

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

Complaint no. : 4716 of 2020
First date of hearing: 04.03.2021
Date of decision : 09.08.2022

1. Vinod Munshi
2. Anita Munshi
R/O : A - 414, LGF, Defense Colony,
New Delhi - 110024

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. Vivek Singh (Advocate)
Sh. CK Sharma & Dhruv Dutt Sharma
(Advocate)

Counsel for the complainants
Counsel for the respondent

ORDER

1. The present complaint dated 12.01.2021 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	"Sovereign Next" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	100.785 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid up to 30.10.2019
5.	Name of licensee	M/s Malvina Developers Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 271 of 2017 dated 09.10.2017 valid up to 08.10.2022
7.	Unit no.	1401, 14 th floor, tower B (page 37 of complaint)
8.	Unit area admeasuring	3270 sq. ft. (page 37 of complaint)
10.	Date of allotment	N/A
11.	Date of builder buyer agreement	02.05.2013 (page 34 of complaint)
12.	Due date of possession	02.11.2017
13.	Possession clause	14. 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 four years six months from the</i>

		<p><i>date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 17,18 & 42 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.</i></p> <p><i>Emphasis supplied</i></p>
14.	Total sale consideration	<p>Rs. 2,40,87,612/-</p> <p>[as per SOA dated 26.02.2021 on page 31 of reply]</p>
15.	Amount paid by the complainants	<p>Rs. 1,00,27,109/-</p> <p>[as per SOA dated 26.02.2021 on page 31 of reply]</p>
16.	Occupation certificate	Not obtained
17.	Email w.r.t refund	26.10.2015, 29.12.2015,06.01.2016

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That the complainants booked a residential flat in the project of the respondent namely "VATIKA SOVEREIGN NEXT" Sector 82A, Gurugram, Haryana.
 - II. That complainants upon being influenced by the representations of the respondent were induced to sign a one-sided pre-printed builder buyer's agreement dated 02.05.2013 by virtue of which the respondent allotted apartment no. 1401, 14th floor, tower-B, admeasuring 3270 sq. ft. in the said project.

- III. The biased nature of the builder buyer agreement is writ large from the bare perusal of the clauses of the agreement, for example clause 19 of the agreement states that the respondent would be liable to pay compensation to the complainants at the rate of Rs. 5 per sq. ft. of the super area. However on the other hand, in case the complainants delays in making payment towards the sale consideration, then the same clause allows the respondent to charge 18% penal interest on the delayed payment from them. Similarly there are other clauses in the agreement which clearly shows the biased and one-sided nature of the clauses of the agreement.
- IV. The complainants were induced by the respondent to make huge payment towards the sale consideration. The complainants had opted for time linked plan and in terms of the same they till date have made a total payment of Rs. 99,70,678/-, against the total sale consideration of Rs. 2,40,62,628/-.
- V. That the complainants in latter part of the year 2014 discovered that the construction of the concerned tower had not commenced on account of high tension transmission wires running over the tower. They were never informed about the said development and further, it was never represented to them that the respondent is making efforts for removal of the said wires as the same was an hindrance in construction of the tower. The complainants being totally dismayed at the conduct of the respondent and taking into account the delay likely to be caused in completion of the tower immediately sought refund from the respondent. The respondent changed the payment plan to construction linked plan and further offered to credit interest @ 12% p.a. on the excess payments made by the

complainants (i.e. approximately to the tune of Rs. 50,00,000/-) in terms of the earlier agreed payment plan i.e. time linked plan. The respondent further promised that the possession would be handed over by year 2017. However, all the assurances and promises made by the respondent proved to be bogus and false as the construction of the tower till year 2017 continued to remain stalled. Further, the respondent for ulterior motives did not credit the interest on the excess payment to the complainants' account as maintained with the respondent.

- VI. That the respondent had promised to complete the project within a period of 4 years and 6 months from the date of execution of the builder buyer agreement. The buyer's agreement was executed on 02.05.2013 and till date, the construction is not complete, resulting in extreme kind of mental distress, pain and agony to the complainants.
- VII. That the respondent has breached the fundamental terms' of the contract by inordinately delaying in delivery of the possession. The project is not nearing completion and the complainants have lost faith in respondent who has taken them and other home buyers for a ride by not completing the project and delaying the same without any just cause or reason. It is pertinent to mention that till date, even the super structure is not complete.
- VIII. That the respondent has not acknowledged the requests of the complainants with regard to the status of the project. There are no signs of completion of the project. The respondent as per agreement had to deliver possession, complete in all respects to the complainants by 02.11.2017. However till date, the project is far from completion. It is submitted that in the case at hand, the respondent has already delayed the

project by over 4 years and thus the complainants are eligible for refund of their hard earned monies

