HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2933 of 2022**
Date of filing:	**04.11.2022**
Date of first hearing:	**17.01.2023**
Date of decision:	**06.12.2023**

1. Sajal Gupta HUF through Karta Mr. Sajal Gupta
2. Ashwati Gupta D/o Sh. Sajal Gupta

Both R/o House No. T-13, Green Park Extension
New Delhi-110016

....COMPLAINANT(S)

VERSUS

Vatika Limited.
Unit no. A-002, INXT City Centre,
Ground floor, Block-A, Sector-83,
Vatika India Next, Gurugram-122012

....RESPONDENT(S)

Complaint no.:	**81 of 2023**
Date of filing:	**10.01.2023**
Date of first hearing:	**02.03.2023**
Date of decision:	**06.12.2023**

Pooja Singh W/o Sh. Amit Sinha
R/o House No. C-401, IVY Apartments, Sushant Lok-I
Block A , Gurugram-122002

....COMPLAINANT(S)

VERSUS

Vatika Limited.
Unit no. A-002, INXT City Centre,
Ground floor, Block-A, Sector-83,
Vatika India Next, Gurugram-122012 ....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
Nadim Akhtar **Member**

Present: - Mr. Amitabh Narayan, Counsel for the complainants through VC
Ms. Vertika H.Singh, Counsel for the respondent

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaints no. 2933/2022 and 81/2023 were filed on 04.11.2022 and 02.03.2023 respectively by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Both of captioned complaints are taken up together for hearing as they involves same issues pertaining to same project and against one respondent only-Vatika Limited. This order is passed taking complaint

no. 2933/2022-Sajal Gupta HUF & Ashwati Gupta vs Vatika Ltd as lead case.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	C-718
5	Unit area	500 sq. ft.
6.	Date of allotment	07.05.2017
7.	Date of builder buyer agreement	18.03.2020
8.	Due date of offer of possession	Not available.
9.	Possession clause	Not available.
10.	Total sale consideration	₹ 27,50,000/-
11.	Amount paid by complainants	₹ 28,73,750/-
12.	Offer of possession	No offer.
13.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Complainants booked a commercial unit bearing no. 718, measuring 500 sq. ft. on 7th floor, Tower C of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by respondent at agreed sale consideration of ₹ 27,50,000/- on 26.04.2017. Allotment of the unit was made on 07.05.2017, copy of allotment letter is annexed at page 19 of the complaint. Complainants paid amount of ₹28,73,750/-, copy of cheques issued in favour of respondent have been placed at Annexure-B, page nos.22-23 of the complaint file. Thereafter, as stated in complaint the respondent issued a letter dated 11.11.2019 informing the conplainants that the unit has been changed from C-718, 7th floor, Tower-C to unit no. D-436, 4th floor in Tower-D. No further information was provided by respondent, however, said letter was not acted upon and was abandoned/waived by the parties. Further, builder-buyer agreement was executed between the parties on 18.03.2020 for allotted unit no. C-718. signed by the complainants and was given to respondent for signing.

4. That respondent had promised to complete the project up to 31.12.2017. But respondent had failed to complete project and hand over possession of the unit up to 31.12.2017. Complainants allege that respondent paid assured return @ ₹77 per sq. ft. till 30th September, 2018, but suddenly stopped making payment thereafter. Further, it is stated that the possession

of the unit has not been offered and the project is not ready for occupation which is borne out from the documents submitted by the respondent before Authority in the year 2021.

5. The complainants have discovered that conveyance deed of the unit in question cannot be executed in favour of complainants for the reason that respondent company has time and again mortgaged the unfinished project namely Vatika Mindscapes at Tower-C to various banks and financial institution. Details of said mortgage has been provided as Annexure H to complaint. Due to inability of the respondent promoter to complete the project in time and deliver actual physical possession of the unit to the complainants, present complaint has been filed seeking refund of the entire paid amount along with interest and compensation @₹77/- per sq. ft. @₹38,500/- per month from 01.10.2018 till date.

C. RELIEF SOUGHT

6. Complainants in their complaint have sought following relief:

a. To direct the respondent to refund the sum of ₹28,73,750/- deposited with the respondent along with interest @24% per annum.

b. To direct the respondent to pay compensation @₹77/- sq. ft. @₹38,500/- per month from 01.10.2018 till date.

c. To pay a penalty at the rate of 5% of the estimated cost of the real estate project in terms of Section 61 read with Section 11(4)(h) of the RERA Act for each of the mortgages and charges created on the entire unfinished project.

d. To award compensation in favour of complainant under section 72 of the RERA Act for mental agony and harassment caused to the complainant to the tune of ₹30,00,000/-.

e. Respondent be directed to pay a penalty at the rate of 10% of the estimated cost of the real estate project for failing to extend the registration of the project under the RERA Act.

f. Cost of the complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 17.07.2023 pleading therein:

7. That present complaint is not maintainable for the reason that Authority does not have jurisdiction to decide the complaint pertaining to unregistered project- 'Vatika Mindscape'in the light of judgement dated 11.11.2021 of Hon'ble Supreme Court in the case titled as M/s Newtech Promoters and Developers Pvt Ltd vs State of UP and others in Civil Appeal no. 6745-6749 of 2021 whereby Hon'ble Supreme Court has clearly held that no complaint under Section 31 of the Act filed against any unregistered project shall be entertained as the applicability of the Act is retroactive in

character and thus the provision of the Act would not apply to projects already completed or regarding with completion certificate has been garnted. It is to mention here that the Block B of the said project was already complete in March,2015 i.e. before the commencement of RERA Act,2016. Occupation certificate for said Block B was also issued on 14.10.2016.

8. That the agreement between the complainants and Vatika Ltd. was in form of investment agreement and the complainants had made investment in the project of the respondent by purchasing a unit for speculative gains and not for getting possession of unit which is evident from clause 3 of allotment letter. Therefore, there does not exist relation of allotees and promoter between the parties as complainants herein are not allottees but mere investors.

9. That the commercial unit of the complainants is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, the said commercial space shall be deemed to be legally possessed by the complainants as per the agreement.

10. That agreement for sale was executed between the parties on 18.03.2020 which was also duly registered vide serial no. 9701 dated 18.03.2020. Vide said agreement for sale, there is no commitment or liability on the part of respondent to pay the assured returns.

11. That the construction of the building/project in question is complete and the complainants was duly informed about it. Complainants had invested their money in an assured return schemes of the respondent and in compliance of said arrangement between the parties, the respondent has already paid each and every penny of assured returns amounting to Rs 3,77,208.33/- till September, 2018. However, assured returns cannot be further paid to complainant due to prevailing laws for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.

12. Further, Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" took the cognizance in respect of banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till next date of hearing. Said matter is listed before the Hon'ble High Court for 17.05.2023. That once Hon'ble High Court has

taken cognizance and State of Haryana has notified the appointment of competent Authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely BUDS Act, 2019.

13. Respondent has further taken a plea that complainants are speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainants cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bharti Knitting vs DHL by Hon'ble Apex Court.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

14. Learned counsel for complainants has submitted that possession of the booked unit was to be handed over by 31.12.2017, however, till date project is not complete. Occupation certificate has not been issued by competent authority with respect to tower in question i.e. tower C. Since project-Vatika Mindscape has been mortgaged time and again with banks and financial institutions by the respondent, conveyance deed cannot be executed. Without prejudice to interest of the complainants, it is averred that complainants are

not desirous of waiting endlessly for a valid possession of unit and are therefore, praying for relief of refund of paid amount along with interest.

15. At the outset, learned counsel for complainants stated that complainants do not want to continue with the project and as such they are pressing for relief of refund of the paid amount along with interest and they want to forgo relief of assured returns and imposition of penalty upon respondent as specified in clause b,c and e of relief clause respectively.

