

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

Complaint no.: 4480 of 2024
Date of complaint: 11.09.2024
Date of order: 16.12.2025

1. Anil Vir Anand
R/o: - F-16, Upper GF, Kirti Nagar, New Delhi
2. Aaditya Anand
R/o: - F-23, First Floor, Kirti Nagar, New Delhi

Complainants

Versus

M/s Vatika Limited
Office address: Vatika Land Base, 4th Floor, Sushant Lok
Phase I, Block A, MG Road, Gurugram – 122002.

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Ms. Lalita Yadav (Advocate)
Shri Venket Rao and Shri Shivaditya Mukherjee
(Advocates)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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.no.	Particulars	Details
1.	Name of the project	"Vatika Next City Centre" at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial Complex
3.	Project Area	0.826 Acres
4.	DTCP license	258 of 2007
5.	Name of the Licensee	M/s Kolina Developers Private Limited
6.	RERA registered/ not registered and validity status	Un-registered
7.	Unit no.	283A, 2nd floor, Tower-A in " Vatika Trade Centre " (page 18-19 of complaint)
8.	New unit no.	617, 6th floor, block F in " Vatika Next City Centre " (as per the letter for allocation dated 25.04.2013 of unit at page no. 62 of reply)
9.	Unit area (in super area)	500 sq. ft. (page 18-19 of complaint & page 62 of reply)
10.	Booking application form	24.05.2011 (page 42-45 of reply)
11.	Allotment Letter	29.06.2011 (page 60 of reply)
12.	Date of execution of buyer's agreement	29.06.2011 (Page 17 of complaint)
13.	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>

14.	Due date of Possession	29.06.2014 (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).
15.	Addendum to the buyer's agreement (for assured return clause)	29.06.2011 (page 59 of reply)
16.	Assured return clause	This addendum forms an integral part of builder agreement dated 29.06.2011 A. Till completion of building: Rs.71.50/- per sq. ft. B. After completion of the building: Rs.65/- per sq. ft. (page 59 of reply)
17.	Allocation of unit no. in INXT City Centre.	25.04.2013 (page 62 of reply)
18.	Total sale consideration	Rs.24,37,500/- (page 18-19 of complaint)
19.	Total amount paid against the allotted unit	Rs.25,25,860/- (as per SOA dated 25.09.2024 at page 46 of reply)
20.	Assured return paid	Rs.30,89,883/- (till September, 2018) (as per details provided at page 61 of reply)
21.	Completion of construction of Block-F, INXT City Centre	27.03.2018 (page 63 of reply)
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
- i. That in the year 2011 the complainant visited the respondent office for inquiry. The officials of the respondent show the rosy picture of their project. The official of the respondent lures the complainant to buy a commercial unit in their project "Vatika Trade Centre", Sector-83, Gurugram. The complainant agreed to buy a commercial unit in the above said project.

- The respondent promised delivery of possession within 36 months from the date of execution of the agreement. Believing over the assurance of the respondent the complainant booked a unit and made payment of Rs.1,00,000/- as booking amount on 24.05.2011.
- ii. That the respondent made a BBA with the complainant for dwelling unit no.283A, 2nd Floor, Tower No-A at Vatika Trade Centre, Gurugram dated 29.06.2011 and a total amount Rs.39,00,000/- out of which Rs.25,00,266/- by bank transfer and Rs.14,00,000/- by way of cash, paid by the complainant up to now as per acknowledgment receipts which is entire sales consideration amount. The respondent issued an allocation letter on 25.04.2013 for the said Unit 283 A ,2ND Floor Tower No.-A, Vatika Trade Centre, Gurugram, which was later on shifted to Unit No. 617,6th Floor ,Block-F in India Next City Centre, NH-8, Sector -83, Gurugram, without taking the permission from the complainant and even without completing the project only to make fool of the customers and on assurance that the said project will be completed and operational by the second quarter of year 2014.
 - iii. That at the time of booking the respondent assured possession within 36 months from the date of BBA. Now as per 2 of the BBA the respondent had to give possession of the said unit within 36 months of the execution of the builder buyer agreement i.e. up to July 2014 which has already passed ten years back.
 - iv. That the respondent has also assured the complainant to give a monthly assured return of Rs.35,000/- per month till the offer of possession. It is further pertinent to mention here that the possession has not been offered till date. That the respondent had stopped paying the assured return in 2017 and has not paid even a single penny till today.

