BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 6257 of 2019
First date of hearing: 06.02.2020
Date of decision : 14.07.2022

Ramesh Chand
R/O : House No. 817, Housing Board,
Saraswati Vihar, Chakkarpur, Gurugram-122002 **Complainant**

Versus

M/s Vatika Limited
Office: 7th Floor, Vatika Triangle, Sushant Lok-1, Block–A, Mehrauli-Gurgaon Road, Gurgaon–122002. **Respondent**

CORAM:
Shri K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Sukhbir Yadav (Advocate) **Counsel for the complainant**
Sh. Venkat Rao and Pankaj Chandola (Advocate) **Counsels for the Respondent**

ORDER

1. The present complaint dated 06.12.2019 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	"Vatika Express City" at sector 88A & 88B, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	Project area	100.785 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019
5.	Name of licensee	M/s Malvina Developers Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022
7.	Plot no.	11, Street no. G-14, Block-G (page no. 22 of complaint)
8.	Plot area admeasuring	302 sq. yds. (page no. 22 of complaint)
9.	Date of allotment	14.11.2014 (page 17 of complaint)
10.	Date of builder buyer agreement	14.11.2014 (page 19 of complaint)
11.	Possession clause	***3. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL PLOT*** *The Developer based on its present plans and estimates and subject to all just exceptions, force majure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential Plot* ***within a period of 3 (Three) years 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 herein.* ***Emphasis supplied***
12.	Due date of possession	14.11.2017 [Due date of possession calculated from the date of execution of agreement]
13.	Total sale consideration	Rs. 1,50,30,540/-

		[as per builder buyer agreement page 22 of complaint]
14.	Amount paid by the complainant	Rs. 1,50,30,540/- [as per builder buyer agreement page 22 of complaint]
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

I. That relying on representation and assurance of office bearers/ marketing staff of the respondent, the complainant booked a residential plot vide plot no. 11 at street no. E16, sector 88A, Gurugram admeasuring 150 sq. yd. on 12.11.2014, in the project of the respondent. The complainant issued a DD of Rs. 1,50,30,540/- vide demand draft no. "056730" drawn on Indusind bank as booking cum full and final consideration and signed a pre-printed application form. The above said plot was purchased under the down payment/full and final payment plan including basic sale price, PLC, EDC/IDC IFMS and club membership etc. The respondent issued a payment receipt on 27.02.2015 against the payment. That on 14.11.2014, respondent issued an allotment letter in favour of complaint for the said plot.

II. That a pre-printed, arbitrary and unilateral builder buyer agreement to Sell (hereinafter referred as BBA) was executed inter-se the complainant and the respondent on 14.11.2014. As per clause 3 of BBA, the respondent has to give the possession of plot within 3 (Three) years from the date of execution of BBA. The agreement to sell was executed on 14.11.2014, and therefore, the due date of possession was 14.11.2017. That since November, 2016, the complainant is making all efforts to get the possession of plot and visited several times to the office of the respondent,

but all went in vain. In spite of all efforts, the complainant was not able to know the actual reason for delay in possession.

III. That the complainant sent an email to the respondent on 26.06.2019, to enquire about firm date of possession of plot and demanded current plan of the project. The respondent replied on email on 17.07.2019 and stated that "we shall like to apprise you that possession of the plot shall be tentatively by end of 2020".

IV. That the main grievance of the complainant in the present complaint is that in spite of his paying total 100% of the actual amount of plot and is ready and willing to pay the remaining amount (if any amount become due), the respondent party has failed to deliver the possession of plot on time.

V. That the work on other amenities, like external, Internal MEP (Services) is not yet completed. Now it is more than 5 years from the date of booking and even the developments of blocks are not completed, it clearly shows the negligence of the builder. As per project site conditions, it seems that project would further take more than two year to be complete in all respect, subject to willingness of respondent to complete the project.

VI. That due to above acts of the respondent and the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially. Therefore, the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

VII. That for the first time, cause of action for the present complaint arose in November, 2014, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action further arose in November, 2017, when the respondent

party failed to handover the possession of the plot as per the buyer Agreement. Further the cause of action again arose on various occasions, including on: a) April. 2018; b) December, 2018; c) June, 2019 and many time till date, when the protests were lodged with the respondent Party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority/adjudicating officer restrains the respondent by an order of injunction and/or passes the necessary order.

VIII. That the complainant want to withdraw from project and the promoter/respondent has not fulfilled his obligation. Therefore, as per obligations on the promoter under section 18 and 19(4), the promoter/respondent is obligated to refund the paid money along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

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

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.

6. Despite giving ample opportunities for filing reply the respondent has failed to filed reply in stipulated period. Hence, the defence of the respondent was struck of. Thus, the authority is proceeding the matter as per pleadings and documents on the record.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

D.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 case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainants.

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

E. II Direct to pay litigation cost of Rs. 1,00,000/- & compensation of Rs. 10,00,000/- to the complainant.

13. The complainant booked a unit in the project of the respondent detail above for a total sale consideration of Rs. 1,50,30,540/- and a plot was allotted to the complainant vide allotment letter dated 14.11.2014. The complainant paid Rs. 1,50,30,540/- to the respondent against the total sale consideration. A builder buyer agreement was executed between the parties on 14.11.2014. As per clause 3 of the said agreement, the due date of possession was 14.11.2017, three years from the execution of the agreement i.e. 14.11.2014. The complainant sent an email to the respondent on 26.06.2019, to enquire about date of possession of plot and demanded current plan of the project. The respondent replied on email on 17.07.2019 and stated that possession of the plot would be tentatively by end of 2020.

14. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project is and 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 plot 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 **14.11.2017** and there is delay of 2 years and 22 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....."*

16. 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"*

17. 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 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.

18. 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.

19. The authority hereby directs the promoter to return the amount received by him 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.

E II. Direct to pay litigation cost of Rs. 1,00,000/- & compensation of Rs. 10,00,000/- to the complainant.

20. 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

21. 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. **1,50,30,540/-** 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 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.

22. Complaint stands disposed of.

23. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2022