16. Learned counsel for respondent argued that as the complainants are an investors in the project of respondent, relation of complainants and respondent are based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of investment/lease agreement wherein the complainants were to receive monthly assured returns till offer of possession of unit and after offer of possession, respondent was obligated to lease out said unit for rental income to complainants. As a matter of fact, the complainants were paid assured returns till September,2018. It is only after the enactment of BUDS Act,2019 the scheme of assured returns became infructuous. Further, she stated that as builder buyer agreement dated 18.03.2020 the respondent was not even under obligation to pay assured returns as no clause is provided for assured returns in it except clause 2 and 3 of allotment letter dated 07.05.2017 which deals with the leasing arrangement with the complainants. So, the respondent

is not obligated to comply with assured return scheme under the buildr buyer agreement. Further, in the present case, no date for handing over of possession has been defined in the said allotment letter as well as in builder buyer agreement and it is because of the fact that the complainants have invested for monetary gains- assured returns so there is no loss being caused to complainants even if possession is not handed over within reasonable time as respondent has duly paid assured return to complainants since September,2018. Therefore, complainants are not aggrieved of any default on part of respondent. She further stated that the conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority.

17. Further, she stated in respect of handing over of possession, no clause in particular to this effect has been incorporated in the allotment letter and builder buyer agreement. Complainants by accepting monthly assured returns upto September, 2018 has enriched themselves with monetary gains on their invested/paid amount which was the essence of their purchase of commercial unit in question. Here the complainants are not the one who

booked the unit for their personal residence it was only for the purpose of monetary gains which respondent has duly paid to them.

F. ISSUES FOR ADJUDICATION:

i. Whether complainants are entitled to refund of the paid amount along with interest?

G. OBSERVATIONS OF THE AUTHORITY:

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that the respondent has taken certain objections w.r.t the maintainability of complaint. Findings/ observations of Authority w.r.t maintainability issues are as follows:

i. The respondent has taken a stand that the complainants are speculative buyers who have invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainants are an aggrieved persons who have filed a complaint under Section 31 of the RERA Act, 2016 against

the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:
(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;

ii. In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 07.05.2017 and builder buyer agreement dated 18.03.2020, it is clear that complainants are an "allottee" as unit bearing no. C-718 in the real estate project "Vatika Mindscape", Faridabad was allotted to them by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose.

The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

iii. Respondent has also taken an objection that complainants had applied for allotment of a unit in respondent's project as an investor for steady rental income not as an allottee for delivery of possession of booked unit. In support of said objection, clause 3 of allotment letter and clause 18 of the builder buyer agreement has been referred which is reproduced below for reference:-

> *"3.That you have intended to purchase the said unit with leasing arrangement and in terms of builder buyer agreement, the company shall be authorised to put the said unit on lease for and on your behalf as and when the said unit is ready and fit for occupation."*

> *"18. The allottee hereby specifically authorizes the promoter or its nominated subsidiary to have the authority to negotiate and finalize the leasing in respect of the said commercial space/unit, individually or in combination with other adjoining commercial spaces/units with any suitable tenants, at the prevailing market rates and conditions as may be negotiated by the promoter or its nominated subsidiary as the case may be and o execute the lease with the said intending lease in its own name or on behalf of the allotee, for which the allottee has vested the promoter or its*

nominated subsidiary with all the powers and rights as under the sign by the allotee and which shall not be questioned by the allotee subsequently."

It is pertinent to mention here that above referred clause was subject to condition when 'project is ready for possession' and that stage of possession has not been reached by respondent as occupation certificate for the tower C has not yet been received from the competent authority. Further, the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that the allotee gets a perfect title in the property, however, it is a matter of fact that the title was never perfected as no conveyance deed has been executed. That this stage of delegating/respondent's right to lease out property/unit does not arise. Thus, there is no doubt regarding the fact that complainants are only an allotee not an investor for steady rental income.

iv. Further, respondent has raised an objection that the project in which the complainants are seeking relief is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. It is pertinent to mention here that the project in which the unit in question is situated is registered with the Authority vide Registration no. 196 of 2017 dated 15.09.2017. Moreover, the issue

that whether this Authority has jurisdiction to entertain the complaint if the project is not registered with the Authority has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd**. Relevant part of said order is being reproduced below:

"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."

