

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

Complaint no. :	1397 of 2021
Date of filing complaint:	31.03.2021
First date of hearing:	15.07.2021
Date of decision :	13.05.2022

1. Sh. Hari Prakash Gupta, S/o Late Shri Ved Prakash Gupta 2. Sh. Siddharth Gupta, S/o Shri Hari Prakash Gupta both RR/o: Vijay Nikunj, Tika Ram Mandir Marg, Maris Road, Aligarh, Uttar Pardesh-202001	Complainants
Versus	
M/s Vatika Seven Elements Pvt. Ltd. Office: Vatika Triangle, 5th floor, Sushant Lok. phase- 1, block - A, M.G. road, Gurgaon (Haryana) - 122002 Also at: Flat No. 621 A, 6th floor, Devika towers, Nehru Place, New Delhi-110019	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Gaurav Madan (Advocate)	Complainants
Sh. C.K. Sharma & Dhruv Dutt Sharma (Advocates)	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 provision of the Act or the rules and regulations made there under or to the allottees 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	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.	Apartment no.	A-602, 6 th floor, building Fifth court (page 37 of complaint)
8.	Apartment measuring (super area)	2195 sq. ft
9.	Date of allotment	17.07.2015 (annexure C3, page 29 of complaint)
10.	Date of execution of builder buyer agreement	16.09.2015 (page 102 of reply)
11.	Possession clause	13. Schedule for possession of the said apartment

		<p>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.</p>
12.	Due date of possession	16.09.2019
13.	Total basic sale price (page 104 of reply)	Rs. 1,51,65,255/-
	Total sale consideration (page 104 of reply)	Rs. 1,67,74,475/-
14.	Amount paid as alleged by the complainants (page 19 of complaint)	Rs. 34,91,457/-
15.	Occupation Certificate	Not received
16.	Offer of possession	Not offered
17.	Delay in handing over possession	2 years 7 months 27 days

B. Facts of the complaint:

3. The complainants have submitted that they booked an apartment bearing no. HSG-023/A-602/fifth floor/sector 89A, having a super built up area of 2195 sq. ft in the said project. They visited the site and adopted construction-based plan of apartment booked by them, wherein it was categorically mentioned the payments detail according to construction of the said project. They paid a sum of Rs. 8,65,427/- vide cheque dated 16.05.2015 and booked an apartment which was duly encashed by the respondent and sent a copy of receipt dated 18.05.2015. The respondent vide letter dated 17.07.2015 allotted an apartment bearing no. A-602 on 6th floor, tower- fifth court, having a super area of 2195 sq. ft. in the said project to the complainants.
4. In the month of July 2015, the respondent raised another demand of Rs. 8,69,714/- along with builder buyer's agreement to sign the document and thereon, the complainants have paid an amount of Rs. 8,61,382 /- after deducting the TDS on 18.08.2015 through RTGS into the account of respondent.
5. That the complainants duly signed the builder buyer agreement and same was sent back to be signed by the respondent and intimated as well through letter dated 31.08.2015. But the respondent did not sent back copy of builder buyer agreement after duly signed by them. Instead of ensuring execution of the builder buyer's agreement, the respondent sent a request or demand in the month of November 2015 for making another payment of Rs. 17,39,385/- which was also paid by them upto 05.12.2015 and was duly encashed.

6. That after making payment the complainants issued a letter as well as email dated 09.01.2016, wherein they intimated the respondent that they did not receive the copy of builder buyer's agreement yet duly signed by the respondent but in response of the said letter and email, the respondent sent an email dated 12.01.2016, wherein relationship manager Mr. Rohit Uppal, stated that " we would like to appraise you that executed BBA and addendum's for your booked unit in seven elements has already been dispatched on 23.09.2015 and same stands delivered as per confirmation attached for your kind perusal." That the respondent received more than Rs. 34 lakhs in a span of 7 months from the complainants but still took no steps towards construction of the said project. It appears from the records available online as well as BBA that the respondent has obtained licence for the said project on 06.06.2013 and zoning plan was approved on 06.06.2013 by the concerned authority and possession thereof should have been handed over within 48 months from the execution of the BBA to the complainants as per the terms and conditions contained in the said BBA.
7. It is pertinent to mention here that despite paying such huge amount, the complainants were never apprised about the actual development status by the respondent despite repeated requests. In fact, they issued a letter dated 01.06.2018 to know the actual status of the project but the respondent did not give any reply on the request of complainants. They issued a notice through its advocate calling upon the respondent to refund the amount paid by them along with interest and compensation. Despite receipt of the

said notice, the respondent did not bother to reply to the same. As per clause 13.1 of the agreement, the possession of the apartment was to be offered within a period of 48 months from the execution of the BBA.

8. That the respondent failed to handover possession of the said unit on August-September 2019 as per the said clause contained in BBA. The respondent has not only failed to hand over possession of the said unit since last 2 years but have also failed to even complete the construction work till date. The complainants approached the respondent on numerous occasions for knowing the current status of the said unit. But they keep the matter on the one pretext or the other and did not give any satisfactory reply to them.
9. That the conduct of the respondent as narrated above clearly shows that they were only interested in collecting huge sums from the prospective purchasers despite knowing fully well that the project would take years to get started. The respondent deliberately made fake, wrongful and fraudulent promises to induce the complainants and other prospective buyers and made them victims of their malice filled plans and have enjoyed large sum of money free of interest for years together.
10. That relying upon respondent's representation and believing them to be true, the complainants were induced to pay Rs. 34,91,457/- towards sale consideration of the aforesaid unit. The respondent had acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said unit, imposing heavy charges on vague

accounts and compelling them to pay a heavy amount towards enhanced area.

11. That the cause of action accrued in favour of the complainants and against the respondent on 01.06.2018, when it failed to reply the letter and secondly when it did not give the reply of legal notice which was successfully delivered. Lastly the cause of action accrued in August-September 2019 when the respondent failed to deliver or offer possession of the said unit as per the agreement after a lapse of 48 months of execution of BBA and is still subsisting.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):
- i. Direct the respondent to refund the sum of Rs. 34,91,457/- paid by the complainants along with interest calculated @ 21% from their respective dates of payment until repayment.
 - ii. Direct the respondent to pay a penalty of Rs. 3,00,000/- to the complainants.
 - iii. Direct the respondent to pay a sum of Rs. 1,00,000/- to the complainants towards litigation expenses.

D. Reply by respondent:

13. That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.

14. That the complaint filed by the complainants besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint as the reliefs being claimed by them, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this authority.
15. That it has been categorically agreed between the parties that subject to the complainants 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 building/ said apartment within a period of 48 months from the date of execution of the agreement unless there shall be delay due to force majeure events and failure of allottees to pay in time the price of the said unit.
16. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer, then it shall be automatically entitled to the extension of time for delivery of possession. Further the developer may also suspend the project for such period as it may consider expedient.
17. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent 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 respondent. 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. 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 respondent 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 respondent.

(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 respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:

i. The Hon'ble National Green Tribunal/Environment Pollution Control Authority issued directives and measures to counter deterioration in air quality in the Delhi-NCR region, especially during winter months. Among these measures were ban imposed on construction activities for a total period of 70 days between November 2016 to December 2019.

ii. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.

18. That since the hurdles faced by the respondent were beyond its control, no fault can be found qua the same with it. Further, the agreement clearly states that in case of delay due to reasons beyond the control of the respondent, it reserves the right to alter or vary terms and conditions of the agreement and suspend the scheme for

such period. It is further clarified that the complainants agreed not to claim any compensation during such period. It is further submitted that; it was never the intention of the respondent not to complete the project and rather the delay was beyond its control as indicated in previous paragraph. That it is extremely important to bring to the notice of this hon'ble court that the development of project in question was deferred due to external, unseen and unavoidable reasons and there was no delay on part of the respondent. The respondent is committed in completing the present project at the earliest and hand over possession to the complainants after receiving the full amount as per the schedule of payment against the said residential apartment and after completion of construction of NH 352 W by the NHAI.

19. The Government of India imposed lockdown in India in March 2020 to curb the spread of the covid-19 pandemic and surge of 2nd wave in the year 2021. This severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety; most of the labour/workforce migrated back to their villages and home states, leaving a gap in the construction activities. There is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process the orders which inadvertently have led to more delay.
20. 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:

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 allottees 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 complainants at a later stage.

F. Entitlement of the complainants for refund:

F.1 Pass an order directing the respondent to refund the sum of Rs.34,91,457/- paid by the complainants along with interest calculated @ 21% from their respective dates of payment until repayment.

22. Vide letter dated 17.07.2015(annexure C3), the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 1,67,74,475/-. A buyer's agreement dated 16.09.2015 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 16.09.2019. After signing of flat buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs. 34,91,457/- as alleged by the complainants at page 19 of complaint. The complainants have issued a legal notice dated 15.10.2018 through its counsel and decide not to purchase aforesaid unit which ultimately led to their withdrawal from the project. So, keeping in view the fact that the allottee- complainants wished to withdraw

from the project and are 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.

23. The occupation certificate of the building/tower where allotted unit of the complainants is situated has not been received by the promoter. So, it is on failure of promoter 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. The complainants-allottees have already wished to withdraw from the project and the allottees have become entitled to their right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as he failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottees in respect of that unit with interest at the prescribed rate.
24. 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

25. 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 allottees 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.
26. This is without prejudice to any other remedy available to the allottees 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.

27. The authority hereby directs the promoter to return to the complainants the amount received by it i.e., Rs. 34,91,457/- 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

28. The complainants are 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority:

29. 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 respondent/promoter is directed to refund the amount i.e., Rs. 34,91,457/-received by it from the complainants 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 date of this order.
 - 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.
30. Complaint stands disposed of.
31. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2022

