

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

Complaint no.	:	725 of 2020
Date of filing complaint:		07.02.2020
First date of hearing:		25.03.2020
Date of decision	:	13.05.2022

Shipra Gupta R/o: Vijay Nikunj, Tika Ram Mandir Marg, Maris Road, Aligarh, Uttar Pradesh-202001	Complainant
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 M/s Vatika Limited Also at : Flat No. 621 A, 6th 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.	Apartment no.	602, 6 th floor, building A2 (page 26 of complaint)
8.	Apartment measuring (super area)	1620 sq. ft
9.	Date of execution of builder buyer agreement	10.08.2015 (page 23 of complaint)
10.	Addendum to builder buyer agreement	13.08.2015 (page 94 of complaint)
11.	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.
12.	Due date of possession	10.08.2019
13.	Total basic sale price as per SOA dated 26.12.2017 (annexure C1, page 19 of complaint)	Rs. 1,10,78,135/-
	Total sale consideration as per SOA dated 26.12.2017 (annexure C1, page 19 of complaint)	Rs. 1,21,03,805/-
14.	Amount paid by the complainant as per SOA dated 26.12.2017 (annexure C1, page 19 of complaint)	Rs.38,90,893/-
15.	Occupation Certificate	Not received

16.	Offer of possession	Not offered
17.	Notice for termination	03.12.2019
18.	Cancellation letter dated	21.09.2020 (annexure R3 of reply)
19.	Delay in handing over possession	2 years 8 months 03 days

B. Facts of the complaint:

3. The complainant being a simple person and believing in such false representations, assurances, warranties, and claims under the pretext of the respondents through their authorized representative, booked an apartment for the total sale consideration of Rs. 1,21,03,805 in the project on 03.04.2013 and accordingly paid an amount of Rs. 6,00,000/-. As per the payment schedule and believing the respondents they made payments on different occasions from 03.04.2013 to 08.06.2015 towards the sale consideration of the unit.
4. After 2 years of booking of the flat, on 10.08.2015, a builder buyer agreement was executed between the parties. As per clause 13 of that agreement, the possession of the unit was to be handed over to the complainant within 48 months from the date of execution of agreement. Therefore, the due date of handing over of possession as per the agreement was fixed as 10.08.2019.
5. It is further submitted that an addendum to the agreement was also executed between the parties on 13.08.2015 and whereby M/s Vatika Seven Elements Private Limited and M/s Vatika Limited become developer and confirming parties respectively to the agreement of sale of the allotted unit.

6. It is pertinent to mention that as per the complainant, the construction of the project is at a stage where it would be impossible for the respondents to complete the project in the next two years also. In pursuance of the same, the complainant tried to contact the respondents time and again to seek clarifications about the stage-wise construction and completion of the project but all went in vain as there was no response received from their side. It is pertinent to mention herein that till date the complainant has paid a sum of Rs. 38,90,893/- which is much more than the construction done at the site as per the construction-linked payment plan. The demands were raised by the respondents for the further payments without even reaching that particular stage of the construction which clearly depicts their malafide and frivolous behaviour and the breach of the payment plan.
7. Furthermore, besides these illegal demands, the complainant made all the payments of the amount due, timely on or before the due date. But now, as there is no response to the queries of the complainant from the respondents. The complainant does not find it wise to transfer lakhs of amount without the tenable progress of the project or positive answers from the respondents and hence has stopped the further payments.
8. It is pertinent to note that the addendum to the agreement was also executed on 13.08.2015 vide which the complainant was informed that the respondent no. 1 was earlier known as Strong Infrabuild Private Limited and now, it has been named as Vatika Seven Elements Pvt. Ltd., and that this fact was concealed from the

complainant by the respondents. It is pertinent to note that the DTCP issued the license to Vatika Limited i.e., respondent no. 2, and not to Vatika Seven Elements Pvt. Ltd. which can be culled out from the reply received by the Haryana Government in response to the RTI application. The fact of non-delivery of unit to the complainant even after lapse of more than 6 years suggests that there is no intention of respondents to fulfil their contractual obligations entered into with her.

9. That the act and conduct of respondents are quite contrary to the settled terms and conditions as entered into between the parties. It is apparent from the facts that there has been non-fulfilment of commitments at the respondents' end and who have been acting contrary to the contractual terms and hence, this complaint seeking refund of the amount deposited along with interest and compensation.

C. Relief sought by the complainant:

10. The complainant has sought following relief(s):
- i. Direct the respondents to refund the amount of Rs. 38,90,893/-
 - ii. Direct the respondents to pay interest on the deposited amounts by the complainant till the date of refund.
 - iii. Direct the respondents to pay a penalty of Rs. 3,00,000/- to the complainant.
 - iv. Direct the respondent to pay a sum of Rs. 1,00,000/- to the complainant towards litigation expenses.

