

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

Complaint no. :	102/2020
Date of filing complaint:	23.01.2020
First date of hearing:	24.02.2020
Date of decision :	04.07.2022

1. Mr. Shakti Singh 2. Mr. Pushpender Singh <b>both R/o:</b> Rajan Complex, Above Axis Bank, Near Bus Stand, Jhajjar, (Haryana)	<b>Complainants</b>
Versus	
M/s Capital Heights Pvt. Ltd <b>R/o:</b> Veritas Building, 4 <sup>th</sup> Floor, Golf Course Road, Sector 53, Gurugram-122002	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Prachi Darji (Advocate)	Complainants
Ms. Neelam Gupta (Advocate)	Respondent

**ORDER**

- 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 29 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 provisions of



the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S.No.	Heads	Information
1.	Project name and location	Residences 360, Sector 70
2.	Project area	27.7163 acres
3.	Nature of the project	Group Housing
4.	DTCP License	16 of 2009 dated 29.05.2009 valid up to 28.05.2024
5.	Name of the licensee	Vibhore home developers pvt. Ltd and 6 others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	CR-02/02 02 at Residences 360, Sector 70 A, Gurgaon (Page no. 3 of complaint)
8.	Unit measuring (carpet area)	1900 sq. ft. (Page no. 7 of complaint)
9.	Date of Provisional allotment letter	06.05.2013 (Annexure P/1 at Page 7 of the complaint)
10.	Date of execution of builder buyer agreement	Not Executed
11.	Possession clause	BBA was not executed. Hence due date for possession can't be ascertained. But there is an unsigned flat buyer agreement with regard to subject unit and wherein





		as per clause 6, the possession of the allotted unit was to be offered within a period of 42 months from the date of commencement of construction of the project hereof. As per demand letter dated 25.06.2016, the date of excavation is mentioned as 07.08.2014 and from which the due date of possession is counted by adding 42 months.
12.	Due date of possession	07.02.2018 (Calculated from the date excavation as 07.08.2014)
13.	Total sale consideration	Rs.11,32,21,00/- (As per page no. 7 of allotment letter)
14.	Total amount paid by the complainants	(The complainants have contended that they have paid an amount of Rs. 80,83,669 at page no. 4 of the complaint and at demand letter page 12 annexure P/2 but as per the statement of account filed by the respondent the amount received from the complainant is Rs. 77,28,405)
15.	Occupation Certificate	Not received
16.	Offer of possession	Not offered
17.	Grace Period	Allowed

**B. Facts of the complaint:**

3. That on 06.07.2012, the complainants booked two flats bearing number CR 02/0401 in the name of Shakti Singh and CR-02/0402 in the name of / Pushpender Singh admeasuring 1900 sq. ft. each in the project known as Residences 360, Sector 70 A, Gurgaon, being developed by the respondent and paid some amount





towards booking of those units. A provisional allotment letter dated 06.05.2013 was issued in this regard.

4. That no buyer's agreement was executed with regard to the allotted units between the parties. When the complainants insisted on execution of buyer's agreement, the respondent threatened to cancel the units. So, in this way they continued to pay towards the allotted units.
5. That on 15.06.2016 vide annexure P/3, the complainants requested the respondent for cancellation of allotment of unit no. 02/0401 and transferring its amount in the account of another unit bearing no. 02/0402 allotted in the name of Pushpender Singh complainant and the same was done. So, in this way, Shakti Singh complainant became a co allottee of unit no. 02/0402.
6. That the complainants were allotted the subject unit on re-allocation on the same terms and conditions as were that of earlier units vide annexure P/5. The complainants have paid a total sum of Rs.80,83,669/- upto 25.06.2016
7. It is further the case of complainants that this despite a number of reminders, the respondent failed to execute a Builder Buyer's Agreement. However, the possession of the allotted unit was to be offered within a period of 42 months as per clause 6 of unsigned BBA. The excavation for the project commenced on 07.08.2014. Hence, the due date for completion of the project is counted from that date and which comes to 07.02.2018.
8. That since the construction of the project was not going upto mark, so the complainants did not pay the amount after 25.06.2016. Despite lapse of due date, for possession, the

respondent failed to complete the project and offer possession of the allotted unit, leading to filing this complaint seeking refund of the deposited amount.

**C. Relief sought by the complainants:**

9. The complainants have sought the following relief(s):
  - i. Direct the respondent to refund the amount of Rs. 80,83,669/- along with interest.
  - ii. Direct the respondent to pay an amount of Rs. 20,00,000/- as compensation on account of physical harassment and mental agony caused to the complainants.

