



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

Complaint no. : 1613 of 2021
First date of hearing: 06.07.2021
Date of decision : 09.08.2022

1. Amit Agarwal
R/o: C-3/11, Block- C, Rana Pratap Bagh,
New Delhi - 110007
2. Yogita Arora
R/o: H. no. D-401, Alaknanda CGHS,
Plot No 45, Sector 56, Gurugram,
Haryana - 122011

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:

Sh. Vishnu Kant (Advocate) **Counsel for the complainants**
Sh. CK Sharma & Dhruv Dutt Sharma **Counsels for the Respondent**
(Advocates)

ORDER

1. The present complaint dated 09.04.2021 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 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	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	M/s Ganesh buildtech Pvt. Ltd. & others, C/o Vatika Ltd.
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Date of booking	N/A
8.	Date of allotment	N/A
9.	Date of builder buyer agreement	15.10.2015 [Annexure C1, page 27 of complaint]
10.	Unit no.	3703, 37 th floor, tower A (page 30 of complaint)
11.	Unit area admeasuring	1635 sq. ft. (Page no. 30 of complaint)
12.	Possession clause	13 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 of 48 (Forty Eight) 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 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>
13.	Due date of possession	15.10.2019
14.	Total sale consideration	Rs. 1,21,30,065/- [page 62 of complaint]
15.	Amount paid by the complainant	Rs. 70,10,946/- [page 62 of complaint]
16.	Occupation certificate	Not obtained
17.	Legal notice	25.06.2020 (page 69 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainants in March 2013 were approached by the representative of opposite party for booking an apartment in project. The complainants were asked to submit an expression of interest form for booking a residential apartment admeasuring 2100 sq. ft. (approx.) by the opposite party. The complainants paid a sum of Rs.8,00,000/- vide cheque no. 463934 dated 10.04.2013 to opposite party towards booking amount

at time of submission of the expression of interest form. By 31.07.2013, complainants had already paid a sum of Rs. 22,70,000/- towards booking of a said residential apartment.

- II. Subsequently in September 2013, the opposite party vide letter dated 23.09.2013 called upon the complainants for invitation for offer of allotment of unit in "**Seven Elements**" at Sector 89A, for priority no. 3BHK+S +ST/031 at their registered office mentioned above. It was also informed to the complainants that since apartment numbers have to be allotted in sequence, opposite party will not be able to offer another opportunity for those who are not present at the prescribed venue at stipulated time and date.
- III. The complainants on 09.10.2013 were allotted apartment no. B-201, fourth court in the seven elements project located at Sector 89A, Dwarka Expressway, Gurugram. The complainants by February, 2014 had already paid a sum of Rs. 41,85,617/- towards the sale consideration to opposite party but the progress of the construction of the project had not even begun then, and the completion within a period of 36 months was simply out of question.
- IV. Since the complainants were in need of residential house and the construction of 'Seven Elements' was only at a very nascent stage and completion was not possible within the stipulated time period, so they requested opposite party to refund the amount. However, instead of refunding the amount, opposite party gave two options to the complainants.
 - a. Refund, if any will only be possible after deduction of the earnest money and other non-refundable amounts;



- b. The allotment of the complainants would be transferred to a project named "Tranquil Heights" located in Sector 82A, Gurugram and the possession of the same shall be handed over by October, 2019.
- V. By that time, the complainants had already paid a sum of Rs. 41,85,617/- towards the sale consideration to opposite party. They had no option but to shift their allotment to "**Tranquil Heights**" located in Sector 82A, Gurugram. The complainants in order to get their allotment transferred to "Tranquil Heights" were asked to give an undertaking based on the format shared by opposite party. At the time of giving the undertaking in February 2015, complainants had inquired from opposite party about any charges which would be levied towards transfer of booking from "Seven Elements" to "Tranquil Heights". The opposite party had assured that no charges would be levied and therefore, the undertaking given by complainants was left blank at few places at time of submission of the undertaking on 19.02.2015.
- VI. That the complainants on 23.02.2015 were allotted an apartment no. 3703, admeasuring 1635 sq. ft., floor- 37th, building-a, tranquil heights, Sector-82A, Village Shikohpur, Tehsil Manesar, Gurugram, Haryana for a total consideration of Rs. 1,16,10,135/-.
- VII. To the utter shock of the complainants, when the booking was transferred from "Seven Elements" to "Tranquil Heights" on 23.02.2015, instead of Rs.41,85,617/-, only an amount of Rs.37,66,290.75 were transferred and reflected in the account and Rs.4,32,969.75/- was deducted illegally and arbitrarily. On contacting the representative of opposite party, it was assured that the same would be adjusted at the time of offer of possession.

Based on the said assurance, the complainants kept on making payments as and when demanded by the opposite party.

- VIII. The builder buyers agreement ('Agreement') was executed between the parties on 15.10.2015 wherein as per clause 13 of the agreement, the opposite party had promised to deliver the physical possession of the apartment with a period of 48 months from the date of execution of the agreement i.e. by 15.10.2019.
- IX. That till date, the complainants have paid an amount of Rs.74,43,916/- towards the total sale consideration of the apartment to the opposite party. However, the project is far away from completion and the stipulated time period for handing over the possession has also expired on 15.10.2019.
- X. That the complainants sent a legal notice dated 25.06.2020 to the opposite party seeking refund of Rs.74,43,916/- along with interest @ 18% p.a. from date of each payment till actual realization. The opposite party on 14.07.2020 gave a frivolous reply to the legal notice raising untenable grounds for delay in construction.
- XI. It is submitted that as per the website of opposite party, it has been clearly admitted that the project is far away from completion. As per the update available on the website it states that the "Substructure work of Phase 1 is 80% complete", which information is also false. Superstructure work is still in the nascent stage only. Further, the complainants have been allotted an apartment on the 37th floor in building a whereas till date the superstructure till 17th floor has been completed, which is even less than 50%.
- XII. That complainants have suffered much as victims of fraudulent malpractices of opposite party and therefore entitled to refund

Rs.74,43,916/- along with interest @ 18% p.a. from date of each payment till actual realization.

C. Relief sought by the complainants:

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

Direct the respondent to refund to the complainant a sum of Rs. Rs.74,43,916/- along with interest @ 18 % per annum from the date of payment made towards each instalment till date of refund, for failing to deliver possession of the unit within the stipulated time period.

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 complaint filed by the complainants 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 relief being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this adjudicating officer.

b. 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.

c. That the relief sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.



- d. That the respondent 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 allottee(s) to pay in time the price of the said apartment.
- e. Further, it had been also agreed and accepted that in case the delay was due to the reasons beyond the control of the developer then the developer would be automatically entitled to the extension of time for delivery of possession. Further the developer may also suspend the project for such period as it may consider expedient.
- f. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- i. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and the respondent was forced to reevaluate its construction plans which caused a long delay.
 - ii. Initially HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana



Government had transferred the land falling in sector 87, 88 and others sectors to GMDA for constructing new highway 352 W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs. It is pertinent to note that respondent has already laid down its facilities before such upliftment. As a result, respondent was constrained to uplift the project land and re-align the facilities. Thereafter GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W. All this process caused considerable amount of delay and thus hampered the project in question which are beyond the control and ambit of developer.

- iii. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were ban imposed on construction activities for a total period of 70 days between November, 2016 to December, 2019.
- iv. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labor supply, due to laborer's regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain laborer's for longer and stable periods of time and complete construction in a smooth flow.
- v. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana. Disruptions caused by unusually heavy rains in Gurgaon every year.



- vi. Due to the slump in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- vii. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- viii. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. That severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.
- g. That it is not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no laborer was available. Infact, all the developers are still facing hardship because of acute shortage of laborer, the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the force majeure clause and therefore, there cannot be said to be any delay in delivering the possession by the respondent.
- h. That the project "Tranquil Heights" (for Phase-1) has been registered with the authority vide registration no. 359 of 2017.
- i. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers is further invested



towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer / builder in proceeding towards timely completion of the project.

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

(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 complainant 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 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 relief sought by the complainants.

F.I Direct the respondent to refund to the complainant a sum of Rs. Rs.74,43,916/- along with interest @ 18 % per annum from the date of payment made towards each instalment till date of refund, for failing to deliver possession of the unit within the stipulated time period.

14. The complainants booked a unit in the project namely "Tranquil Heights". A unit bearing no. 3701, 37th floor, tower A was allotted to the complainants for a total sale consideration of Rs. 1,21,30,065/- against which they paid 70,10,946/-. On 15.10.2015 a buyers' agreement was executed between the parties. The respondent assured the complainants to handover the said unit within 48 months from the date of execution of buyers' agreement. Therefore, the due date of possession is 15.10.2019. It is pertinent to

mention here that the complainant sent a legal notice on 25.06.2020, which is after the due date to withdraw from the project.

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 **15.10.2019 and there is delay of 1 years 5 months 25 days** on the date of filing of the complaint. 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 allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has 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....."

16. 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 :

"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"

17. 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.
18. This is without prejudice to any other remedy available to the allottees including compensation for which she 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.
19. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 70,10,946/- 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

20. 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. 70,10,946/- 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.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022