- v. That the complainant shall be paid back his amount of Rs.39,00,000/- along with interest @ 18% Per annum as the complainant do not want to go ahead for the said dwelling unit because there is already delay of more than ten years as the respondent had to give possession up to July 2014.
- vi. That the purpose of buying the above said unit was not served and the complainant was in dire need of the unit for the commercial purpose, so the complainant purchased a commercial unit, now he is no more interested due to this intolerable delay on the part of the respondent. The respondent has not completed the said project site till date. The complainant sent several mails to the respondent regarding his concern regarding the delay in construction but respondent did not pay any attention to the concern of the complainant.
That the complainant had invested all his past and future canings in said unit.
- vii. That the respondent had not only cheated and committed fraud upon the complainant but under false pretexts and assurance, the respondent succeeded in siphoning the money from the complainant to cause wrongful losses to him. The respondent had intention to cheat and commit fraud not only upon the complainant but public at large.
- viii. The complainant many times requested the respondent for resolving the-matter but the respondent has not paid any heed to the request of the complainant who are the customer with the respondent and hence decision of not taking the genuine request of the complainant by the respondent is arbitrary and the respondent refuse to accede any of the demand of the complainant.
- ix. That the complainant has even visited the project site and was shocked to find that there has been no progress of the said project despite taking hefty amount from the complainant towards the sale consideration of the said unit.

- x. That the complainants have been left with no other option but to approach this Authority to seek refund of the amount paid so far by the complainant. That the complainant has paid an amount of Rs.39,00,000/- towards the sale consideration of the said unit.
- xi. That the respondent therefore, is liable to refund the amount of Rs.39,00,000/- along with prescribed rate of interest per annum from the receipt till the date of realization and also the assured return of Rs.29,40,000/- till now. The interest is also being claimed since the complainant has used and enjoyed the money which legally belongs to the complainant and has either earned interest thereon or has saved interest and has additionally denied the complainant its opportunity to earn interest on the said amount and has exposed the complainant to interest loss to that extent. Thus, the complainant is entitled in the manner stated above, to the interest on the amount till the date of realization of the amount claimed. Hence this complaint.
- xii. The cause of action for the present complaint arose in April 2013 when the respondent did not offer the possession of the said unit to the complainant, in terms of the flat buyer agreement and moreover is in the nature of a continuing cause of action on all such various dates when the complainant demanded the refund of the money paid to the respondent. The cause of action still subsists and continuing as the respondent has till date not refunded the amount received by them from the complainants. Even otherwise the project has been delayed excessively due to which the hard-earned money of the complainants has got blocked. As per clause 2 of the builder buyer agreement possession of the said unit had to be given by the respondent within a period of 36 months from the date of approval of building plans for grant of environment clearances, whichever is later.

- xiii. That the said project, constructed by the respondent is located in Gurugram. There are no proceedings pending between the parties in any other forum/ courts etc or before any other High Courts with respect to the said unit except the one mentioned in the present complaint.

C. Relief sought by the complainant(s):

4. The complainants have sought the following relief(s):
- Direct the respondent to refund the total sum of Rs.39,00,000/- to the complainant along with interest at the prescribed rate in terms of Section 18 & 19 of Act from the date of respective payments made to the respondents till realization;
 - Direct the respondent to refund amount of Rs.29,40,000/- as assured return amount till date;
 - To pay a sum of Rs.1,50,000/- as cost of litigation to the complainant.
 - Any other relief the Authority deems fit 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: -
- 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.
 - That the BBA executed in between the complainants and the respondent is dated 29.06.2011. That the date of executing of the BBA is much prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016.

