

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of Order:****13.01.2026**

NAME OF THE BUILDER		VATIKA LIMITED	
PROJECT NAME		"INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4881/2024	Jawahar Lal Sehgal and Kiran Sehgal V/S Vatika Limited	Sh. Akhil Mangla Advocate for complainant Sh. Pawan Kumar Ray Advocate for respondent
2.	CR/4882/2024	Radhika Sehgal V/S Vatika Limited	Sh. Akhil Mangla Advocate for complainant Sh. Pawan Kumar Ray Advocate for respondent
3.	CR/4883/2024	Radhika Sehgal V/S Vatika Limited	Sh. Akhil Mangla Advocate for complainant Sh. Pawan Kumar Ray Advocate for respondent
4.	CR/4886/2024	Kiran Sehgal V/S Vatika Limited	Sh. Akhil Mangla Advocate for complainant Sh. Pawan Kumar Ray Advocate for respondent
5.	CR/4887/2024	Jawahar Lal Sehgal and Kiran Sehgal V/S Vatika Limited	Sh. Akhil Mangla Advocate for complainant Sh. Pawan Kumar Ray Advocate for respondent
6.	CR/5166/2024	Jawahar Lal Sehgal V/S Vatika Limited	Sh. Akhil Mangla Advocate for complainant Sh. Pawan Kumar Ray Advocate for respondent

CORAM:

Shri Arun Kumar

Chairman**ORDER**

1. This order shall dispose of all the 6 complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules)

for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "INXT City Centre" situated at Sector-83, Gurugram being developed by the respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		Vatika Limited at "INXT City Centre" situated in Sector- 83, Gurugram.				
Occupation certificate: Not obtained						
Complaint No. & Case Title	Reply status	Unit no. & Area of the unit	Date of execution of buyer's agreement	Due date of handing over of possession	Offer of possession	Total Consideration /Total Amount paid by the complainant(s)
CR/4881/2024 Jawahar Lal Sehgal and Kiran Sehgal V/S Vatika Limited	07.03.2025	321, 3 rd floor & 273.40 sq. ft. (Carpet Area) (As per page no. 56 of the	05.03.2021 (As per page no. 29 of the reply)	Not Specified	Not offered	TSC: Rs.15,58,950/- (As per page no. 56 of the complaint) AP: Rs.15,59,950/- (As per statement of accounts on page

		complaint)				no. 74 of the complaint)
CR/4882/2024 Radhika Sehgal V/S Vatika Limited	07.03.2025	428, 4 th floor & 353.06 sq. ft. (Carpet Area) (As per page no. 54 of the complaint)	23.06.2021 (As per page no. 54 of the complaint)	Not specified	Not offered	TSC: Rs.45,70,012/- (As per page no. 54 of the complaint) AP: Rs.45,70,013/- (As per account statement on page no. 73 of the complaint)
CR/4883/2024 Radhika Sehgal V/S Vatika Limited	07.03.2025	417, 4 th floor & 266.94 sq. ft. (Carpet Area) (As per page no. 56 of the complaint)	23.06.2021 (As per page no. 54 of the complaint)	Not specified	Not offered	TSC: Rs.30,46,675/- (As per page no. 55 of the complaint) AP: Rs.30,47,675/- (As per account statement on page no. 73 of the complaint)
CR/4886/2024 Kiran Sehgal V/S Vatika Limited	07.03.2025	330, 3 rd floor & 545.73 sq. ft. (Carpet Area) (As per page no. 54 of the complaint)	05.03.2021 (As per page no. 30 of the reply)	Not specified	Not offered	TSC: Rs.31,17,900/- (As per page no. 54 of the complaint) AP: Rs.31,18,905/- (As per account statement on page no. 72 of the complaint)
CR/4887/2024 Jawahar Lal Sehgal V/S Vatika Limited	07.03.2025	525, 5 th floor & 260.49 sq. ft. (Carpet Area) (As per page no. 54 of the	05.03.2021 (As per page no. 30 of the reply)	Not specified	Not offered	TSC: Rs.15,58,950/- (As per page no. 54 of the complaint) AP: Rs.24,76,050/- (As per account statement on page no. 72 of the complaint)

		complainant)				
CR/5166/2024 Jawahar Lal Sehgal V/S Vatika Limited	07.03.2025	403, 4 th floor & 266.94 sq. ft. (Carpet Area) (As per page no. 56 of the complaint)	05.03.2021 (As per page no. 29 of the reply)	Not specified	Not offered	TSC: Rs.15,58,950/- (As per page no. 56 of the complaint) AP: Rs.15,61,955/- (As per account statement on page no. 75 of the complaint)

