

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

Complaint no.: 2390 of 2024

Date of decision: 07.04.2026

Rakshit Verma

R/o: - J01202, Adani Oyster Grande, Next to DPS Sector
102, Dwarka Expressway, Dhankot, Gurgaon-122505.

Complainant

Versus

M/s KPDK Buildtech Pvt Ltd.

Office address:- 2nd Floor, a-8, Paryavaran complex, ignou
road, New Delhi-110030.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Ms. Daggur Malhotra (Advocate)

Complainant

Shri Himanshu Singh (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/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 details of sale consideration, the amount paid by the complainant(s), 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 and location of the project	"Newtown Square" at Sector 95-A Gurugram
2.	Nature of the project	Commercial Complex
3.	Project area	3.075 acres
4.	DTCP license no.	98 of 2013 dated 09.11.2013 valid upto 08.11.2019
5.	Name of licensee	Mahender Kumar Gupta
6.	RERA Registered/ not registered	192 of 2017 dated 14.09.2017 valid upto 30.11.2018
7.	Unit no.	SA/606, 6 th floor (page no. 16 of complaint)
8.	Unit area admeasuring (super area)	475 sq. ft. (page no. 33 of complaint)
9.	Date of agreement for sale	17.08.2015 (page no. 32 of complaint)
10.	Possession clause	<p>2. Possession</p> <p><i>2.1 Subject to Force Majeure circumstances, intervention of statutory authorities and Purchaser having timely complied with all its obligations, formalities or documentation, as prescribed by Seller and not being in default under any part hereof and the Agreement, including but not limited to the timely payment of installments of the Total Sale Consideration and other charges as per the payment plan opted, the Seller, proposes to offer possession of the Said Premises to the Purchaser within a period of 36 months from the date of execution of the Agreement ("Commitment Period") subject to : an extension of 6 months grace period: After filing an application for grant of</i></p>

		<p><i>Occupation Certificate (OC), Seller shall not be liable for any delay in grant thereof by the competent authority and such delay shall proportionately extend the Commitment Period. The Seller shall give Notice of possession to the Purchaser with regard to the date of handing over of possession, and in the event the Purchaser fails to accept and take the possession of the said Premises on such date specified in the notice the Purchaser shall be deemed to be custodian of the said Premises from the date indicated in the notice of possession and the said premises shall remain at the risk and gosity of the Purchaser.</i></p> <p><i>(Emphasis Supplied)</i></p>
11.	Due date of possession	17.02.2019 (grace period is allowed)
12.	Date of MoU	14.10.2015 (page 15 of complaint)
13.	Addendum to the MoU dated 14.10.2015	28.09.2020 (page 22 of complaint)
14.	Assured return clause	10. From the date of this MOU till the Receipt of balance Rs. 9,55,938- (Rupees Nine Lac Fifty Five Thousand Nine hundred Thirty Eight only plus service tax payable by second party on demand by first party on completion of building structure, the First Party shall pay to the Purchaser a part Assured Return at the rate of Rs. 19,278- (Rupees Nineteen Thousand Two Hundred Seventy Eight only). From the date of receiving the Balance amount of Rs. 9,55,938/- (Rupees Nine Lac Fifty Five Thousand Nine hundred Thirty Eight only) (payable on completion of building structure) till the date of handover of the units to the designated

		operator, the First Party shall pay to the Second Party an Assured Return of Rs.28,041/- (Rupees Twenty Eight Thousand Forty One only) per month, (hereinafter referred to as the 'Assured Return'). The assured return shall be subject to tax deduction at source, which shall be payable on or before 7th day of every English Calendar month on due basis. The said Assured return shall be paid, via Post Dated Cheques), till such time the possession is handed over to the designated operator and not thereafter.
15.	Total sale consideration	Rs. 41,32,500/-
16.	Amount paid by the complainant	Rs.41,88,668/-
17.	Notice for permissive possession for fitouts	21.10.2019 (page 57 of complaint)
18.	Occupation certificate received on	Not obtained
19.	Offer of possession	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - I. That, the complainant desired to purchase a commercial unit in the project being developed by the respondent as the same was being advertised by it as one of the best commercial spaces. The respondent assured the complainant that it had taken all the necessary permissions and approvals for the project from the competent authorities and would deliver possession of the unit within a period of 36 months from the date of execution of the memorandum of understanding plus 6 months' grace period and further promised lucrative assured returns.
 - II. That, believing the representations made by the respondent, the