- The obligations of the aforementioned agreements were as per the applicable laws at that point of time.
- iii. That the complainants herein are investors having a unit in project being developed by the respondent. It is evident that the complainants are merely investors who purchased the unit for making steady monthly returns. That it is an established fact herein that the complainants had booked the unit with the Respondent for investment purposes. The said complainants herein are not "Allottee", as the complainants approached the respondent with an investment opportunity in the form of a steady rental income from the commercial units.
 - iv. That in the year 2011, the complainants in search of investment opportunities learnt about the project launched by the respondent titled as "Vatika Trade Centre", later changed to "INXT City Centre" in Gurugram and visited the office of the respondent to know about the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and were satisfied with every proposal deemed necessary for the development.
 - v. That after having dire interest in the commercial project constructed by the respondent, the complainants decided to invest and thus had booked Unit No. 283 A on 2nd Floor, Tower A admeasuring super area of 500 sq. ft. under the assured return scheme, vide Application for Allotment dated 24.05.2011. Furthermore, upon knowing about the assured return scheme, the complainants upon their own free will paid the entire sale consideration amount to the respondent for making steady monthly returns.
 - vi. It may be noted that the complainants were aware of the status of the project and invested in the project of the respondent without any protest or demur, to make steady monthly returns upon their own judgement and investigation.

- vii. That the complainants had paid a total amount of Rs.25,25,860/- towards the said unit against the total sales consideration to the tune of Rs.25,25,859.63/- to the respondent. It is a matter of fact, that the Unit in question was deemed to be leased out upon completion of the Unit. As the Complainants had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.
- viii. That the complainants had booked the unit under the monthly assured return plan and had executed the BBA with the respondent on 29.06.2011. That as per clause 32 of the BBA read along with addendum to the agreement (Annexure A), the respondent was supposed to pay Rs. 71.5/- per sq. ft. super area of the unit by way of assured returns from the date of execution of this agreement till the offer of possession and Rs. 65/- per sq. ft. super area after completion of the building.
- ix. That the agreed assured returns were already paid by the respondent to the complainant at the agreed rate. That post the BBA, the allotment letter dated 29.06.2011 was also issued by the respondent in favour of the complainants. That the respondent has already fulfilled its obligation of paying the assured returns as per the executed BBA and has paid a total amount to the tune of Rs.30,89,883.3/-.
- x. That the respondent has always abided by its obligations, herein the respondent has already executed the BBA on 29.06.2011.
- xi. That the respondent had also duly intimated the complainants vide letter dated 25.04.2013, informing about the change in the unit of the complainants from 283A on the 2nd Floor in Tower A to unit no. 617 on the 6th floor of Block F. This due intimation by the respondent clearly shows the clear intent of the respondent.

- xii. That the respondent with its clean intent, communicated vide letter dated 27.03.2018 to the complainants that the respondent has completed the construction of the work of Block F of the project and the same is ready for occupation.
- xiii. That the complainants are trying to deceive the Authority in the present complaint. That it is pertinent to note that the BBA that was executed on 29.06.2011 between the respondent and Mr. Anil Vir Anand (complainant no. 1), Mrs. Lalita Anand (wife of complainant no. 1) and Mr. Aditya Anand (complainant no. 2). That due to the non-joinder of necessary parties/impleadment of the co-allottee (wife of complainant no. 1), the instant complaint is not maintainable and the same is liable to be dismissed with heavy costs.
- xiv. That the respondent was committed to complete the construction of the project within 36 months from the date of the execution of the BBA. It is pertinent to apprise the Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
- xv. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. That it is pertinent to mention herein that such delay was not intentional. That the respondent was bound to adhere with the order and notifications of the Courts and the Government. That the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of

the date of completion of building. That after considering the above delay, the date of completion of the building has to be extended by approximately 1.7 years.

- xvi. That considering the above, it can conclusively be said that the Covid-19 pandemic was an act of God and therefore is force majeure. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project. That all these factors being force majeure may be taken into consideration for the calculation of the period of the construction of the project. That the respondent had carried out its obligations in agreement with utmost diligence.
- xvii. 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".
- xviii. 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.

- xix. 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.
- xx. 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.

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. 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. I Territorial jurisdiction

9. 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.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, 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 objections raised by the respondent:

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

14. 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 complainants have sought the relief of refund of paid-up 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.

F.II Objection regarding complainants are investor not consumer.