The complainant in the above complaint(s) has sought the following reliefs:

1. To get a refund of the paid money to the tune of Rs.15,58,950/- along with prescribed interest from the date of payment i.e., 24.04.2015 till date of refund (as per Section 11(4) 12, 18 & 19(4) of the real estate (regulation and development) Act, 2016).
2. To get compensation of Rs.10,00,000/- for mental agony, harassment, discomfort, and undue hardship.
3. To get the litigation cost of Rs.1,00,000/-.
4. The complainant is entitled to get an order in his favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the sale agreement.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the buyer's agreement against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking refund of the amount paid along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the respondent/promoter in terms of Section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4881/2024 titled as Jawahar Lal Sehgal and Kiran Sehgal Vs Vatika Limited** are being taken into consideration for determining the reliefs of the allottee(s) qua refund of the amount paid.

A. Project and unit related details

7. The particulars of the project, the details 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 and location of the project	"INXT City Centre" India Next City Centre at Sector 83, Gurugram, Haryana
2.	Project area	10.718 Acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	Name of Licensee	M/s Trishul Industries
6.	Rera registered/ not registered and validity status	Not Registered
7.	Application form for allotment w.r.t P-190, in Vatika Tower-C	24.04.2015 [As per page no. 21-27 of the complaint]
8.	Amount paid w.r.t P-190, Vatika Tower-C	Rs.41,83,581/- [Rs.8,00,000/- via cheques bearing no. 720939 dated 24.04.2015 and Rs.33,83,581/- via cheques bearing no. 090163 dated 26.05.2015] [As per payment receipts on page no. 28-29 of the complaint]
9.	Settlement agreement	09.12.2020 [As per stamp paper attached with buyer's agreement on page no. 40 of the complaint]
10.	Terms of settlement agreement	2.A That the company shall cancel the booking bearing no. P190 & P-189 and P-383 in Tower-C, Vatika Towers.

		<p>2.B That the company shall allot alternative unit nos. being unit no. C-321 measuring 500 sq. ft., unit no. C-330 measuring 1000 sq. ft., unit no. C-403 measuring 500 sq. ft., unit no. C-417 measuring 500 sq. ft., unit no. C-428 measuring 750 sq. ft. and unit no. C-525 measuring 500 sq. ft., summing up to total of 3,750 sq. ft. at the price of Rs.3117.90/- per sq. ft. for unit, no. C-321, C-330, C403 & C-525 and Rs.6,093/- per sq. ft. for unit no. C-417 & C-428 respectively at Vatika INXT City Center, Gurugram ("New Unit")</p> <p>4.... Upon settlement, INR 1,36,620/- to Mr. Jawahar Lal Sehgal, INR 1,36,620/- to Mrs. Kiran Sehgal and INR 3,83,305/- to Mrs. Radhika Sehgal stands refundable which shall be paid within next 60 days form the execution of this settlement deed. (As per page no. 43, 44 & 45 of the complaint)</p>
11.	Unit No.	321, 3 rd Floor, Tower-C (As per clause B of BBA on page no. 56 of the complaint)
12.	Unit area admeasuring	273.40 sq. ft. [Carpet Area] (As per clause B of BBA on page no. 56 of the complaint)
13.	Date of buyer's agreement	05.03.2021 [As mentioned in buyer's agreement on page no. 29 of the reply]
14.	Possession clause	<p>7. Possession of the apartment</p> <p><i>7.1 Schedule for possession of the said Unit/ Apartment for Residential purpose - The Promoter agrees and understands that timely delivery of possession of the Unit/ Apartment for Residential along with parking to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement.</i></p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As per page no. 59 of the complaint)</p>
15.	Due date of possession	Not specified
16.	Total Sale Consideration	Rs.15,58,950/-