**D. Reply by respondent:**

The respondent-builder by way of written reply made the following submissions:

10. The complainants came to the officials of the respondent for booking of two units in one its most coveted projects. The complainants submitted the application form and paid the booking amount accordingly. That at the time of signing the application form, the respondent officials clarified and explained in detail all the terms and conditions of the application form. A copy of the application form was provided to the complainants and after fully understanding and agreeing to the terms & conditions of the application form, they made the booking.
11. That it is further submitted that on one hand the complainants are relying on particular clauses of the provisional allotment letter and on the other hand, they are submitting that the terms of provisional allotment letter are illegal and amount to unfair trade



practices. It is pertinent to mention herein that the complainants cannot be allowed to refer to the allotment letter as per their own convenience nor should be they allowed to rely upon certain terms and clauses of the provisional allotment letter and deny its other terms and clauses which they themselves, with free will, have signed. The indecisive and preferential reading of the agreement and the complainants actual intention of procuring the suit property as an investment is writ large from the bare perusal of the complaint.

12. It is pertinent to mention here that complainants have not disclosed about the fact that despite of the several reminders sent by the respondent company to the complainants to clear the dues timely, they being regular defaulters were not able to clear the outstanding dues in respect of the units booked by them. Moreover, vide letter dated 25.08.2015, both the complainants requested to the respondent to transfer the funds of unit no. CR-02/0401 which was in the name of Mr. Shakti Singh being the original allottee amounting to Rs 33,77,600/- to the unit no. CR-02/0402 which is in the name of Mr. Pushpender Singh. An affidavit and undertaking dated 11.09.2015 were executed by the complainants in this regard.
13. The complainants have also concealed about the fact that prior to requesting for the transfer of funds, Mr. Shakti Singh, allottee of unit no. CR-02/0401 was liable to pay a sum of Rs 47,06,069/- excluding interest to be paid on delayed payments and Mr. Pushpender Singh allottee of unit no. CR-02/0402 was liable to pay a sum of Rs 48,68,239/- excluding interest to be paid on delayed payments in respect of the units booked by them. Despite of all



these facts, considering the request of the complainants to be genuine, which was not so, the respondent company cancelled the unit no. CR-02/0401 and the funds amounting to Rs 33,77,600/- were transferred in the account of unit no. CR-02/0402. Furthermore, upon the request of the complainants, Mr. Shakti Singh was added as Co-applicant with Mr. Pushpendra Singh in unit no. CR-02/0402.

14. Further the complainants have also requested for the reallocation of their unit from fourth floor to second floor and accordingly unit no. CR-02/0202 was reallocated to them along with the same terms and conditions and the complainants were supposed to comply with terms and conditions of booking, allotment letter and builder buyer agreement. Moreover, the complainants have not disclosed about the fact that the original copy of the builder buyer agreement along with the demand letter to clear the outstanding dues amounting to Rs 23,12,160/- excluding interest to be paid on delayed payments in respect of the unit in question were sent via post bearing postal receipt no. EH776003350IN to the complainants for the execution. However, the complainants did not bother to execute the same and sum of Rs 23,12,160/- excluding interest to be paid on delayed payments, is still outstanding in respect of the unit in question. Thus, the complainants are not entitled for the relief which are seeking by the way of the present complaint and the present petition is not maintainable under the provisions of the Real Estate (Regulation and Development) Act, 2016.
15. That presently, the authority is not the right forum for the relief sought by the complainants as there is no question of refund to be



given in view of the catena of judgements passed by the Hon'ble Real Estate Regulatory Authority, Gurugram. The complainants are attempting to seek an advantage of the slowdown in the real estate sector and are trying to seek undue advantage by concealing the true facts.

