



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

**Complaint no. : 3167 of 2021**  
**First date of hearing: 10.09.2019**  
**Date of decision : 12.08.2022**

1. Arun Kumar  
2. Meenu Dev  
Both RR/o: H. no. 48, Ground Floor, Block-F,  
Vipul World, Sec-48, Gurugram-122001

**Complainants**

Versus

M/s Vatika Limited  
Office: 4<sup>th</sup> Floor, Vatika Triangle, Sushant Lok-1,  
Block-A, Mehrauli- Gurgaon Road, Gurgaon-  
122002.

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Meenu Dev (Advocate)  
Sh. Rishabh Gupta proxy counsel for  
Venket Rao (Advocate)

**Complainant in person**

**Respondent**

**HARERA**  
**ORDER**

**GURUGRAM**

1. The present complaint dated 25.08.2021 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 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 complainants, 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	Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	18.80 acres
4.	DTCP license no.	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav warehousing Pvt. Ltd & others
6.	RERA Registered/ not registered	Registered vide no. 213 of 2017 dated 15.09.2017 area admeasuring 93588 sqm. Valid upto 15.03.2025
7.	Unit no.	1701, tower-westend-8 (A-2 of complaint)
8.	Unit area admeasuring	1125 sq. ft. (A-2 of complaint)
9.	Date of allotment	30.11.2016 (A-2 of complaint)
10.	Date of builder buyer agreement	07.06.2018 (B3 of complaint)
11.	Due date of possession	07.06.2021  [As no due date of possession has been mentioned and keeping in view the judgment passed by the Hon'ble Supreme Court in case titled as <b>Fortune Infrastructure and Ors. Versus Trevor D'Lima and Ors</b> (12.03.2018) this period for delivery of possession may be taken as 3 years) to safeguard the interest of the allottee]
12.	Total sale consideration	Rs. 1,61,22,270/- [as per SOA dated 07.01.2016 on page C1 of complaint]



13.	Amount paid by the complainant	Rs. 45,80,525/- [as per SOA dated 07.01.2016 on page C1 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

- I. That the complainants booked a unit in Tranquil Heights, Vatika Ltd. Gurugram Haryana on 27.11.2013. After that the respondent started raising fake demands regarding work progress to deposit installments and accordingly, the complainants deposited installments till 17.02.2014. The complainants had paid a total amount of Rs. 46,12,991/-, but respondent had not done any work in that particular project and refused to construct the project. In 2016, the respondent pressurized the complainants to transfer deposited money in another project i.e. (Vatika Turning Point) as it was not constructing the project. The complainants requested to respondent to return deposited amount to them. But it refused request and deducted Rs. 6,00,000/-. The builder took back builder buyer agreement also and transferred the deposited money in another project i.e. "Turning Point".
- II. That now the respondent again refused to construct the new project also. The respondent is again offering them transfer of their money in another new project. The respondent is harassing the complainants for the last 8 years and using their hard money. The complainants asked the respondent to refund money as it is not constructing the offered project also but it is not refunding the money.

**C. Relief sought by the complainants:**

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



- a. Direct the respondent to refund the amount paid by the complainants 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.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- a. That the complainants, failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with an intent to make unlawful gains.
  - b. It is submitted that the ld. adjudicating officer does not have jurisdiction to adjudicate upon the matters pertaining to seeking relief of refund.
  - c. That the complainants initially booked a unit in the project "Tranquil Height". But due to financial constraints, they requested the company to transfer the funds to some other project namely "Turning point". Thereafter in May 2016, the complainants, learnt about the project launched by the respondent titled as 'Turning Point' situated at Sector 88 B, Gurgaon and approached it repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
  - d. That after having keen interest in the project to be constructed by the respondent, the complainants desired to book a unit and applied for the same vide application form dated 11.05.2016. It is pertinent to note, that the complainants were aware of each and every terms of the



aforsaid application and only after being fully satisfied, agreed to sign without any protest on any demur.

- e. That in the aforsaid application form, the complainants undertook to pay the instalments as and when decided by the respondent as per the payment schedule and in case of any default in making the requisite payment, they would be liable to pay the delay payment charges.
- f. That it is pertinent to mention that the complainants have already booked one more unit in other project of the respondent titled as 'Tranquil Heights' for a total sale consideration of Rs. 1,54,02,000/- for which they have merely paid a partial amount of Rs. 45,80,525/-. It is submitted that that for the earlier booked unit in project titled as "Tranquil Heights", the complainants have paid a partial amount. It is submitted that the complainants requested to cancel the said unit on the ground that due to financial instability, they would not be able to retain the unit. However, considering the request of the complainants, the respondent after deduction of the brokerage charges transferred the funds to the "Turning Point" project. As a matter of fact, as per the terms of the previous BBA, the respondent was entitled to deduct the earnest money and other charges but it never deducted earnest money of the complainants.
- g. Thereafter, upon several meetings between the complainants and the respondent, they requested to transfer the amount paid in the project "Tranquil Heights" to the project in question. And, upon considering the requests, the respondent being a customer centric and to prevent the complainants' from monetary loss agreed to transfer the amount paid by them without deducting the earnest money except the brokerage paid to the third party i.e., Real Estate Agent.