		(As per clause 1.2 of BBA at page 56 of complaint)
17.	Amount paid	Rs.15,58,950/- (As per account statement on page no. 74 of the complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainants have made the following submissions:

- I. That the complainant received a marketing call from a real estate agent M/s 360 Realtors who represents themselves as an authorized agent of the respondent/promoter and marketed for booking in commercial project namely "Vatika Towers" situated at Golf Course Road, Gurugram. The marketing staff of the respondent claimed that "Vatika Towers" is an A-Grade commercial complex with direct access from NH-08 and the said project falls under the assured return scheme @129.72/- sq. ft. (till offer of possession).
- II. That the complainant booked a commercial unit in Tower C in the said project admeasuring super area 500 sq. ft. on for a total sale consideration of Rs. 41,83,581/- inclusive of @ of Rs. 8,068/- per sq. ft. as basic sale price and the preferential location charges (PLC) charged @ Rs.5.79/- per sq. ft. super area.
- III. That the said commercial unit was booked on 24.04.2015, where the complainant deposited Rs.8,00,000/- to the respondent along with the application for provisional allotment letter and unit no. P-190 was also provisionally allotted to complainant.
- IV. That as per clause 9 of the terms and conditions, the builder buyer agreement had to be signed between the complainant and respondent after the payment of 10% of the total sale consideration, however,

instead of signing builder buyer agreement as per clause 9, the respondent and their agent kept relying upon clause 12 to make the full and final payment. Consequently, for the sake of respondent's market goodwill and reputation, the complainant made balance payment vide cheque bearing no.090163 dated 27.05.2015 in favour of the respondent drawn on ICICI Bank Gurgaon for an amount of Rs.31,83,581/-. Therefore, the complainant has successfully paid total sale consideration of the said commercial unit which amounts to Rs.41,83,581/-.

- V. That the complainant after making payment to respondent, requested many times to enter into builder buyer's agreement, but the respondent did not pay any heed to just and proper request of my client and kept on postponing it on one pretext or other. Since, the complainant was getting the monthly assured return on time, the complainant believed in the assurances given by respondent company and waited for some time for execution of agreement.
- VI. That after making 100% payment towards the total sale consideration, the respondent as per the sum assured return paid Rs.58,374/- per month to the complainant since June 2015 till 10.10.2018.
- VII. That in the month of January 2019, complainant visited the respondent's office and reported the non-receipt of assured return instalments. The respondent through its officials informed that due to some government regulations, they were unable to pay monthly assured return instalment, and the same shall be paid in half yearly instalments thereafter but never fulfilled their commitment.
- VIII. That in July 2019, the complainant again visited the office of the respondent, requesting the respondent and its officials to make instalment payments due and to execute builder buyer's agreement, whereas, the officials of the respondent informed that they were going

- through financial crisis and hence were unable to pay the instalments. They further assured that the project would resume shortly or they could transfer booking into another project if so desired.
- IX. That on 07.02.2020, 28.02.2020 and 25.05.2020, the complainant sent various e-mails to respondent and its agent i.e., 360 Realtors to execute the builder buyer's agreement as per clause 9 but all in vain.
- X. That in June 2020, the after enquiring, it is learnt by complainant that the respondent had not even received the sanction/approval of the project from government. He again visited the office of respondent to clarify the matter, and to his utter shock and surprise, his apprehensions regarding project approval got confirmed and it was confirmed by the respondent that they had not received the sanction to build the said Tower-C in complex and hence were unable to execute agreement.
- XI. That in spite of complainant paying 100% sale consideration in advance, the respondent company had played a fraud upon the complainant and had cheated him fraudulently and dishonestly with a false promise to deliver the possession of the said commercial space as per clause 9 of the application.
- XII. That being aggrieved by the act and conduct of respondent company the complainant on 04.09.2020, filed a complaint against respondent company before S.H.O, P.S, Sector-50, Gurugram and before Commissioner of police, Economic Office Wing on 30.09.2020 bearing no. 13900/CP/2020, thereafter, the respondent company entered into settlement agreement dated 09.12.2020 with complainant, Kiran Sehgal and Radhika Sehgal and allotted the alternate units, wherein the respondent company allotted unit no. 321 @ Rs.3117.90/- sq. ft., unit no. 403 @Rs.3117.90/- sq. ft., each to complainant and Unit No. 525 @ Rs.3117.90/- sq. ft., jointly to complainant and Mrs. Kiran Sehgal