- complainant, paid an amount Rs.2,00,000/- for booking to the respondent. That, on 17.08.2015, complainant and respondent entered into a space buyers' agreement. The complainant was allotted a commercial unit bearing number SA/606 on the 6th Floor with a super area of 475 sq. ft. for a total sales consideration of Rs.41,32,500/-. The complainant duly paid the balance amount and subsequently MoU dated 14.10.2015 was executed by the respondent in the favour of the complainant by way of which it was informed to the complainant that the respondent had obtained statutory approval vide license no.98 of 2013 by DTCP Haryana for the construction of the project.
- III. That, it was further assured by the respondent that the complainant, from the execution of MoU till the receipt of the balance payment, will be eligible for an assured return of Rs.19,278/- per month and an assured return of Rs.28,041/-per month from the date of payment of balance on completion of building structure till the date of handover of the unit to the operator.
- IV. That, the complainant was also assured that the possession would be handed over to the operator as per the agreed terms and the complainant will be eligible for an assured return of Rs.28,678/- for 12 months from the date of commencement of operations and thereafter the complainant was to get 45% of the room rent as generated by the operator. That, an addendum dated 28.12.2020 to the MoU was entered between the parties which only modified the terms of assured returns and no other term between the parties.
- V. That, as per MoU, Clause 7, the respondent undertook to completion construction and handover possession/permissive possession of the unit by 14.10.2019 inclusive of grace period.
- VI. That on 21.10.2019 respondent issued a so-called unlawful "notice of

permissive possession " along with a statement of account in order to claim the final payment for fit out works in the unit. The complainant, believing said representations and statements of the respondent, duly paid Rs.7,37,071/- to the respondent. That, post receipt of the same, the respondent started to falter in making assured return payments to the complainant and further failed to deliver actual possession to the operator as promised to the complainant. The total sum of assured returns received by the complainant till date is Rs. 10,49,441/-.

- VII. Later, the complainant was shocked to learn that the respondent did not have any occupation certificate for the 6th floor of the project i.e., the for the floor of the complainant's unit. occupation certificate being relied upon by the respondent was dated 04.08.2020 and was received only for Ground to 5th floor and not for the unit of the complainant. The same further points at the fact the respondent never had the right to offer any possession/permissive possession to the complainant in the year 2019 as the respondent had never received the occupation certificate for the same. Therefore, the respondent under false representations, took the last instalment of Rs.7,37,071/- from the complainant.
- VIII. That, under the false guise and sheer misrepresentations, the respondent had extorted a total sum of Rs.41,88,668/- from the complainant till date.
- IX. That, on account of lack of any occupation certificate for the unit/floor of the complainant, the respondent is even after a delay of approx. 5 years from the promised due date of delivery, failed to handover the possession of the unit i.e., by 14.10.2019 and fraudulent offer of possession in 2019 based on defective OC is invalid in the eyes of Law. That, the complainant cannot be made to wait indefinitely for the completion of construction and handover of the unit. That, the respondent has time and again misled the

complainants into believing that the construction of the project was on track and that it had the requisite permissions/certificate to handover possession. On account of all of the above-mentioned reasons, the complainant seeks refund of the entire amount paid by the complainant to the respondents with interest from each date of payment.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 1. Direct the respondent to refund the entire amount paid by the complainant along with interest.

D. Reply filed by the respondent

5. That in 2015, the respondent started its operations under the name Newtown Square at Sector 95 A, Gurugram, Haryana (hereinafter referred to as "**the said Project**"). The said Project is a mixed - use commercial project in Gurugram, which is located at Sector 95 A, Gurugram, Haryana and is spread over a land area of 3.08 acres. The said Project is well equipped with all the amenities like power back-up, elevators, escalators, security, ample multi-level parking space, water storage etc.
6. The said project in Gurugram offers a wide category, ranging from commercial spaces, food courts, F&B areas, Hotel apartments, all within an approved commercial project space. The said project has a commensurate space to define every business type. Accompanied with world-class facilities that match the lavishness of the properties, the said project is a commercial space built to be the best in class making it the best option amongst the new commercial projects in Gurugram.
7. That the respondent had applied for the occupancy certificate for the said project on 27.09.2019 with the Department of Town and City Planning,

Haryana which was conditionally approved by the Department on 27.05.2020. It is submitted that the final occupancy certificate for the said project was received on **04.08.2020**.

8. Brief facts leading to the filing of the present Complaint are recapitulated hereunder:

- a. In 2015, Mr. Rakshit Verma applied for booking a commercial unit in the said project which was subsequently approved by the Respondent and Shop unit no. SA/606 admeasuring 475 Sq Feet on the Sixth Floor ("**Impugned shop**") of the said project was allotted to Mr. Rakshit Verma vide space buyer agreement executed between the parties dated 17.08.2015.
- b. Thereafter, a Memorandum of Understanding dated 14.10.2015 ("**MOU**") was executed between the respondent and Mr. Rakshit Verma with respect to the Impugned shop.
- c. That the respondent offered permissive possession of the impugned shop to the complainant after making application of Occupancy Certificate vide letter dated 21.10.2019 and thereafter affidavit cum undertaking for permissive possession was submitted by the complainant.
- d. In accordance with Clause 10(a) of the Memorandum of Understanding (MOU) dated 14th October 2015, executed between the complainant and the respondent, the respondent initially paid an assured return of Rs. 19,279/- per month to the complainant. Upon receiving the balance payment until the date of handover of the units to the designated operator, the assured return was revised to Rs.28,041/- per month. Additionally, the same clause specifies that

the Minimum Guarantee (MG) for the first year of operation, upon handover of possession to the designated operator, is Rs. 28,678/- per month. This amount was duly paid by the respondent to the complainant from 21st November 2019 to 20th November 2020.

- e. It is submitted that a sub-license agreement was entered into between KPDK Buildtech Pvt. Ltd. and Sorel Hospitality Pvt. Ltd. on 4th July 2016 concerning Best Western International, a lodging industry service provider, for operating at Newtown Square Commercial Complex, Sector 95A, Hayatpur Village, Pataudi Road, Gurgaon, Haryana - 122505. Subsequently, on 28th December 2020, the complainant and the respondent entered into an addendum, wherein the complainant acknowledged that the respondent had paid returns up to 31st March 2020, as per Clause 10 of the MOU dated 14th October 2015, and had received the Minimum Guarantee (MG) until November 2021, which was reflected in its account.
- f. It is further submitted that the sub-license agreement between KPDK Buildtech Pvt. Ltd. and Sorel Hospitality Pvt. Ltd. was terminated and they issued an NOC on 3rd March 2023.
- g. The MOU dated 14th October 2015 explicitly states that in the event of suspension of operations by the operator or termination of the contract with the operator, the respondent shall make every effort to identify and contract with a new operator. Until such time, for a period of up to six months, the fixed return payable to the complainant shall remain suspended and shall only recommence once the new operator starts operations.