D. Reply by respondents:

The respondents by way of written reply made the following submissions:

11. 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 parties respectively on the basis of builder buyer agreement followed by addendum to that agreement dated 13.08.2015 but written reply was filed by M/s Vatika Seven Elements Private Limited, which is also being treated as written reply to have been filed by M/s Vatika Limited i.e., respondent no. 2
12. That the present complaint is an abuse of the process of the authority and is not maintainable. The complainant has not approached this authority with clean hands and is trying to suppress material fact relevant to the matter. The complainant is making a false, misleading, frivolous, baseless, unsubstantiated allegations against the respondents with malicious intent and sole purpose of extracting unlawful gains from them.
13. It is pertinent to note that the amount paid by the complainant so far for the booked flat amounting to 32% of the total sale consideration amount Rs. 1,21,03,805/- and did not comply with the payment schedule which was issued by the respondents and wilfully agreed by the complainant. That it is submitted that the complainant has violated the provisions of section 19(6)(7) of the Real Estate (Regulation and Development) Act, 2016 and maliciously approaching the authority by producing bare facts and

circumstances of the matter for gaining undue monetary advantage which completely abuses the process of law.

14. The complainant has mutually agreed the terms and conditions of the builder buyer agreement executed on 10.08.2015. It is humbly submitted that the complainant has agreed to the schedule of payment under free will and consent and failed to comply with such on repetitive occasion. It is pertinent to note that the allottee/complainant is to pay the total consideration amount in a time bound as per the schedule of payment. It is further submitted that the complainant has not complied with the timely payment of instalments and due to which the respondents had imposed delay interest on several occasions i.e., 20.09.2015, 21.09.2015, 01.01.2016, 01.01.2016, 16.12.2016 as per the statement of account.
15. In the present case, there has been a delay due to various reasons which were 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 power 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). This is showing that still 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 mtrs. 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 result in deferment of construction of project but also attract costing to the respondent.

(c) Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans and cause unnecessary delay in development.

(d) Direct impact on project due to policy of NILP and TOD issued on 09.02.2016.

16. 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:

17. 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 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 complainant at a later stage.

F. Entitlement of the complainant for refund:

F. 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 after setting aside the cancellation of the unit issued vide letter dated 21.09.2020.

18. It is the plea of the respondent that the complainant has not complied with the timely payment of instalments and due to which they had imposed delay interest on several occasions i.e., 20.09.2015, 21.09.2015, 01.01.2016, 01.01.2016 & 16.12.2016 as per statement of account dated 26.12.2017. Moreover, the respondents have also sent various letters/reminders dated 09.01.2015, 13.06.2015, 06.07.2015, 16.12.2016, 15.02.2017, 01.05.2017, 04.07.2017, 05.10.2017, 26.12.201, 08.06.2018, 16.07.2019, 01.08.2019 and 03.12.2019 respectively to the

complainant for execution of BBA, payment of demands and reminders but she failed to comply with the same. Furthermore, having no other alternate, the respondents were constrained to issue cancellation notice dated 21.09.2020 to the complainant and thereby cancelled the allotment of her unit.

19. On consideration of the documents available on record and submissions by both the parties, the authority is of the view that the allottee has failed to abide by the terms of agreement by not making the payments in timely manner as per the payment plan opted by her. The complainant as per the statement of account paid an amount of Rs. 38,90,893/- out of the total sale amount of Rs. 1,10,78,135/-. She failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice of termination by the respondents on 03.12.2019 and cancellation letter dated 21.09.2020. Now the question that arises for consideration is as to whether this cancellation is valid?

As per clause 7 of the agreement dated 10.08.2015, the allottee was liable to pay the installments as per payment plan opted by her.

Clause 7 of the agreement is reproduced under for ready reference:

Clause 7 The Total Price payable by the Allottee is lined with timely payment of installments. Therefore time, has been understood to be of the essence of this agreement with respect to the allottees obligation to pay the price of said apartment in accordance with the schedule of payments as given in annexure I along with other payments as stipulated under this agreement.

20. The respondents had issue various reminders, last and final opportunity letter to the complainant for making payment of the

amount due but she failed to comply with the same. It is evident from a perusal of statement of account at page 19 of the complaint that the complainant lastly made payment to the respondents against the allotted unit on 08.06.2015. Though it cannot be neglected that the respondents have not obtained the occupation certificate of the unit till date but the complainant is also in default for not making timely payments. The respondents cancelled the unit of the complainant with adequate notices. Thus, the cancellation of allotted unit is valid.

21. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

22. Keeping in view the aforesaid legal provisions, the authority is of the view that the cancellation made by the respondents is valid and they are directed to return the balance amount after deducting 10%

of the sale consideration within 90 days from the date of this order along with interest @ 9.40% from the date of cancellation i.e., 21.09.2020 till its actual payment.

F.II Litigation expenses & compensation


25. 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 respondent-promoters are directed to return the balance amount after deducting 10% of the sale consideration of Rs. 38,90,893/- within 90 days from the date of this order along with interest @ 9.40% from the date of cancellation i.e., 21.09.2020 till its actual payment.
 - 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


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2022

HARERA
GURUGRAM

