

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

Complaint no. :	723 of 2020
Date of filing complaint:	07.02.2020
First date of hearing:	25.03.2020
Date of decision :	13.05.2022

Ajay Narain Gupta HUF R/o: H.no. 19, Bahubali Enclave, Karkar Dooma, New Delhi	Complainant
Versus	
M/s Vatika Limited R/o: 4 th floor, Vatika Triangle, block A, Sushant Lok, Gurgaon M/s Vatika Seven Elements Pvt. Ltd. R/o: Flat no. 621-A, 6 th floor, Devika Towers, Nehru Place, New Delhi-110019	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Harshit Batra (Advocate)	Complainant
Sh. Venket Rao (Advocate)	Respondents

ORDER

1. The present complaint 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 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 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 the project, the details of sale consideration, the amount paid by the complainant, 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	Seven Elements, Sector 89A, Gurgaon-Manesar, Haryana.
2.	Project area	14.30 acres
3.	Nature of the project	Group housing colony
4.	DTCP License	41 of 2013 dated 06.06.2013 and valid up to 05.06.2017
5.	Name of the licensee	Strong Infrabuild Pvt. Ltd. & Anr.
6.	RERA Registered/ not registered	Registered vide memo no. 281 of 2017 valid upto 31.03.2011
7.	Unit no.	602, 6 th floor, building A3 (page 35 of complaint)
8.	Unit measuring (super area)	1620 sq. ft
9.	Date of allotment	N/A
10.	Date of execution of builder buyer agreement	30.07.2015 (page 32 of complaint)
11.	Addendum to builder buyer agreement	30.07.2015 (page 100 of complaint)
12.	Possession clause	13. Schedule for possession of the said apartment 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 months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of 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 or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.
13.	Due date of possession	30.07.2019
14.	Total basic sale price as per SOA dated 25.05.2021 (annexure R3, page 104 of reply)	Rs. 1,10,78,135/-
	Total sale consideration as per SOA dated 25.05.2021 (annexure R3, page 104 of reply)	Rs. 1,21,03,805/-
15.	Amount paid by the complainant as per SOA dated 25.05.2021 (annexure R3, page 104 of reply)	Rs.35,27,581/-
16.	Occupation Certificate	Not received
17.	Offer of possession	Not offered

18.	Delay in handing over possession	2 years 9 months 13 days
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B. Facts of the complaint:

3. The complainant has submitted that it booked an apartment in the project "Seven Elements" on 03.04.2013, details of being such-unit no. 602, tower A3, Sector 89A, Gurugram, admeasuring super area 1620 sq. ft. and accordingly paid an amount of Rs. 6,00,000/-. As per the payment schedule and believing the respondents for developing project on time, it made payment of Rs. 28,90,893/- from 19.07.2013 to 09.02.2015 towards the sale consideration of the unit. After 2 years of booking of the flat, on 30th July 2015, a builder buyer agreement was executed between the parties. As per clause 13 of the agreement, the possession of the unit was to be handed over to the complainant within 48 months from the date of execution of the said agreement. Therefore, the due date of handing over of possession as per the agreement was fixed as 29.07.2019.
4. It is further submitted that an addendum to the agreement was executed between the parties on 30.07.2015 and whereby M/s Vatika Seven Elements Private Limited became the developer and M/s Vatika Limited became confirming party to the agreement of sale of the allotted unit. However, the respondents failed to handover the possession or provide any compensation for delay possession of the unit allotted to the complainant. The respondents illegally offered flats for booking before the approval of layout and building plans and which were sanctioned much later from the date of the issue of the license. After persistent

requests of the complainant, the agreement of sale was executed on 30.07.2015. Thereafter, the complainant came to know that the respondent no. 1 was issued a license no. 41 of 2013 on 06.06.2013 as per the website of the Department of Town and Country Planning. Therefore, the booking of the unit was made under a pre-launch scheme.

5. The complainant neither received any updates from the respondents regarding status of the work nor about the date of possession. The complainant believed the respondents and till date, paid the amount of Rs. 34,90,893/- against the total price of the flat. However, as per the payment schedule, the complainant has paid more than the development work at the site. The respondents have raised the demands without achieving the particular stage of construction. The complainant has at all times made payment against the demand of the respondents and has preferred to stop further payment due to the fact that the project was far from being completed and he cannot be expected to keep transferring lakhs of amount to the respondents.
6. The complainant raised his concern before the respondents several of times. Though the complainant was always ready and willing to pay the due instalments if there is sustainable progress in the project. The entire acts of the respondents are deliberate and willful with the sole intention to cause monetary loss to the complainant and extract money by making false promises thereby amounting to deficiency of service for which they are liable to pay compensation to him apart from refund of the entire amount already paid along with interest. The complainant strongly

believes that the method chosen by the respondents in duping it clearly amounts to unfair trade practice for which they are liable to be proceeded in accordance with law.

