

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

Complaint no. : 4785 of 2020
First date of hearing: 04.03.2021
Date of decision : 14.07.2022

Sachin Mehrotra
S/o Shri R.N. Mehrotra
R/O: C4E/11/138 Janakpuri,
New Delhi 110058

Complainant

Versus

M/s Vatika Limited
Office: 4th Floor, Vatika Triangle, Sushant Lok-1,
Block-A, Mehrauli- Gurgaon Road, Gurgaon-
122002.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Gaurav Bhardwaj (Advocate)
Sh. C.K. Sharma & Dhruv Dutt (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 21.12.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations

made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Xpressions By Vatika", Sector 88, distt-Gurgaon.
2.	Nature of the project	Residential floor
3.	Project area	133.022 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
5.	Name of licensee	Malvina Developer Pvt. Ltd. & 20 others Haben Developer Pvt. Lt. & 7 others
6.	RERA Registered/ not registered	Not registered
7.	Plot no.	18, S.T. H-21, Level 2, Block H2, Street H 21 (page no. 19 of complaint)
8.	Unit area admeasuring	1350 sq. ft. (page no. 19 of complaint)
9.	Date of allotment	10.02.2016
10.	Date of builder buyer agreement	21.03.2016 Page 16 of complaint
11.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of</i>

		<i>Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time oy any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. Emphasis supplied</i>
12.	Due date of possession	21.03.2020 [Due date calculated from the date of execution of BBA]
13.	Total sale consideration	Rs. 88,54,490/- [as per SOA dated 27.07.2018 (annexure 4, page 55 of complaint)]
14.	Amount paid by the complainant	Rs. 31,25,914/- [as per SOA dated 27.07.2018 (annexure 4, page 55 of complaint)]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. The complainant booked a plot on 22.07.2015 by paying an amount of RS. 2,00,000/- to the respondent. After persistent follow-ups, on 10.02.2016, an allotment letter was issued by the respondent to the complainant wherein a residential unit no. 18, street no. H-21, level 2 admeasuring 1350 sq.ft. was allotted to the complainant in the said project. A BBA was executed on 21.03.2016 between the parties. The complainant as per the demand raised by the respondent and as per the payment plan, paid a sum of Rs. 31,25,914/- towards the said apartment against the total sale consideration of Rs. 88,54,490/- as and when demanded by the respondent.
 - II. The complainant in order to purchase the unit sought a loan against the said unit and a loan amount to Rs, 70 lacs was approved by Indiabulls

Housing Finance Limited. A tripartite agreement dated 12.05.2017 was executed between the parties. As per clause 13 of the agreement dated 21.03.2016, the respondent undertook to complete the construction and handover possession within a period of 48 months from execution of said agreement. Thereafter, the complainant visited the project site in September, 2019 only to find out that no considerable construction progress has been made at the project site. Rather, the project was still in the initial stage of construction despite being 5 years elapsed from the date of booking. Upon this, the complainant contacted the representatives of the respondent enquiring about the snail pace construction work but assured him that the construction shall resume at full pace soon. Subsequently, somewhere around March 2020, the complainant again visited the project site in October 2020 and was stunned to see that there was still no progress in terms of construction. He again contacted the respondent but to no avail.

- III. The complainant also objected to PLC charges as at the time of booking of the said unit. It was agreed between the complainant and the respondent that the respondent would provide green area to the complainant on account of preferential location. The respondent had charged an amount of Rs. 4,05,000 @ Rs. 300 per sq.ft. on account of PLC from the complainant. But he visited the project site, he found that there was no green area as agreed in the BBA and allotment letter.
- IV. The complainant after visiting the construction site several times and seeing the slow construction work realized that the respondent is not having intention to complete the project on time and in order to evade the liability from the financial institution, he filed an application seeking closure of the said loan amount to Rs. 70,00,000/-. He approached the respondent's officials on June 2020 and sought refund of the deposited

