

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

Complaint no. :	3929 of 2021
Date of filing complaint:	19.10.2021
First date of hearing:	01.12.2021
Date of decision :	13.05.2022

Poonam Sood & Charu Sood Both RR/o: BL 111, Shalimar Bagh	Complainants
Versus	
M/s Vatika Limited R/o: Vatika Triangle, 4 th floor, Sushant Lok, Phase-I, block A, Mehrauli-Gurgaon Road, Gurgaon-122002	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Poonam Sood & Charu Sood	Complainant in person
Sh. C.K. Sharma & Sh. Dhruv Dutt Sharma (Advocates)	Respondent

ORDER

1. The present complaint has been filed by the complainants/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	Tranquil Heights, Sector 82A, Gurugram.
2.	Project area	11.218 acres
3.	Nature of the project	Group housing colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid up to 23.03.2017
5.	Name of the licensee	Stanway Developers Pvt. Ltd. & 2 others
6.	RERA Registered/ not registered	Registered vide memo no. 359 of 2017 dated 17.11.2017 valid upto 30.04.2021
7.	Unit no.	3702, 37 th floor (page 20 of complaint)
8.	Unit measuring (super area)	1635 sq. ft
9.	Date of execution of builder buyer agreement	01.12.2015 (page 17 of complaint)
10.	Possession clause	13. Schedule for possession of the said apartment The Developer based on its

		<p>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>
11.	Due date of possession	01.12.2019
12.	Total basic sale price	Rs. 1,06,27,500/-
	Total sale consideration as per SOA dated 01.11.2021 (annexure R4, page 103 of complaint)	Rs. 1,11,47,430/-
13.	Amount paid by the complainants as per SOA dated 01.11.2021 (annexure R4, page 103 of complaint)	Rs.59,25,927/-
14.	Occupation Certificate	Not received
15.	Offer of possession	Not offered
16.	Refund request email	11.08.2021 (annexure E, page 73 of complaint)

B. Facts of the complaint:

3. The complainants submitted that on the basis of representations made by the respondent, they agreed to book an apartment in its upcoming project "Tranquil Heights", Sector 82A, Gurugram. They were allotted unit no. 3702, 2BHK, building A, 37th floor admeasuring 1635 sq.ft. and paid the booking amount. Subsequently, they signed a builder buyer agreement on 01.12.2015 for purchasing a residential apartment detailed above. The respondent issued an installment payment request with last date of payment for casting of 12 floor roof slab. The complainants with a bonafide intention and believing the reasoning of the respondent, duly made the payment of the various instalments due and had already made a payment of Rs. 59,25,927/-.
4. That as per clause 13 of the builder buyer agreement, the respondent was to complete construction of the said building within a period of 48 months from the date of the execution of the builder buyer agreement i.e., 1st December 2015. Despite a lapse of about seven years, the respondent has neither handed over the possession of the said flat nor has communicated the reasons for delay and date for handing over possession.
5. It appears that the respondent never intended to complete the construction of said project and entire project was nothing but a sham transaction of cheating innocent buyers by deceiving and inducing them to put in their hard-earned money into the project and having absolutely no intention to complete it.

6. The agreement of sale was executed on 30.07.2015, and according to clause 13 of the BBA, neither there is any update on status nor work about possession till date has been offered. The respondent also failed to provide compensation to the complainants for delay in handing over of possession. Hence they sent a request to the respondent through email dated 11.08.2021 (annexure E) for withdrawing from the project and seeking refund of the amount deposited with it but with no positive results.

C. Relief sought by the complainants:

7. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation.
 - ii. Direct the respondent to pay a sum of Rs.2 lakh as cost of litigation/legal advice/present proceedings to the complainants.
 - iii. Direct the respondent to pay a sum of Rs. 15,00,000/- for the harassment and mental agony suffered by the complainants.

D. Reply by respondent:

The respondent by way of written reply dated 01.12.2021 made the following submissions.

8. That the relief sought by the complainants appears to be on misconceived and erroneous basis. Hence, the complainants are stopped from raising the pleas, as raised in respect thereof,

besides the said pleas being illegal, misconceived and erroneous. The complainants have miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainants have frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties. Therefore, the complainants now cannot involve a particular clause and the complaint is not maintainable and should be rejected at the threshold. They have also misdirected in claiming refund on account of alleged delayed offer for possession.

9. 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 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 residential floor. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent.
10. It was also pleaded that though there has been delay in completing the project but due to laying of GAIL pipeline, loss of land in ROU alignment of GAIL corridor, non-acquisition of land for laying down sector roads by HUDA, re-routing of high tension lines,

various orders passed by NGT & the various courts for stoppage of construction work, implementation of various social schemes by Govt. of India unusual heavy rains in the area of Gurugram, shortage of construction material, non-extraction of ground water for carrying out construction activities, slow down in the real estate market and Covid-19 restrictions, the construction of the project could not be completed and the circumstances mentioned above fall within the preview of force majeure.

11. 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:

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

13. The complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 1,11,47,430/-. A buyer's agreement dated 01.12.2015 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 01.12.2019. After signing of buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs. 59,25,927/- as per statement of account dated 01.11.2021 (annexure R4). It is evident from a perusal of the written reply that the construction of the project is not complete and the same is delayed one. The respondent has cited various reasons for delay in completion of the project and allowing it the period during which it could not carry out the construction activities. Though various circumstances had been cited in written reply forcing the respondent to stop construction activities leading to delay in completion of the project, but the plea advanced in this regard is devoid of merit. It is not the case of respondent that during the period it could not carry out construction activities, it suspended receipt of payments due from the allottees including the complainants. Secondly, the various orders passed by NGT and other authorities are annual feature and the developer is bound to take the same into consideration while launching the project. The shortage of construction material including labour is also not helpful to the respondent for postponing the due date of possession of the project after its completion. It is a fact that the project was to be completed by 01.12.2019 by the respondent and possession of the allotted unit was to be offered to the complainants. But there is nothing on the record to show as to what is the status and stage of the project.

neither any report from the engineering wing of the respondent has been placed on the file nor there is any update of the project. The allottees have paid their hard-earned money to the respondent and they are waiting for their dream home since 01.12.2019. A period of about 2.5 years has already expired and the project is nowhere near completion. Even before filing of the complaint, the complainants sent an email dated 11.08.2021 (annexure E, page 73 of the complaint) for refund of the amount of Rs. 59,25,927/- along with interest. 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.

14. 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.

15. 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

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 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 withdrew 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.

17. 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.
18. The authority hereby directs the promoter to return to the complainants the amount received by it i.e., Rs. 59,25,927/- 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

19. The complainants are also seeking relief w.r.t. litigation expenses & compensation. The 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 & compensation.

H. Directions of the Authority:

20. 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 promoter 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. 59,25,927/-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 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.

21. Complaint stands disposed of.
22. 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