15. The respondent submitted that the complainants are investor and not consumer/allottee, Thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
16. The Authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under Section 31 of the Act, 2016, any aggrieved person can file a complaint against the promoter if the promoter 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 MoU and buyer's agreement, it is revealed that the complainant is an allottee/buyer and they had paid total price of Rs.25,25,860/- to the promoter towards purchase of the said unit in the project of the promoter. 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;

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under Section 2 of the Act, 2016. there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants.

- G.I. Direct the respondent to refund the total sum of Rs.39,00,000/- to the complainant along with interest at the prescribed rate in terms of Section 18 & 19 of Act from the date of respective payments made to the respondents till realization;**
- G.II. Direct the respondent to refund amount of Rs.29,40,000/- as assured return amount till date;**
- G.III Any other relief the Authority deems fit in favour of the complainant and against the respondent.**

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

19. The factual matrix of the case reveals that vide allotment letter dated 29.06.2011, the complainants herein and Ms. Lalita Anand (being Co-allottee) were allotted a unit no. 283A, 2nd 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 complainants and the respondent on 29.06.2011, the possession of the subject unit was to be delivered within a stipulated time of three years i.e., by 29.06.2014. Further, as per Annexure A (addendum to the agreement dated 29.06.2011) to the builder buyer agreement dated 29.06.2011 provided for payment of assured returns to the complainants @ 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 complainants have paid an amount of Rs.25,25,860/- to the respondent against the basic sale consideration of Rs.24,37,500/- and an amount of Rs.30,89,883/- has been paid upto September, 2018, by the respondent to the complainants on account of assured returns. Thereafter, on 25.04.2013, the respondent allocated the unit of complainant's project "Vatika Trade Centre" to "Vatika INXT City Centre" and the complainants were allotted a unit bearing no.617 at 6th Floor, in Block-A, ad-measuring 500 sq. ft. in project namely "Vatika INXT City Center" at Sector-83, Gurugram.

20. Thereafter on 18.06.2019, the co-allottee (Lalita Anand) got expired and as per surviving member certificate, the complainants herein are the only legal heir's of the deceased co-allottee (Lalita Anand) and a copy of death certificate dated 18.06.2019 of deceased co-allottee (Lalita Anand) and surviving member certificate dated 31.07.2021 are already on record.
21. Therefore, in the present complaint, the complainants intend 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...*

(Emphasis supplied)

22. The builder buyer's agreement executed between the parties on 29.06.2011.

However, as per clause 2 of builder buyer agreement dated 29.06.2011, 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 calculated as 3 years from the date of execution of buyer's agreement i.e., 29.06.2011. Therefore, the due date of possession comes out to be 29.06.2014. 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.24,37,500/-, the complainant has paid an amount of Rs.25,25,860/- to the respondent. However, the complainants 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 complainants cannot be compelled to take possession of the unit and they are well within right to seek refund of the paid-up amount.

26. In the present complaint, vide letter dated 27.03.2018, the respondent has intimated the complainant that the construction of said tower is complete wherein the subject unit is located. However, admittedly, the respondent-promoter has not obtained the occupation certificate till date and hence, the Authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project.
27. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under Sections 71 & 72 read with Section 31(1) of the Act of 2016.
28. **Admissibility of refund along with prescribed rate of interest:** The 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.”*
29. 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.

30. 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., 16.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

31. 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, ...

32. Therefore, the Authority hereby directs the promoter to return the amount received by it i.e., Rs.25,25,860/- along with interest at the rate of 10.80% (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*.

33. The respondent-promoter has paid an amount of Rs.30,89,883/- as an assured return up to September, 2018 to the complainants. The said amount shall be adjusted/deducted from the payable amount.

G.IV To pay a sum of Rs.1,50,000/- as cost of litigation to the complainant.

34. The complainants are seeking above mentioned relief w.r.t 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 Section 71 and the quantum of compensation &

litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:

35. 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.25,25,860/- received by it from the complainants along with interest at the rate of 10.80% 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.30,89,883/- 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.

36. Complaint as well as application, if any, stands disposed of accordingly.

37. File be consigned to the registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.12.2025