7. The complainant had been continuously approaching the respondents to inquire about of the progress at the site and handing over the physical possession of the apartment at the earliest for which he has invested his hard-earned money. However, without considering the same, the respondents deliberately and malafide maintained their silence and kept giving lame assurances to him on every occasion on one pretext or another that the construction would be completed at the earliest and possession would be handed over to the complainant shortly but with no positive results, resulting into filing this complaint seeking refund as prayed above.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- i. Direct the respondents to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of respective deposits till its actual realisation.
 - ii. Direct the respondents to pay the compensation of Rs. 10,00,000/- for causing mental agony, harassment to the complainant.
 - iii. Direct the respondents to pay the compensation of Rs. 1,00,000/- towards legal costs.

D. Reply by respondents:

9. Though while filing the complaint, the complainant added M/s Vatika Seven Elements Private Limited & M/s Vatika Limited as respondents being developer and confirming party respectively on the basis of builder buyer agreement followed by addendum to that agreement dated 30.07.2015 but written reply was filed by M/s Vatika Seven Elements Private Limited on 03.07.2021, which is also being treated as written reply to have been filed by M/s Vatika Limited i.e., respondent no. 2.
10. The present complaint has been filed just to harass the respondents. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, a detailed deliberation by leading the evidence and cross-examination is required. Thus, only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication, if at all the contents of the complaint are taken to be correct and true.
11. The project of the respondents was delayed due to the various unforeseen circumstances beyond their control. It is submitted that the project in question has not been abandoned nor there has been any instance of misuse of the money collected in regard to the project in question. All the allegations and averments of the complainant are baseless and lack factual nexus. Further, it is brought notice of the authority that the construction has been stalled at the project site due to reasons beyond the control of the respondents and the same are enumerated below:
 - (a) Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run

through the project of respondents. Under this new development, NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process. Thereafter, the Haryana Government in alliance with the Town and Country Planning Department in exercise of powers vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 made the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W. After that the GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). Thus, it shows that the construction of NH 352 W is under process resulting in unwanted delay in completion of project and handing over of possession of land.

- (b) Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 meters was uplifted. Before start of the acquisition and construction process, the respondents had already laid down the services according to the earlier sector road levels. However due to upliftment caused by the HUDA in NH 352 W, the company has been constrained to raise

- and uplift the same within the project, which not only resulted in deferment of construction of project but also attracted towards the costing to the respondents.
- (c) Re-routing of high-tension lines passing through the land resulting in inevitable change in the layout plans and causing unnecessary delay in development.
 - (d) Direct impact on project due to policy of NILP and TOD issued on 09.02.2016.
 - (e) Additionally, imposition of several partial restrictions from time to time prevented the respondents from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
12. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in air quality in the Delhi-NCR region, especially during winter months.
 13. It is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondents by engaging and igniting frivolous issues with ulterior motives to pressurize them. The present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondents and hence the complaint deserves to be dismissed.
 14. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint

can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

15. The plea of the respondents 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.

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 complainant at a later stage.

F. Entitlement of the complainant for refund:

F.1 Direct the respondents to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of respective deposits till its actual realisation.

16. The complainant was allotted the subject unit by the respondents for a total sale consideration of Rs. 1,21,03,805/-. A buyer's agreement followed by an addendum dated 30.07.2015 was executed between the parties. The due date of possession of the subject unit was fixed as 48 months from the date of signing of agreement which comes to 30.07.2019. After signing of flat buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs. 35,27,581/- as is evident from statement of account dated 25.05.2021. It is the case of complainant that since the construction of project was not as per schedule of payment, so he stopped making remaining amount due. Thus, keeping in view the fact that the allottee-complainant wished to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on his failure 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.

17. The due date of possession as per agreement for sale as mentioned in the table above is 30.07.2019 and there is delay of 2 years 9 months 13 days on the date of this order.
18. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoters. 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....."

19. Further in the judgement of the Hon'ble Supreme Court of India in the case of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(I), RCR (civil),357*** and followed by the Hon'ble High Court of Punjab & Haryana in case ***Ramprashtha Promoters and Developers Pvt Ltd Vs Union of India and Ors. in CWP No.6688 of 2021*** decided on 04.03.2022, it was 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

20. 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 it in respect of the unit with interest at such rate as may be prescribed.
21. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
22. The authority hereby directs the promoters-developers to return to the complainant the amount received by them i.e., Rs.

35,27,581/- with interest at the rate of 9.40% (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 Litigation expenses & compensation


23. The complainant is also seeking relief w.r.t. litigation expenses & compensation. 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 & litigation expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses & compensation.

H. Directions of the Authority:

23. 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 promoters as per the

functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondents/promoters are directed to refund the amount i.e., Rs. 35,27,581/-received by them from the complainant along with interest at the rate of 9.40% 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 respondents to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


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

Dated: 13.05.2022