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund a sum of Rs. 99,70,678/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full.
- II. Direct the respondent to pay a sum of Rs. 10 lacs to the complainant towards undue hardship and injury, both physical and mental, caused to due to the acts of omissions and commissions on the part of the respondent.
- III. Direct the respondent to pay a sum of Rs. 1,00,000/- to the complainant towards the cost of the 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. 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 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 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 estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- e. That the complainants have miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that they have frustrated the terms and conditions of the agreement, which were the essence of the arrangement between the parties. Therefore, the complainants now cannot invoke a particular clause, and the complaints are not maintainable and should be rejected at the threshold. That the complainants have also misdirected in claiming refund on account of alleged delayed offer for possession. As per statement of accounts, an amount of Rs. 99,91,012/- is still due and outstanding from the complainants. It has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said building/said apartment floor



within a period of four years six months from the date of execution of the agreement unless there shall be delay due to failure of allottee(s) to pay in time the price of the said apartment. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer then the developer shall 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. Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar **Gas Pipeline** by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the township, including that of Independent floors.
 - ii. Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of **Sector roads** 75 mtr and 60 mtr wide and the consequent litigation for the same, the issue is even yet not settled completely.
 - iii. Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of ground water.

- iv. Delay in removal/ re-routing of **defunct High Tension Line of 66KVA** in Licenses Land, despite deposition of charges/fee with HVBPNL, Haryana.
- v. Total and Partial **Ban on Construction** due to the directives issued by the National Green Tribunal during various times since 2015.
- vi. 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 bans imposed on construction activities for a total period of 70 days between November, 2015 to December, 2019.
- vii. Additionally, imposition of several partial restrictions from time to time prevented the respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
 - a. No construction activities between 6 pm till 6 am (174 days).
 - b. Stop the usage of Diesel Generator Sets (128 days).
 - c. Stop entry of Truck Traffic into Delhi.
 - d. Close brick kilns, Hot Mix plants and Stone Crushers.
 - e. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
 - f. This year, partial restrictions continued to be in place in NCR region.
- viii. The several stretches of total and partial construction **restrictions** have led to **significant loss of productivity in construction** of the projects. It also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.

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 complainant.

F. I Direct the respondent to refund a sum of Rs. 99,70,678/- along with interest @ 18% per annum from the date when payments were made till realization of the amount in full.

14. The complainants have submitted that they booked an apartment bearing no. 1401, 4BHK, 14th floor, tower B admeasuring 3270 sq. ft. in project namely "Vatika Sovereign Next". A builder buyers' agreement was executed between the parties on 02.05.2013 for a total sale consideration of Rs. 2,40,87,612 and they paid Rs. 1,00,27,109/-. The complainant sent various emails dated 26.10.2015, 29.12.2015, 06.01.2016 respectively and requested to cancel the unit and refund the money.
15. Keeping in view of the above said facts and submission made by complainants, the authority observes that the complainants surrendered the unit vide notice dated 26.10.2015. The deductions should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that:-

"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."

16. Keeping in view the aforesaid legal provisions, the respondent shall refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this failing which it shall pay the amount due along with prescribed rate of interest.

17. The authority hereby directs the respondent to refund the deposited amount after forfeiting 10% of the basic sale price of the unit being earnest money as per Haryana Real Estate Regulatory authority Gurugram (Forfeiture of earnest money by the builder) Regulation, 2018 along with an interest @9.80% P.A on the refundable amount, from the date of surrender (i.e., 26.10.2015) till the date of realization of payment.

FII. Direct the respondent to pay Rs. 15,00,000/- towards mental harassment and mental agony, loss of income, bank EMI interest and Rs. 1,50,000/- towards the litigation cost. (Inadvertently Rs. 2,00,000/- written in the proceeding).

FIII. Direct the respondent to pay a sum of Rs. 1,00,000/- to the complainant towards the cost of the litigation.

18. 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

19. 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):
- The respondent is directed to refund the deposited amount after forfeiting 10% of the basic sale price of the unit being earnest money as per Haryana Real Estate Regulatory authority Gurugram (Forfeiture of earnest money by the builder) Regulation, 2018 along with an interest @9.80% P.A on the refundable amount, from the date of surrender (i.e., 26.10.2015) till the date of realization of payment.
 - 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.
20. Complaint stands disposed of.
21. File be consigned to registry.

v.l - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram



(Dr. K.K. Khandelwal)

Chairman

Dated: 09.08.2022