9. It is pertinent to mention that owing to the worldwide pandemic situation due to the outbreak of novel Covid - 19 virus, the respondent was forced to apply moratorium on the Return of Investment and accordingly two options were provided to Mr. Rakshit Verma and other similarly placed purchasers on the sixth floor. Subsequently, an addendum to MOU dated 28.12.2020 was executed between the Answering Respondent and Mr. Rakshit Verma, where the complainant gave his verbal approval/acceptance dated 07.07.2020 and opted for the Second option which is as follows -

“(Option B) - 12 months moratorium w.e.f Apr 20 to Mar 21. The returns will start w.e.f Apr 21 for period remaining in terms of the MOU”

10. It is submitted that the said project is nearing its final stages, with almost 90% of the work complete and operational. That the project in itself is a testament to the dedication and hard work of the answering respondent. It is pertinent to mention that that by the end of October, all necessary Occupancy Certificates (OC) and Completion Certificates (CC) will be fully obtained.
11. That the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent Developer. Further, Developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related

to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed in the paraforesaid continued, despite which all efforts were made, and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That despite the aforementioned circumstances, the complainant developer is aiming to complete the construction of the project diligently and timely and almost 90% of the said project has been made operational, without imposing any cost implications of the aforementioned circumstances on the allottee.

12. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'NEW TOWNSQUARE' project of the Respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work

in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

13. All other averments made in the complaint were denied in toto.
14. 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

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

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11

.....

(4) 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;

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

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
- F. Objection regarding force majeure conditions:**
13. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 17.08.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 17.02.2019. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than four years. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent-builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.
14. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I)*

(Comm.) no. 88/2020 and I.As 3696-3697/2020 dated 29.05.2020 which has observed that-

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

15. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 17.02.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the amount paid by the complainant along with interest.

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

(b) *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

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

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

16. Clause 10 of the agreement provides for handing over of possession and is reproduced below:

"2. SCHEDULE FOR POSSESSION OF THE SAID PREMISES:

*Subject to Force Majeure circumstances, intervention of statutory authorities and Purchaser having timely complied with all its obligations, formalities or documentation, as prescribed by Seller and not being in default under any part hereof and the Agreement, including but not limited to the timely payment of installments of the Total Sale Consideration and other charges as per the payment plan opted, the Seller, proposes to offer possession of the Said Premises to the Purchaser **within a period of 36 months from the date of execution of the Agreement ("Commitment Period") subject to : an extension of 6 months grace period:** After filing an application for grant of Occupation Certificate (OC), Seller shall not be liable for any delay in grant thereof by the competent authority and such delay shall proportionately extend the Commitment Period. The Seller shall give Notice of possession to the Purchaser with regard to the date of handing over of possession, and in the event the Purchaser fails to accept and take the possession of the said Premises on such date specified in the notice the Purchaser shall be deemed to be custodian of the said Premises from the date indicated in the notice of possession and the said premises shall remain at the risk and gosity of the Purchase.*

[Emphasis supplied]

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the

complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. **Admissibility of refund along with prescribed rate of interest:** The allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

19. 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.
20. 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., 07.04.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
21. The definition of term 'interest' as defined under section 2(za) 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;"*
22. On consideration of the documents available on record and submissions made by the complainant regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2 of the agreement dated 17.08.2015, the possession of the subject apartment was to be delivered

within a period of 36 months from the date of execution of the Agreement ("Commitment Period") subject to: an extension of 6 months grace period. The due date is calculated 36 months along with 6 months of grace period from date of the agreement dated 17.08.2015. Accordingly, the due date of possession is 17.02.2019.

23. It is pertinent to mention over here that even after a passage of more than 6 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
24. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he 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....."

25. Further, 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."

26. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is 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 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.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents

is established. As such, the complainant is entitled to refund of the entire amount 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*. The amount paid on account of assured return may be adjusted from the refundable amount and shall return the balance amount to the complainant.

H. Directions of the authority

28. 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 paid by the complainant received by it 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 the actual realization of the amount. The amount paid on account of assured return may be adjusted from the refundable amount and shall return the balance amount to the complainant.
 - 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 builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject

unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.

29. The complaint stands disposed of.
30. File be consigned to registry.

Dated: 07.04.2026



(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM