

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

Complaint no. : 3602 of 2021
First date of hearing: 29.10.2021
Date of decision : 12.08.2022

1. Sarvjit Singh
2. Ritu Chandel
Both RR/O : House No. 5282/2,
Modern Housing Complex,
Manimajra, Chandigarh - 160101

Complainants

Versus

M/s Vatika Limited
Office: Vatika Triangle, 4th Floor, Sushant Lok-
Phase-I, Block-A, Mehrauli-Gurgaon Road,
Gurgaon-122002.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

None

Sh. Dhruv Dutt Sharma (Advocate)

Behalf of complainants

Counsel for the respondent

ORDER

1. The present complaint dated 09.09.2021 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 | "Vatika India Next" at sector 81,82A,83,84 and 85, Gurgaon, Haryana |
| 2. | Nature of the project | Primrose complex (Independent floors) |
| 3. | Project area | 182 acres |
| 4. | DTCP license no. | 113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017 |
| 5. | RERA Registered/ not registered | Not registered |
| 6. | Plot no. | 30, GF, tower E (page 54 of complaint) |
| 7. | Plot area admeasuring | 781.25 sq. ft. (Page no. 54 of complaint) |
| 8. | Date of allotment | 20.01.2011 |
| 9. | Re-allotment of unit | 06.08.2012 |
| 10. | Plot no. | 6, GF, ST 82E-13,(annexure 17) |
| 11. | Date of builder buyer agreement | 25.03.2011 (page 51 of complaint) |
| 12. | Due date of possession | 25.03.2014 |
| 14. | Total sale consideration | Rs. 31,52,607/- |
| 15. | Amount paid by the complainant | Rs.9,48,714/- (At page No.21 of the complaint and agreed to by the counsel for the respondent) |



| | | |
|-----|------------------------|------------------------------------|
| 16. | Occupation certificate | Not obtained |
| 18. | Legal notice | 13.02.2021 (page 110 of compliant) |
| 19. | Notice for termination | 14.11.2018 |

B. Facts of the complaint

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

I. That somewhere around in 2009, respondent approached the complainants and represented that it was developing a state of the art residential colony viz. Vatika India Next, located in Sector 81, Gurugram, (Haryana) and induced them to purchase a unit in the said project.

II. That believing the representations to be true and correct and with the dream of owning a residential unit for them and their family, the complainants filed an application form and paid Rs. 2,41,492/- vide cheque dated 15.10.2009 towards application money vide Receipt No. 34504 dated 27.10.2009. The complainants further paid Rs. 2,478/- on account of balance porting amount. Thereafter, on 16.12.2009, the respondent wrote to the complainants that they would shortly inform them to come forward for allotment of a specific unit (firm allotment) and execution of the builder buyer's agreement. Pursuant to the aforesaid letter dated 16.12.2009, on 08.01.2010, the respondent wrote another letter and informed the complainants that 20.01.2011 had been fixed as the date for firm allotment. Thereafter, on 11.01.2010, the respondent issued a revised letter to the complainants and had again informed them to come forward for firm allotment on 20.01.2011.

III. That pursuant to the aforesaid letters dated 08.01.2010 and 11.01.2010, on 31.05.2010 and later on 29.07.2010, the respondent wrote a letter and informed that the process of allotment had been further being delayed due to alleged on-going work on the alignment of sectoral roads by the

authorities and assured the complainants that the allotment would be surely be done somewhere in the early part of September, 2010.

- IV. That in the meantime, complainants were called for firm allotment and accordingly they were allotted Emilia unit, ground floor on plot no. 30, 15th street, sector - 83, Block - E. An allotment letter dated 20.01.2011 was issued by the respondent evincing and acknowledging the allotment in their favour. Immediately thereafter, respondent raised a demand for third instalment. However, the complainants vide their letter dated 20.01.2011 [hand delivered and received] expressed their inability to pay the third instalment as their loan application was under process. The complainants further requested the respondent to exempt them from any penal interest on account of delayed payment. However, the respondent out rightly refused to accommodate any such request and warned the complainants that any delayed payment would inevitably lead to imposition of penal interest.
- V. Accordingly, complainants somehow managed to arrange funds and issued a cheque for Rs. 2,79,969/- [bearing cheque No. 060879 dated 20.01.2011] towards payment of third instalment and a payment of Rs. 9,990/- was made vide cheque No. 433673 dated 20.01.2011. The respondent issued a voucher dated 21.01.2011 evincing the receipt of payment of Rs. 2,79,969/- from the complainants. Thereafter, vide demand letter dated 16.02.2011, the respondent raised a total demand of Rs. 4,05,158/-.
- VI. Thereafter on 03.03.2011, a further payment of Rs. 3,00,158/- was made by the complainants to the respondent vide cheque No. 575336 dated 03.03.2011 and a payment of Rs. 1,05,000/- was made vide cheque No. 433675 dated 03.03.2011.

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- VII. In the meantime, the complainants' loan application came to be approved and a housing loan of Rs. 16,00,000/- was sanctioned in favour of Mr. Sarvjit Singh (complainant No.1) @ 9.50% p.a. for a total duration of 10 years.
- VIII. Ultimately, after receiving a payment of Rs. 9,39,087/- out of the total sale consideration of Rs. 24,39,696/- excluding PLC and IFMS, the respondent finally came forward and executed the dwelling unit buyer's agreement only on 25.03.2011. Thereafter, vide letter dated 09.01.2012, out of nowhere and without any rhyme or reason, the respondent informed the complainants that they had unilaterally changed the number of the dwelling unit and further revised the area of the residential unit as allotted to them. The revised area now stood at 929.02 sq. ft. from 781.25 sq. ft. as mentioned previously at the time of reservation and allotment. It is pertinent to mention here that the modifications in the numbering and floor area was done keeping the complainants in dark and they only came to know of it when the said letter was issued. More so, the respondent unilaterally revised the payment plan qua the said unit to Rs. 31,99,494/- from Rs. 24,39,696/- as it stood earlier. Under the garb of the said revision, vide demand Letter dated 09.01.2012, the respondent made a further demand of Rs. 1,86,671/- and Rs. 4,807/- [service tax] on account of increase in the floor area and directed the complainants to make the said payment by 24.01.2012.
- IX. Thereafter on 06.08.2012, the respondent informed the complainants of the re-allotment of the residential unit owing to alleged fine tunings and amendment since the master layout necessitated changes due to architectural and other related considerations. The respondent further directed the complainants to come forward for the said re-allotment of the residential unit.

- X. Pursuant to the aforesaid re-allotment, the respondent issued a letter dated 14.08.2012 and re-allotted the residential unit and allotted a completely different unit with a different address altogether, being unit No. 6, GF, ST 82E-13, Sector 82-E. The respondent yet again issued a reminder letter dated 08.05.2013 thereby, calling upon the complainants to pay for the revised area and completely ignored the delivery schedules and their requests to adhere to the agreed terms of the agreement. The complainants continued to wait for the respondent to complete the project and handover vacant and peaceful possession of the allotted unit.
- XI. That in the year 2015, the respondents issued a letter dated 15.06.2015 informing the complainants about the alleged applicability of Value Added Tax upon the construction of the residential unit as booked by them. The respondent further directed the complainants to give an undertaking to pay for the VAT in case the same is levied upon them by the government. The respondent thereafter in the year 2016 issued a letter dated 10.11.2016 and under the garb of some amnesty scheme, calculated the VAT liability of the complainants to the tune of 1.05% on the gross amount received/ receivable for sale of a flat.
- XII. The complainants visited the respondent office and objected to any such demand and further requested them for join inspection of the site to take stock of the status of the construction. The respondent however, showed its reluctance and gave assurance that the said residential unit would be ready in no time and the same would be ready for possession and tried to wash away its liability by saying that the interest on delayed payments would be adjusted at the time of handing over of possession and that the complainants need not worry at all. Believing the representations and assurances advanced by the respondent at that time, the complainants made a further payment of Rs. 9,627/- against VAT Demand.

- XIII. Thereafter, the complainants visited the respondent to inquire about the status of the construction and requested to issue possession letter. However, the respondent on every occasion, kept on advancing excuses and gave false assurances that the said dwelling unit was almost ready and would be offered for possession very shortly. The complainants became apprehensive of the evasive conduct of the respondent. They accordingly approached it and warned of legal action, in case it did not deliver the possession of the dwelling unit in next three (3) months.
- XIV. As up till February 2020, no payment was received and the respondent kept on taking time on some pretext or the other. It became clear that it had no intention of making the payment and had all along cheated the complainant of their hard earned money. Thereafter, commencing March 2020, the entire country witnessed the outbreak of novel COVID-19 pandemic and the entire country was put under strict lockdown. resultantly, the complainants were unable to physically follow up with the respondent and tried to reach on phone. However, to an utter shock and surprise of the complainants, the respondent totally avoided them and did not take their calls. It was only when the restrictions were eased out late in February 2021 that the complainants were constrained to issue legal notice dated 13.02.2021 to the respondent duly highlighting their illegal and arbitrary conduct and inter-alia, calling upon them to refund the entire amount of Rs. 9,48,714/- with 18% p.a. from the date of each payment till actual realisation and damages.

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund of Rs.9,48,714/- along with interest/compensation towards delay at the rate of 18% per**

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annum from the date of payment till the actual date of refund to the complainants.

II. Direct the respondent to pay Rs. 20,00,000/- as compensation for damages on account of mental harassment caused to the complainants, lack of service, physical discomfort, mental agony and pain.

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 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.

b. That the complaint filed before the adjudicating officer, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this adjudicating officer 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 adjudicating officer.

c. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

d. That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are

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estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.

- e. That apparently, the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, is liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainants.
- f. That the respondent had already terminated the builder buyer agreement dated 25.03.2011 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL Corridor, non-removal or shifting of the defunct High Tension lines and non-acquisition of sector roads by HUDA. It is submitted that the respondent also offered alternate unit in the same project however, the complainants did not accept the alternate option and thus the respondent was constrained to terminate the agreement. It is pertinent to mention here that the respondent also offered to refund the amount to the complainants along with 6% interest p.a. as per builder buyer agreement. However, it was the complainants who did not come forward to collect the money.
7. Copies of all the relevant documents have been files and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions 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

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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

.....

(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 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 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 cases 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 relief sought by the complainant.

F.I Direct the respondent to refund of Rs.9,48,714/- along with interest/compensation towards delay at the rate of 18% per annum from the date of payment till the actual date of refund to the complainants.

14. The complainants have submitted that they were allotted Emilia unit, ground floor on Plot No. 30, 15th Street, Sector - 83, Block - E. The parties executed the dwelling unit buyer’s agreement on 25.03.2011. On 06.08.2012, the respondent informed the complainants that it had

unilaterally changed the number of the dwelling unit and further revised the area of the residential unit as allotted to them. The respondent issued a letter dated 14.08.2012 and re-allotted the residential unit and allotted a completely different unit with a different address altogether, being Unit No. 6, GF, ST 82E-13, Sector 82-E. On 14.11.2018, the respondent sent a letter dated 14.11.2018 wherein it had categorically admitted the factum of delay in construction on its part and after so acknowledging, offered the complainants to get the entire amount paid by them refunded. The complainants were constrained to issue legal notice dated 13.02.2021 to the respondent duly highlighting their illegal and arbitrary conduct and inter-alia, calling upon them to refund the entire amount of Rs. 9,48,714/- with 18% p.a. from the date of each payment till actual realisation and damages. The respondent had already terminated the builder buyer agreement dated 25.03.2011 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL Corridor, non-removal or shifting of the defunct High Tension lines and non-acquisition of sector roads by HUDA. It is submitted that the respondent also offered alternate unit in the same project. However, the complainants did not accept that alternate option and thus, the respondent was constrained to terminate the agreement. It is pertinent to mention here that the respondent also offered to refund the amount to the complainants along with 6% interest p.a. as builder buyer agreement.

15. Keeping in view the fact that the allottees/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. The due date

of possession as per agreement for sale as mentioned in the table above is 25.03.2014 and there is delay of 7 years 5 months 15 days on the date of filing of the complaint.

16. 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....."

17. 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.** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)**. It was observed:

"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"

18. 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 allottees, 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.

19. This is without prejudice to any other remedy available to the allottee 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.
20. The authority hereby directs the promoter to return the amount received by him i.e., Rs.9,48,714/- 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*.

FII. Direct the respondent to pay Rs. 20,00,000/- as compensation for damages on account of mental harassment caused to the complainants, lack of service, physical discomfort, mental agony and pain.

21. The complainants are also seeking relief w.r.t 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 & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

22. 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):

- i. The respondent is directed to return the amount received by him i.e., Rs.9,48,714/- 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.

23. Complaint stands disposed of.

24. File be consigned to registry.

V.1-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman

Dated: 12.08.2022