- h. That on 21.11.2016, vide invitation for allotment letter called upon the complainants to come ahead and accept the allotment. And, subsequently vide letter dated 30.11.2016, the respondent allotted a unit bearing no. 1701-Westend-08-88b-Sector. On 31.10.2017, a builder buyer agreement was send to the complainants through post for signatures and they were bound to execute the same within 30 days but the same was left unanswered. After much pursuance on 07.06.2018, a builder buyer agreement was executed between the parties for the unit bearing no. HSG-1701- westend- 8, in the said project for a total sale consideration sale price of Rs. 66,49,897/-.
- i. It is a matter of fact, that the complainants were well aware of every terms of the said agreement and agreed to sign the same after being satisfied with each and every term at free will and without any protest or demur. It is submitted that as per the agreement so signed and acknowledged, the complainants knew that the possession of the said unit was subject to timely payment of amount due by them.
- j. It is submitted that the concerned project is registered with authority vide registration no. 213 of 2017 dated 15.09.2017. In accordance with the registration certificate granted by the authority, the due date of completion of the project would be on or before March 2025, and the same was duly communicated to them. Thus as per *Clause 5* of the agreement, the possession of the unit in the question was proposed to be completed as per the date provided at the time of the registration of the project. Therefore, the due date of the possession of the unit in question comes out to be March 2025. It is submitted that the present complaint is premature. There is no cause of action arising in favour of the complainants.

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k. That subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township. The various unforeseen events are listed below;

- i. *Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the 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.*
- ii. *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 makes 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.*
- iii. *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.*
- iv. *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.*
- v. *Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.*
- vi. *In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/ Authorities to curb pollution in Delhi-NCR region.*
- vii. *Even before the normalcy could resume, the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.*
- viii. *Despite, after such obstacles in the construction activity and before the normalcy could resume, the entire nation was hit by the World wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.*

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1. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainants have not approached the authority with clean hands and hence, the complaint deserves to be dismissed with costs.
7. 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**

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

**E.I Territorial jurisdiction**

9. 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.

**E. II Subject-matter jurisdiction**

10. 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**

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(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

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*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.*

11. 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.
12. 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*

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*functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. 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.

**F. Findings on the objection raised by the respondent.**

**F.I Objection regarding force majeure conditions.**

14. The respondent-promoter has raised the contention that the construction of the project in which the apartment is situated, has been delayed due to force majeure circumstances such as HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land, gas pipeline passed through the sanctioned project, NGT issued directives and measures to counter deterioration in air quality in the Delhi-NCR region, and many other reasons. It is observed by the authority that the construction of the project was delayed on account of gas pipe line passing through land of the subject project & HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. The said factors might be taken into consideration however, the respondent may get the required period declared as "zero period" from the competent authority. Till then the said period cannot be excluded while calculating the delay in handing over of the possession. Moreover, as far as NGT orders to directives and measures to counter deterioration in air quality in the Delhi-NCR region, cannot be taken into consideration as the same were imposed for a shorter period of the time. In view of these circumstances, no grace on account of force majeure circumstances can be allowed to the respondent/builder.

**G. Findings on the relief sought by the complainant.**

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

15. The complainants booked a unit in Tranquil Heights, Vatika Ltd. Gurugram Haryana on 27.11.2013 and paid a total amount of Rs. 46,12,991/-. But respondent had not done any work in that particular project and refused to construct the project. In 2016, the respondent pressurized the complainants to transfer deposited money in another project i.e. (Vatika Turning Point) as it was not constructing that project. The complainants requested to respondent to return deposited amount by them. The respondent refused to accept their request and deducted Rs. 6,00,000/- from the deposited amount. They took back builder buyer agreement also and transferred the deposited money in another project i.e. "Turning Point".
16. The respondent took a plea that that the complainants initially booked unit in the project Tranquil Heights and due to financial constraints, they requested it to transfer the funds to some other project namely "Turning Point". Thereafter in May 2016, the complainants learnt about the project launched by the respondent namely "Turning Point" situated at sector-88B, Gurgaon. The complainants applied for the same vide application form dated 11.05.2016. It is pertinent to note that the complainants were aware of the terms of the application.
17. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and are 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 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. As no due date of possession has been mentioned and keeping in view the judgment passed by the Hon'ble Supreme Court in case titled as *Fortune Infrastructure and*

**Ors. Versus Trevor D'Lima and Ors** (12.03.2018) this period for delivery of possession may be taken as 3 years).

18. The due date of possession as per agreement for sale as mentioned in the table above is **07.06.2021** and there is delay of 79 days on the date of filing of the complaint.

19. 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have 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....."*

20. 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 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"*

21. 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 they wish 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.
22. 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.
23. The authority hereby directs the promoter to return the amount received by him i.e., Rs.45,80,525/- with interest at the rate of 9.80% (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. Directions of the authority**

24. 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):



**HARERA**  
**GURUGRAM**

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- i. The respondent is directed to return the amount received by him i.e., Rs. 45,80,525/- with interest at the rate of 9.80% (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.
- 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.

25. Complaint stands disposed of.

26. File be consigned to registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2022

  
(Dr. K.K. Khandelwal)

Chairman

**HARERA**  
**GURUGRAM**