measuring 500 sq. ft., in the project INXT City Centre and further refund excess sale consideration of Rs.1,36,620/- to the complainant and entered into builder buyer agreement dated 09.12.2020. It is pertinent to mention herein that the agreement contained one-sided terms and conditions favouring respondent only. Since the complaints before execution of buyer's agreement had already paid a total amount of Rs.15,58,950/- and therefore, they were trapped into the lies laid by the respondent, left with no option, the complainants had to sign on the dotted line of the agreement.

- XIII. That as per clause 7.1 of the agreement, the respondent had agreed to deliver the possession of the space/unit but had not specified any time period for handing over the possession but refer to clause 18 of the said agreement which provides leasing assistance and nowhere relates to delivery schedules, which clearly shows the malafide intentions of respondent. The respondent had entered into agreement in the month of December 2020, and thus the respondent had to deliver the possession of the shop by December 2023. At this juncture the complainant once again filed a complaint with the Economic Offence Wing, Police Headquarter, Gurgaon and which was registered under no. 23155/CP/2023 dated 17.11.2023 and is pending filing of FIR.
- XIV. That even when after waiting for a span of more than 2 years and making repeated calls to the respondent, there was no intimation of handing over of space, the complainant went through the buyer seller agreement to see the clauses relating to handing over of possession and delayed delivery compensation and was shocked to notice that the agreement was not in accordance with the mandatory provisions of RERA ACT 2016.

XV. That the complainant wants to withdraw from the project. The Promoter has not fulfilled its obligation therefore as per obligations on the promoter under section 11(4), 12, 18 and 19(4), the promoter is obligated to refund the paid amount along with interest at the prescribed rate.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- i. To get a refund of the paid money to the tune of Rs.15,58,950/- along with prescribed interest from the date of payment i.e., 24.04.2015 till date of refund (as per Section 11(4) 12, 18 & 19(4) of the real estate (regulation and development) Act, 2016).
 - ii. To get compensation of Rs.10,00,000/- for mental agony, harassment, discomfort, and undue hardship.
 - iii. To get the litigation cost of Rs.1,00,000/-.
 - iv. The complainants are entitled to get an order in his favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the sale agreement.
10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

11. The respondent has contested the complaint on the following grounds:
- I. That at the outset, it is pertinent to bring into the attention of the Authority that the complainants herein being investors having multiple units in the same project being developed by the respondent. It can be seen that the complainants and their family members have purchased 6 units from the respondent. Thus, the complainants have purchased the units to earn steady monthly returns and are merely investors.

- II. That in the year 2015, the complainants approached the respondent builder looking for opportunities to invest in the commercial units being offered by the respondent. The complainants along with their family members having found the units offered by the respondent to be of best quality and at affordable rates, invested their money by purchasing six units in order to earn profits as at that time the respondent company offered assured return on each of the unit booked till the time of actual handover of the unit and thereafter the complainants expected to earn steady monthly returns as form of rent. The complainants further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- III. That the BBA clearly stipulated provisions for “lease” and admittedly contained a “leasing clause”. In light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants are not “allottees” but investors who have invested the money for making steady monthly returns.
- IV. That till the end of 2018, the respondent builder paid the assured return amount as promised by the respondent. However, in the year 2018, the scheme of assured return was declared and termed as returns on unregulated investment and were declared as illegal as per Securities and Exchange Board of India (SEBI) guidelines and were banned under “The Banning of Unregulated Deposit Schemes Act, 2019”. Therefore, the respondent had no option but to stop making the payments of the assured returns.
- V. That the complainants initially booked the unit with the respondent company in Tower C in the project ‘Vatika Towers’. All the complaints and grievance of the complainants qua their initial booking in the project

was amicably settled with them vide the settlement agreement dated 09.12.2020. The parties agreed that after signing the settlement agreement, the complainants shall raise no grievance with respect to the initial booking and an amount of Rs.1,36,620/- was also refunded to them in terms of the settlement agreement. After having signed and accepted the terms of the settlement with open eyes, the complainants have no right to raise any objection with respect to their initial booking in the project 'Vatika Towers'.

