective/infructuous. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrongs.

G.II. Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return.

16. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.

17. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is not stay

on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

“... it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification.”

18. Thus, in view of the above, the Authority has decided to proceed further with the present matter.

H. Findings on the relief sought by the complainant.

H.I. Direct the respondent to refund the entire amount of Rs.24,61,800/- paid by the complainant along with interest rate as applicable as per prescribe under the Real Estate (Regulation and Development) Act, 2016.

H.II. Any other relied which the Hon’ble Authority may deem appropriate in favour of the complainant and against the respondent.

19. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

20. The factual matrix of the case reveals that the complainant was allotted a unit no. 2108, 21st Floor, tower A, admeasuring 500 sq. ft. in the project “Vatika Trade Centre” being developed by the respondent. The builder buyer agreement was executed between the complainant and respondent on 10.09.2010, the possession of the subject unit was to be delivered within a stipulated time of three years i.e., by 10.09.2013. Further, as per Annexure A (addendum to the agreement dated 10.09.2010) to the builder buyer agreement dated 10.09.2010 provided for payment of assured returns to the complainant @ Rs. 71.50/- per sq. ft. till completion of the building and after completion of the building @ Rs.65/- per sq. ft. The said clause further provides that it is the obligation of the respondent to lease the premises at a

minimum rental of Rs.65/- per sq. ft. The complainant has paid an amount of Rs.24,61,800/- to the respondent against the basic sale consideration of Rs.24,00,000/- and an amount of Rs.34,34,275/- has been paid upto September, 2018, by the respondent to the complainant on account of assured returns. Further the unit of complainant was allocated from "Vatika Trade Centre" to "Vatika INXT City Center" and the complainant allotted a unit bearing no.319 at 3rd Floor, in Block-A, ad-measuring 500 sq. ft. in project namely "Vatika INXT City Center" at Sector-83, Gurugram.

21. Further, in the present complaint, 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)

22. The builder buyer's agreement executed between the parties on 10.09.2010. However, as per clause 2 of builder buyer agreement dated 10.09.2010, the developer assures to complete the construction of the said complex within three (3) years from the date of execution of this agreement. Thus, the due date of possession is to be calculated as 3 years from the date of execution of buyer's agreement i.e., 10.09.2010. Therefore, the due date of possession

comes out to be 10.09.2013. The occupation certificate/ completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which 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.....”

23. It has come on record that against the sale consideration of Rs.24,00,000/-, the complainant has paid an amount of Rs.24,61,800/- 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."

24. 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.
25. 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 she is well within right to seek refund of the paid-up amount.
26. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
27. **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."

28. 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.
29. 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., 16.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. 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, ...*
31. Therefore, the Authority hereby directs the promoter to return the amount received by it i.e., Rs.24,61,800/- along 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.

32. The respondent-promoter has paid an amount of Rs.34,34,275/- as an assured return upto September, 2018 to the complainant-allottee. The said amount shall be adjusted/deducted from the payable amount.

H.III. Direct the respondent to pay litigation cost of Rs.30,000/- to the complainant.

H.IV. Direct the respondent to pay a sum of Rs.5,00,000/- for the harassment and mental agony suffered by the complainant.

33. The complainant is seeking above mentioned relief w.r.t compensation and legal expenses. 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 section71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

I. Directions of the authority

34. 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 is directed to refund the entire paid-up amount of Rs.24,61,800/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
- b. The amount of assured return of Rs.34,34,275/- already paid w.r.t allotted unit shall be adjusted/deducted from the payable amount.

- c. 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.
35. Complaint as well as application, if any, stands disposed of accordingly.
36. File be consigned to the registry.

Dated: 16.10.2025



(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM