

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

Complaint no. : 2717 of 2021
First date of hearing: 06.09.2019
Date of decision : 09.08.2022

Satish Chopra S/o Late. Sh. Hans Raj
R/o: BG 2/21B, LIG flats, Paschim Vihar,
New Delhi

Complainant

Versus

M/s Vatika Limited
Office: 4th 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:

Sh. Mudit Sood (Advocate)
Sh. Ankur Berry (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 04.08.2021 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 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 complainant, 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	"Lifestyle Homes, Sector 83, Village Harsaru, Tehsil and District Gurugram, Haryana.
2.	Nature of the project	Group housing
3.	Project area	12.83 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 01.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	Name of licensee	M/s Spring Buildcon Pvt. Ltd. & Others, C/o Vatika Ltd.
6.	RERA Registered/ not registered	Registered vide no. 272 of 2017 area admeasuring 10650.524 sqm. Valid upto 31.12.2019.
7.	Unit no.	1101, 11 th floor, tower W1 (page 24 of complaint)
8.	Unit area admeasuring	1750 sq.ft. (Page no. 24 of complaint)
9.	Date of allotment	N/A
10.	Date of builder buyer agreement	30.11.2012 (page 21 of complaint)
12.	Due date of possession	30.11.2015
13.	Possession clause	15 SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>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</i>

		<i>of three years 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 III or as per the demands raised by the company 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..... Emphasis supplied</i>
14.	Total sale consideration	Rs. 1,07,16,250/- [as per SOA dated 11.11.2013 on page 46 of reply]
15.	Amount paid by the complainant including co-allottee namely Nitin Chopra	Rs. 19,67,000/- [as per SOA dated 11.11.2013 on page 46 of reply]
16.	Occupation certificate	Not obtained
17.	Termination letter	06.02.2014(page 48 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. The complainant along with one Nitin Chopra booked a flat no. W1- 1101 situated on 11th floor and tower no. W1 having admeasured super area 1635 sq. ft. in the project "Lifestyle Homes" believing on claims made by the respondent for total sale consideration of Rs. 1,07,16,250/-. As per the respondents' demand towards fulfilment of above contract, they have duly deposited an amount of Rs. 4,92,000/- to the respondent as booking amount on 29.09.2012, thereby concluding the contract to purchase the above said residential apartment with the respondent by making payment of Rs. 4,92,000/- booking amount. After the above said concluded contract to purchase the above apartment by them on 29.09.2012, the respondent had also obtained signatures of both the allottees, on buyers' agreement

sent from the respondent's side with unilateral terms and conditions contained therein on 30.11.2012.

- II. That before signing of the unilateral buyers' agreement send by the respondent to the allottees, they had already made payment of Rs. 14,75,000/- as per the respondents' demand letter dated 30.10.2012 amounting to Rs. 7,50,000/- and Rs. 7,25,000/- both drawn on HDFC bank Punjabi Bagh, New Delhi, both dated 27.11.2012 in the respondents favour towards the part payment out of total sale consideration of Rs. 1,07,16,250/-.
- III. The allottees were always ready and willing to make the part payment as demanded by the respondent from time to time and having also paid an amount of Rs. 4,92,000/- towards earnest money and an amount of Rs. 14,75,000/- towards the part payment of the above mentioned flat amounting to a total of Rs. 19,67,000/-. But after paying the earnest money, they realized that the said project has not been completed and no work was going on the site. They anticipated the delay in work and decided to call off the deal. Unfortunately, some family emergency, a financial constrained also occurred in their family and due to which they were not able to pay the further instalment of part payment towards balance sale consideration as per the demands raised by the respondent from time to time. The family emergency occurred to them being an act of God and beyond their control. They duly apprised the facts about the family emergency to the respondent through their regular correspondence in writing as well as orally.
- IV. In the month of February 2014, they received a letter of termination-cum-refund from the respondent's dated 06.02.2014 vide which it illegally, malafidely, unilaterally and without following the due process of law had cancelled the allotment of the above captioned apartment by forfeiting an

amount of Rs. 13,80,717/- out of total amount of Rs. 19,67,000/- paid to it by the allottees as per respondents' demand from time and time and have also sent a refund for an amount of Rs. 5,86,263/- in favour of them.

- V. The above act of termination, as well as deduction of an amount of Rs. 13,80,717/- from total amount of Rs. 19,67,000/- is grossly illegal, capricious, malafide, illogical and against the basic principle of equity and good conscious as your well aware of the fact that allottees are the bonafide end users of the above captioned apartment. But due to delay in the project of the respondent and further due to some family emergency, they have defaulted in making the payment of balance part payment towards the balance sale consideration of the above apartment and they inspite of all odds have also requested to the respondent many times orally to withdraw the termination letter dated 06.02.2014 and vide their mail dated 09.05.2014, but the respondent has not considered their genuine request and sent a vague reply dated 22.05.2014 vide which it further demanded an interest of an amount of Rs. 5,92,551/- besides principal balance towards the part payment.
- VI. That the allottees intention right from the beginning was to purchase the above apartment by making the regular payment towards the part payment of balance sale consideration of the above apartment and the default was occurred due to family emergency. But the respondent's act of illegally forfeiting of an amount of Rs. 13,80,717/- was unjust and malafide, therefore, they have not encashed the cheque of Rs. 5,86,283/- which was sent by it towards the full and final refund and demand refund the whole amount of Rs. 19,67,000/- as deposited by the allottees with it.
- VII. That even after many requests and telephonic conversation with the respondent did not listen to genuine request of the allottees. They had no other option than to send the respondent a legal notice for the refund of

their hard-earned money. Therefore, they had sent the respondent a legal notice which was never replied back.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to refund the entire amount of Rs. 13,80,717/- paid by the complainant and his co-allottee and duly acknowledged by the respondent.
 - b. Direct the respondent to pay interest @24% p.a. on the aforesaid principal amount of Rs. 13,80,717/- from dates of respective instalments/realization of the sale consideration by the respondent.
 - c. Direct the respondent to pay compensation of Rs. 5,00,000/- for mental agony, harassment, and financial losses.
 - d. Direct the respondent to pay Rs. 1,00,000/- towards the cost of litigation.
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. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the application for booking dated 28.09.2012 and ABA dated 30.11.2012, as shall be evident from the submissions made in the following paras of the reply.
 - b. That at the very outset it is submitted that the complaint ought to be dismissed at the very first instance as the allotment was in the name of two allottees namely Nitin Chopra and Satish Chopra. However, the complaint has only been signed and filed by Satish Chopra, the second allottee. Further, the affidavit annexed with complaint also though



names both the allottees. However, is signed only by Satish Chopra. The malice is apparent from the fact that there is no power of attorney in favour of Mr. Satish Chopra from Nitin Chopra and thus this incurable defect, leaves the complaint inadmissible and deserving to be dismissed outrightly.

- c. The complainant has himself violated the obligations as set in within the section 19 of the Act and has further breached the terms of the agreement dated 30.11.2012. The complaint has been filed by him by hiding the true facts of the present case and by placing half-baked truths. Thus, the complaint ought to be outrightly be dismissed with heavy costs.
- d. The complainant has failed to make payments as per the agreed payment plan and out of the total sale price of Rs. 1,07,16,250/- , had only paid Rs. 19,67,000/-. It is most pertinent to submit that even after numerous opportunities, reminders, notice of termination and further chances, they ignored to fulfil their promise of paying the consideration amount as mutually decided and hence there being no fault on the part of respondent, the respondent was entitled to cancel the booking. The respondent issued several reminders to them to pay the balance amount yet they failed to do so. The respondent had issued termination cum refund letter on 06.02.2014, being tired of waiting for due payments from them. It is pertinent to submit that the allottees had requested for extension of time for payments to the respondent vide email dated 28.11.2012. The extension requested by the allottees being for 2 months extension to make interest free payment, the respondent obliged them and vide email dated 09.01.2013, the extension for 2-month period was allowed. However, they continued with their failure



of payments thus the respondent had no option but to cancel and terminate the allotment.

- e. It is submitted that when the above-mentioned demand letters and reminders were issued, and the allottees failed to clear their due as per demands raised in accordance with the payment plan, the respondent was legally entitled to cancel the allotment. It is pertinent to mention that they have committed breach of understanding arrived at between the parties and failed to make any payment towards the unit. They have wilfully defaulted against the payments of due instalments with regard to demand/ reminder letters as marked in annexure R-3 colly. The continued failure of the allottees to fulfil their obligations under the buyers' agreement dated 30.11.2012 and also under section 19 of the Act resulted in issuance of termination cum refund letter dated 06.02.2014. Thus, the booking and allotment of the allottees have already been terminated and accordingly cancelled by the respondent vide termination letter dated 06.02.2014 marked here as annexure R-5.
- f. The complainant failed to bring to the knowledge of the authority that the respondent had sent the buyers' agreement to the allottees for signing on 04.10.2012 to be returned in 15 days. However, they delayed the complete process by failing to provide the signed copy for execution. The respondent sent reminder notice to them on 16.11.2012 and thereafter the buyers' agreement eventually got signed and executed on 30.11.2012.
- g. It is submitted that the allottees entered into buyers' dated 30.11.2012 with the respondent owing to the name, good will and reputation of the respondent, they in terms with the ABA, promised to make all payments in accordance with the agreed payment plan and the timely payments of instalments was the essence of the agreement between the parties.

- h. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead the authority, for the reasons stated above. It is further submitted that none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the authority.
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

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 the paid amount along with interest.

14. It is not disputed that the unit in question was allotted in the name of complainant and one Nitin Chopra. Even payments to the respondent/builder were also made by them in pursuant to buyer's agreement dated 30.11.2012. After cancellation of the unit the respondent sent a cheque dated 31.01.2014 in the name of both the allottees. The complaint seeking refund has been filed by one of the allottee namely Satish Chopra. So, an objection was raised by the respondent/builder w.r.t non-joining of second allottee as a party and in his absence the complaint being liable to dismissed. But the plea advanced in this regard is devoid of merit. The allotment of the unit has already been cancelled by the respondent/builder in favour of the allottees and there is only dispute w.r.t return of the amount after deducting earnest money and that action is under challenge. So, in view of the provisions contained in Order 1 Rule 4 of C.P.C 1908, there is no bar for the authority to give a judgment/order for or against one or more of joint parties without any amendment and the same provides as under :

"4. COURT MAY GIVE JUDGMENT FOR OR AGAINST ONE OR MORE OF JOINT PARTIES.

Judgment may be given without any amendment-

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities."

So, in view of the above-mentioned provisions contained in law, the complaint cannot be dismissed in the absence of one of the allottee not being joined as one of the complainant, but relief can also be granted to him.

15. The complainant has submitted that he along with one Nitin Chopra booked a flat in the residential project namely "lifestyle homes" for a total sale consideration of Rs. 1,07,16,250/- against which they paid Rs. 19,67,000/-. But after paying the amount, they realized that the said project is not going to be completed on time and also, there was some financial emergency to him. The allottees due to these reasons requested the respondent to cancel the unit and sought refund as they did not have the funds to pay the remaining dues for the unit. The respondent in such a situation accepted their request and issued a letter of termination-cum-refund to the allottees and forfeited an amount of Rs. 13,80,717/- out of total amount of Rs. 19,67,000/- and refunded an amount of Rs. 5,86,263/- vide cheque bearing no. 000266 dated 31.01.2014 drawn on HDFC bank, New Delhi in favour of the allottees. It was further submitted that the respondent forfeited the amount illegally. Thereafter, the allottees requested the respondent to withdraw the termination letter dated 06.02.2014, but the respondent did not consider the genuine request of their and sent a vague reply dated 22.05.2014 vide which further demanded an interest of an amount of Rs. 5,92,551/- besides principal balance towards the part payment. They had no other option than to send a legal notice to respondent for refund and which was never replied back.
16. On consideration of the above-mentioned submissions and facts, the authority is in the view that the respondent issued a termination-cum-refund letter on 06.02.2014, accordingly, forfeited an amount of Rs. 13,80,717/- out of 19,67,000/- which is more than 10%. The respondent

while terminating the unit was under an obligation to forfeit the amount paid by the allottees i.e., earnest money and refund the balance amount deposited by them (*inadvertently mentioned in the proceedings as buyer's agreement not executed between the parties*). The allottees paid an amount of Rs. 19,67,000/- to the respondent/builder who terminated the allotted unit on 06.02.2014, by retaining the amount beyond the 10% which is not legal in view of a number of pronouncement of the hon'ble Apex court in cases of ***Maula Bux Vs. Union of India (1970)1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. Vs. Sarag C. Urs. (2015) 4 SCC 136*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of the contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. Even keeping in view the principles laid down in the above mentioned cases, the authority made regulations w.r.t forfeiture of earnest money and regulation 11 (5) of 2018 provides as under:

"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 amount of the real estate i.e. apartment/plot/building as the case may be in all case 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."

17. Keeping in view the above mentioned facts, while cancelling the allotment, the respondent/builder retained more than 10% of the sale price and returned only a sum of Rs. 5,86,263/- which is violative of the law detailed above Thus, in view of the aforesaid provisions, the respondent is directed

to forfeit only the earnest money not exceeding 10% of the sale price of the said unit as per statement of account and return the balance amount to the complainant and the co-allottee in equal shares after deducting Rs. 5,86,264/- (already paid) within a period of 90 days from the date of this order.

F. Directions of the authority

18. 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 refund the deposited amount to the complainant and his co-allottee in equal shares after forfeiting 10% of the basic sale price of the unit being earnest money and after deducting Rs. 5,86,264/- (already paid) along with an interest @9.80% p.a. on the refundable amount, from the date of termination (i.e., 06.02.2014) till the date of realization.
- 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.

19. Complaint stands disposed of.

20. File be consigned to registry.

v.i - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022

(Dr. K.K. Khandelwal)

Chairman