16. It is humbly submitted that the project in question has been already completed by the respondent company. Moreover, the respondent has also applied for the occupation certificate before the Director General, Town and Country Planning, Haryana Chandigarh vide letter dated 04-Mar-2020.
17. That it is further submitted that if there is any alteration in the timeline of the completion of the project, it was beyond the control of the respondent owing to the following reasons:
  - i. Policies regarding availability of FAR based on various factors/ grounds and conditions including TOD and TDR.
  - ii. Revised taxation policies including GST, Brokerage Policies.
  - iii. Environmental restrictions such as use of untreated water and frequent stoppage of construction due to pollution control measure on environment etc.
  - iv. Increase in the cost of construction material.
  - v. Two stage process of environmental clearance which takes 2 to 3 years.
  - vi. Labour strikes and shortage of construction workers, construction material and even the contractor hired for the construction works was not performing as per





- the scope of the project work and the respondent had to send constant reminders to the contractor regarding slow pace of work and workforce deployed, which was resulting in timeline alterations for the timely completion of project.
- vii. Statutory construction bans across the NCR region during the winter season, resulting in slow down of the project.
  - viii. Many investors/allotees in the project had defaulted in timely payment of instalments due to which it became difficult for the respondent to adhere to the timelines for the completion of the project.
  - ix. The connecting roads to the project were not timely acquired by the Government authorities, thus the construction equipment, raw material and labour ingress became a difficult task. The same was a major component which led to the changed timelines in the completion of the project since the construction and development works became slow and delayed.
  - x. Outbreak of the novel-corona virus was also the major factor which leads to the alteration in the timeline for the completion of project.
18. That since the hurdles faced by the respondent company were beyond its control no fault can be found qua the respondent. It is further submitted that it was never the intention of the respondent company to not complete the project on time. Rather, the alteration in the timeline was beyond the control as indicated in previous paragraph. That it is extremely important to bring to



the notice of this authority that the alteration in the timeline for the development of project in question was due to external, unseen and unavoidable reasons and there was no delay on part of the respondent company.

19. That there was an instant decline in the real estate market within the one year of the launch of the project in question. While executing the construction of such a large-scale project a continuous and persistent flow of fund is the essence of smooth operations. However, this situation prevailed and continued for a longer period. Moreover, in the year 2018, non-banking financial companies' crisis also led to drying up the source of funding for the sector. Its further lead to alteration in the timeline of the completion of the project.
20. That the alterations in the timeline for the completion of the project cannot be attributed to the respondent company and is result of external factors which were beyond its control. The timeline as postulated within the agreement are intended and tentative and based on the timely payments made by the allottees, investors, force majeure etc.

**E. Jurisdiction of the authority:**

21. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

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

#### **Section 11(4)(a)**

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

#### **Section 34-Functions of the Authority:**

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

22. 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.

### **F. Findings on the relief sought by the complainants:**



**F.1 Direct the respondent to refund the amount of Rs. 80,83,669/- along with interest.**

23. The complainants booked two units bearing No.CR-02/04/01 and CR-02/04/02 in their names respectively on 06.07.2012 each measuring 1900 sq. ft in the project "Residences 360", Sector 70, Gurugram. Later on, Shakti Singh, complainant intended to transfer the funds of unit No. CR-02/04/01 in the account of another unit CR-02/04/02 in the name of Pushpender Singh complainant. But subsequently to the allotment of unit No. CR-02/04/02 in the name of both the complainants, the same was re-allocated unit no. CR 02/02/02. Though, it is the version of the complainants that they paid a sum of Rs.80,83,669/- against the re-allocated unit upto 25.06.2016 but the statement of account produced during the proceedings shows a total deposit of Rs.77,28,405/- This document has not been rebutted in any manner by the complainants. No buyer agreement was executed between the parties with regard to the allocated unit. So, the due date for completion of the project and handing over possession of the same comes to 07.02.2018. That date has admittedly expired. So, keeping in view the fact that the allottee- complainants wish to withdraw from the project and are demanding return of the amount of Rs.80,83,669/- but actually, Rs. 77,28,405/-received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified



therein, the matter is covered under section 18(1) of the Act of 2016.

24. The due date of possession as per agreement for sale as mentioned in the table above is 07.02.2018 and there is delay of 1 year 11 months 16 days on the date of filing of the complaint.
25. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which 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.....”*

Then, the Hon'ble Supreme Court 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 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 agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
27. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
28. The Authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 77,28,405/- (inadvertently mentioned as Rs.80,83,669/- in the proceedings recorded on that date) with interest at the rate of 9.50% (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*.

**F.2 Direct the respondent to pay an amount of Rs. 20,00,000/- as compensation on account of physical harassment and mental agony caused to the complainants.**

29. The complainants are claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

**H. Directions issued the Authority:**

30. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent/ promoter is directed to refund the amount of Rs.77,28,405/- received by it from the complainants along with interest at the rate of 9.50% 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.

31. Complaint stands disposed of.

32. File be consigned to the Registry.

V.I - 

**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram



**(Dr. KK Khandelwal)**

Chairman

Dated: 04.07.2022