amount but the officials denied giving the same on one pretext or the other. The complainant on 23.07.2020 sent a legal notice through his advocate seeking refund of the deposited amount of Rs. 31,25,914/- along with interest. The said legal notice dated 23.07.2020 delivered at the address of the respondent on 27.07.2020, but till date the respondent did not refund the said amount of Rs. 31,25,914/- to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the amount of Rs. 31,25,914/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.
 - ii. Direct the respondent to give Rs. 2.5 lacs as compensation on account of loss/injury as well as mental agony suffered by the complainant.
 - iii. Direct the respondent to pay litigation charges to the tune of Rs. 30,000/-.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - a. That the complaint filed by the complainant before the Id. adjudicating officer, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Id. adjudicating officer as the relief being claimed by the complainant, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Id. adjudicating officer. The relief sought by the complainant appears to be misconceived and erroneous basis. Hence,

the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous. The complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.

- b. The complainant has miserably and wilfully failed to make payment in time or in accordance with the terms of the BBA. It is submitted that the complainant has frustrated the terms and conditions of the BBA, which were the essence of the arrangement between the parties and therefore, he now cannot invoke a particular clause and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession. It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said residential floor within a period of 48 months from the date of execution of the agreement unless there is be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said residential floor.
- c. The project "Vatika Express City" has been registered with the authority vide registration no. 271 of 2017. Due to the various reasons and not limited to delay on the part of the allottee, NGT notification, covid-19 pandemic etc. the project has been majorly impacted. However, respondent endeavours to handover the unit by December 2021. The

structure work of the building is complete with internal and external plaster of the said unit and finishing work has been going on. The respondent endeavour to handover the unit by December 2021.

- d. It is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers is further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other perspective buyer does not each in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interest of a developer as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient
- e. Payment by the prospective buyers such as the complainants freezes the hands of developer/builder in proceeding towards timely completion of the project.

E. Jurisdiction of the authority

7. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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;

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.

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.*" 2021-2022(1)RCR(C), 357 and followed

in case of **Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 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."

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. Findings on the relief sought by the complainants.

F. I Direct the respondent to refund the paid amount along with interest.

13. The complainant has submitted that he booked a unit on 22.07.2015 and paid 2,00,000/- towards the booking of the said apartment to the respondent. On 10.02.2016, an allotment letter was issued by the respondent wherein a residential apartment unit no. 18, street no. H-21, level-2, Sector 88-B, admeasuring 1350 sq. ft. was allotted to him. Thereafter on 21.03.2016, a BBA was executed between the parties and as per the

payment plan, he paid an amount of Rs. 31,25,914/- against the total sale consideration of Rs. 88,54,490/-. The complainant further pleaded that to purchase the said unit he sought loan and the loan amounting to Rs. 70 lacs was approved by Indiabulls Housing Finance Limited. A tripartite agreement dated 12.05.2017 was executed between the parties. The complainant visited to the project site and found that there is no progress in the project and also, he paid the PLC on head of green area but there was no green area as agreed in the BBA. After seeing all the scenario, the complainant sent several emails to the officials of the respondent after the expiry of due date but the respondent did not pay any heed towards the said requests of him. Thereafter, on 23.07.2020, complainant through his counsel sent a legal notice for seeking refund of the deposited amount but till date the respondent did not refund the said amount of Rs. 31,25,914/- to the complainant.

14. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is demanding return of the amount 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. The due date of possession as per agreement for sale as mentioned in the table above is 21.03.2020 and there is delay of 275 days on the date of filing of the complaint.
15. 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.....”

Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others** SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

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

16. 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 allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

17. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 31,25,914/- with interest at the rate of 9.70% (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. II Direct the respondent to compensate to the complainants for the financial loss due to loss of working hours of the complainant owing to this matter apart from mental harassment and agony caused at 10% of the booked units value and Rs. 2.5 lac towards actual and ongoing expenses.


18. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating

officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the entire amount of Rs.31,25,914/- paid by the complainant along with prescribed rate of interest @ 9.70% 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 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.
20. Complaint stands disposed of.
21. File be consigned to registry.

V.I- 
(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2022