v. Another set of objection raised by the respondent is that the Authority lacks the jurisdiction to adjudicate and grant the relief of refund under section-18 of the RERA, Act 2016 as the same may only be granted by the Adjudicating officer of the Authority. In this regard the Authority has no hitch in proceeding with the complaint and to grant the relief of refund in the present complaint in view of the judgment passed by the Hon'ble Apex Court in "**Newtech Promoters and Developers Pvt. Ltd versus State of UP and Ors." 2021-2022 (1) RCR (C) 357** and followed in the case of "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others" dated 13.01.2022 in CWP bearing number 6688 of 2021** wherein it has been laid down as under:

> *" 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest*

on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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

vi. On merits, the Authority observes that both parties does not dispute the fact that complainants had purchased the booking rights qua the unit in question in the project of the respondent in the year 2017 by making payment of total sale consideration amounting to ₹ 28,73,750/-. Thereafter, allotment letter for Unit

no. C-718, 500 sq ft was issued to complainants on 07.05.2017. Further, builder buyer agreement got executed between the parties on 18.03.2020. However, in said agreement there is no specific clause pertaining to deemed date of possession. Therefore, it can be safely presumed that no timeline was fixed by respondent for handing over possession of booked commercial unit.

vii. Authority observes in absence of specific clause of deemed date of possession in builder buyer agreement as well as in allotment letter, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainants. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Real Estate Appellate Tribunal has referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was allotted to the complainants on 07.05.2017 and builder buyer agreement was executed on 18.03.2020. Accordingly, taking a period of 3 years from the date of agreement, i.e, 18.03.2020 as a reasonable time to complete development works in the project and

handover possession to the allottee, the deemed date of possession comes to 18.03.2023.

viii. Respondent in its reply has claimed that no loss of any kind has been caused to complainants due to non-handing over of possession of unit till date as no date was ever specified for handing over possession of unit in allotment letter. Complainants have duly accepted such type of allotment letter and builder buyer agreement for the reason that complainants have invested their money for monetary gains which in this case is assured returns. Said returns were duly paid to complainants till September,2018 and was stopped thereafter due to enactment of BUDS Act,2019. So, plea of respondent is that the complainants are not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainants have purchased a showroom space commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by respondent on the total sale consideration amount paid by complainants in one-go. Assured returns were paid till September,2018 but stopped thereafter due to enactment of BUDS

Act,2019. Complainants have filed the complaint in year 2022 for seeking refund and assured returns i.e. after 4 years of non-payment of assured returns. Complainants herein are aggrieved of arbitrary acts of respondent ;first in not handing over possession of the unit till date and secondly stopping the payments of assured returns. Every allotee has presumption that a specific date for handing over of possession will be specified in builder buyer agreement but in this case respondent has not bothered to incorporate any clause for handing over of possession and rather accepted money only on the basis of assurances of leasing arrangement/assistance. Complainants who have already paid whole of total sale consideration in year 2017 got stuck with respondent without any definite timelines of delivery of possession w.r.t. unit booked. If we look at the intent of allotee-complainants, they have chosen to invest in a tangible property-showroom space in an commercial project developed under a license issued by DTCP and Haryana Development and regulation of Urban Areas Act,1975, not in any open share market where there is no definite/precise mode of transaction to be carried out. Investment in commercial property does not imply that complainants-allottees never ever wanted to own that property by perfecting the title in their name. Said transaction cannot be said

to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit. Furthermore, the reason that complainants are now exiting out from the project is that there exists no scope of a valid offer of possession and execution of conveyance deed even in near future due to various mortgages created by respondent. Complainants rightly are under apprehension that their title of property will never be perfected. Respondent's act of not paying assured returns is not the sole reason for withdrawing out of the project. Respondent even today has clearly highlighted that possession of unit cannot be given to complainants as there is no clause of possession, on the other hand, refund of paid amount with interest also should not be awarded to complainants as unit was only meant for monetary gain-assured returns and for reason that there is no clause for withdrawing out of project. Further, any delay in delivery of possession is not a fault of respondent. Hence, the complainants are not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERA Act,2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong(by not delivery possession of unit till date). By virtue of Section 18 of RERA

Act,2016, the respondent is obligated to refund the paid amount with interest to the allotee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainants are seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post year 2022 the prices in real estate market is seeing a upward slide. So, this contention of respondent does not hold any merit.