- VI. That after the settlement, a subsequent unit was allotted to the complainants in the project 'Vatika INXT City Centre' and the complainants willingly after perusing the terms and conditions and knowing the status of the project, signed the builder buyer's agreement.
- VII. That after the settlement agreement was signed between the parties, the respondent(s) were committed to complete the development of the project and put the unit on lease with the proposed timelines. 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. As at the time the settlement agreement was signed in January 2021, the whole country was facing the wrath of the covid pandemic. There was shortage of labour all throughout the country. So, no construction was being carried out in that period. Subsequently, upon removal of the Covid-19 restrictions, the respondent again started the construction work. From 2022 onwards, there were a series of orders passed curbing the construction work being done in the Delhi-NCR due to alarming levels of pollution. The construction activities were stopped due to orders and notifications of the Courts and the Government and the respondent(s) were bound to adhere with it.

- VIII. That if the delay occurred due to force majeure reasons is not taken into account, then the construction of the project is within the stipulated time. The construction of the project is complete and only the Occupancy Certificate is awaited which is expected to be received for the whole project in the month of June-July 2025.
- IX. That it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- E. Jurisdiction of the authority:**
13. 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**
- 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**
14. 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) The promoter shall-

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

Section 34-Functions of the Authority:

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

15. 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.

F. Findings on objections raised by the respondent:

F.1 Objection regarding complainants being investors.

16. The respondent took a stand that the complainants are investors and not consumer and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and they have paid a total price of Rs.15,59,950/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and

complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding delay due to force majeure conditions:

18. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the various courts banning the construction for a shorter period of time on account of weather conditions in NCR region. The respondent further raised the contention that other factors like govt. schemes and covid-19 pandemic also contributed in delay in completion of project but all the pleas advanced in this regard are devoid of merit. As the events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact the project being developed by the respondent and are to be considered while fixing the timelines for completion of the project. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

G.I To get a refund of the paid money to the tune of Rs.15,58,950/- along with prescribed interest from the date of payment i.e., 24.04.2015 till date of refund (as per Section 11(4) 12, 18 & 19(4) of the real estate (regulation and development) Act, 2016).

19. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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.-

- (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)

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

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

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

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

21. 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.

22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.01.2026

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

23. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(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—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

24. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(a) of the Act, 2016.

25. In the instant matter, even after lapse of more than 3 years from the date of execution of buyer's agreement till the filing of complaint, the respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.

26. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the

complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.

27. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*
28. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of buyer's agreement i.e., 05.03.2021. Therefore, the due date of handing over of the possession of the unit comes out to be 05.03.2024. However, the counsel for the respondent vide proceedings of the day dated 21.08.2025 stated that as per the possession clause of the buyer's agreement dated 05.03.2021, the possession of the unit was to be offered within 48 months from the date of buyer's agreement i.e., 05.03.2021. Therefore, due date of possession in terms of possession clause at the uppermost limit could be considered as 05.03.2025.
29. The counsel for the respondent further vide proceedings of the day dated 21.08.2025 mentioned that the construction of the project wherein the subject unit is located stands completed but the occupation certificate for the same has not been issued by the competent Authority. Thus, even if we consider 05.03.2025 (which is later date) as due date of possession, the respondent has failed to complete the unit and give possession of the unit till date.

30. Moreover, the authority 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....."

31. 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.

32. 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). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of buyer's agreement or duly completed by the either date mentioned as above. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(a) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount of Rs.15,58,980/- paid by them at the prescribed rate of interest i.e., @ 10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II To get compensation of Rs.10,00,000/- for mental agony, harassment, discomfort, and undue hardship.

G.III To get the litigation cost of Rs.1,00,000/-.

34. The complainants are seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G.IV The complainants are entitled to get an order in his favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the sale agreement.

35. The complainants are seeking refund of the paid-up amount along with the interest. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 32, the above sought relief by the complainants becomes redundant.

H. Directions of the authority:

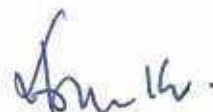
36. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs.15,59,980/- received by him from the complainants-allottee (along with interest on such balance amount 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 the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. 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.

37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

38. Complaints stand disposed of.

39. Files be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026