ix. With regard to plea of respondent that complainants with their consent had duly accepted builder buyer agreement which does not have specific clause for delivery of possession. So, respondent is not duty bound to deliver actual physical possession of unit to complainant, the Authority observes that it was never the intent of the complainants-allotees to not to get the ownership of the property in their name. To substantiate it, clause 12 of the Builder buyer agreement has been referred which is reproduced below for reference:-

12. The promoter on receipt of total price and applicable taxes of commercial space/unit and GST as mentioned under Schedule C for commercial space/unit and Rs 75,000/- as admnistartive charges and other ancillary charges, shall execute a conveyance deed preferably within 3 months but not later than six month from possession and convey the title of the unit for which possession is granted to the allotee as agreed between the parties subject to clause 18 of this agreement and subsequent lease agreement."

In light of aforesaid clause, the respondent was duty bound to execute the conveyance deed of unit after receipt of total sale price. Herein, total price stands paid in year 2017 i.e. prior to execution of builder buyer agreement dated 18.03.2020 but no letter in respect of handing over of possession or for getting the execution of conveyance deed was written by respondent to complainants-allotees. Conveying of title of the unit was obligation cast upon the respondent and respondent failed to fulfil it without any justification for it. Looked from another perspective, even if complainants had accepted agreement with no clause of deemed date of possession but in the same agreement complainants had agreed upon execution of conveyance deed which has not been done so in this case due to fault of respondent. Even as on date, respondent is not in a position to deliver possession of unit with perfect title due to several mortgages with banks and non-receipt of occupation certificate.

x. It is to mention here that the complainants are insisting upon refund only for the reason that though the construction of the unit is almost complete but occupation certificate has not yet been received and further the legal and valid title of the property is not possible as conveyance deed of the unit would not be executed

because of the several mortgages of project by the respondent to banks and financial institution. So, there is no hope of getting a valid offer of possession and legal title of unit with the complainants even in near future. Therefore, Authority cannot keep the complainants waiting endlessly for possession or perfection of title. Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of ibid judgement is reproduced below:

> "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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

xi. In view of aforesaid observations, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

xii. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(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;*

xiii. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

xiv. Consequently, as per website of the state Bank of India i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 06.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

xv. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

xvi. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 28,73,750/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the

actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order as per detail given in the table below:

Complaint no. 2933/2022

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 06.12.2023
1.	1,00,000	26.04.2017	71156
2.	14,36,875	26.04.2017	1022425
3.	13,36,875	26.04.2017	951269
4.	Total=28,73,750/-		Total= 20,44,850/-
5.	Total Payable to complainant	2873750+ 2044850 =	49,18,600/-

Complaint no. 81/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 06.12.2023
1.	1,00,000	07.08.2014	100402
2.	50,000	12.08.2014	14564
3.	38,71,588	23.08.2014	1115176
4.	Total=40,21,588/-		Total= 12,30,142/-
5.	Total Payable to complainant	4021588+ 1230142=	52,51,730/-

xvii. Regarding relief of assured return, it is observed that since complainants wants to withdraw from the project and wants paid money to be refunded back along with interest, thus as per section 18, where the complainant demands refund of amount, promoter is liable to refund the same alongwith interest. In cases of the withdrawal from the project the complainant is not entitled to

other benefits such as assured returns attached thereto, they can only be allowed either refund along with interest. With respect to relief clause no. c and e, learned counsel for complainants has limited his prayer regarding relief of refund by giving up relief of imposition of penalty under Section 61 of RERA Act, 2016 upon respondent. Therefore, relief of imposition of penalty is hereby vacated.

xviii. The complainants are seeking compensation on account of mental agony and harassment. It is observed that Hon'ble Supreme Court of lndia in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

19. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹ 49,18,600/- to the complainants in equal share after deducting paid amount of assured return of Rs 3,77,208.33/- in complaint no. 2933/2022 and Rs 52,51,730/- to the complainant after deducting paid amount of assured return of Rs 19,55,062.03/- in complaint no. 81/2023.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

20. **Disposed of**. File be consigned to record room after uploading of order on the website of the Authority.

.....
NADIM AKHTAR
[MEMBER]

.....
DR. GEETA RATHEE SINGH
[MEMBER]