

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

Complaint no. : 4722 of 2020
First date of hearing: 04.03.2021
Date of decision : 09.08.2022

1. Amit Mathu
2. Gipsy Mathu
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 23.12.2020 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 upto 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.	401, 4 th floor tower C (page 34 of complaint)
8.	Unit area admeasuring	2600 sq. ft. (page 34 of complaint)
9.	Date of allotment	N/A
10.	Date of builder buyer agreement	24.12.2012 (page 31 of complaint)
11.	Due date of possession	24.12.2015
12.	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 three years from the date of execution of this Agreement unless there</i>

		<i>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..... Emphasis supplied</i>
13.	Total sale consideration	Rs. 1,87,83,590/- [as per SOA dated 15.02.2021 on page 30 of reply]
14.	Amount paid by the complainant	Rs. 1,83,37,724/- [as per SOA dated 15.02.2021 on page 30 of reply]
15.	Occupation certificate	Not obtained
16.	Email w.r.t refund	10.09.2020 [page 92 of complaint]

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 24.12.2012 by virtue of which the respondent allotted apartment no. 401, 4th floor, tower-C, admeasuring 2600 sq. ft. in the said project.
 - III. The complainants were induced by the respondent to make huge payment towards the sale consideration and on several occasions pre-mature

demands were raised by the respondent. The complainants had opted for time linked plan and in terms of the same, they till date have made a total payment of Rs. 1,83,37,724/-, against the total sale consideration of Rs. 1,92,12,573/-.

- IV. That the respondent had promised to complete the project within a period of 3 years from the date of execution of the buyer agreement. The apartment buyer's agreement was executed on 24.12.2012 and there is inordinate delay in handing over the possession by the respondent, which is resulting in extreme kind of mental distress, pain and agony to the complainants.
- V. That the respondent has been delaying the delivery of possession of the booked unit to the complainants and whenever they enquire about the exact date of possession, it keeps extending the date of possession and is thereby misleading the complainants.
- VI. 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 by delaying the same without any just cause or reason.
- VII. That respondent as per agreement had to deliver possession, complete in all respects to the complainants by 24.12.2015 but the possession has not been handed over till date. The whole purpose of purchasing the apartment has been frustrated on account of such inordinate delay. It is submitted the respondent has already delayed the project by over 5 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. 1,83,37,724/- 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 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 complainant has also misdirected in claiming refund on account of alleged delayed offer for possession. It has been categorically agreed between the parties that subject to the force majeure events and complainants having complied with all the terms and conditions of the 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 within a period of 3 years 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. As per statement of accounts, an amount of Rs. 8,75,029.06/- is still due and outstanding from the complainants.
- f. That the project "Sovereign Next" (Phase-1) has been registered with the authority vide registration no. 280 of 2017. That due to the various reasons and not limited to delay on the part of the allottees, NGT



notifications, Covid-19 pandemic, etc., there has been a delay in completing the project. However, the respondent would offer the possession to the complainants within the timeline committed before RERA Gurugram. The structure work of tower-C is complete and further the flooring has also been completed. The respondent has already applied for fire NOC.

g. 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 not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating the 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 freeze the hands of developer/builder in proceeding towards timely completion of the project.

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 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. 1,83,37,724/- 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. 401, 4th floor, tower C admeasuring 2600 sq. ft. in project namely "Vatika Sovereign Next". A builder buyers' agreement was executed between the parties on 24.12.2012 for a total sale consideration of Rs. 1,87,83,590/- and they paid Rs. 1,83,37,724/-. The complainants sent email dated 10.09.2020, requesting to refund the money paid by them to the respondent. The respondent in its reply denied all the facts of the complaint.
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 **24.12.2015 and there is delay of 4 years 11 months 29 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 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....."

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. (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"

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. The authority hereby directs the promoter to return to the complainants the amount received by him i.e. Rs. 1,83,37,724/- 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. 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.

20. 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

21. 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 to the complainants received by him i.e. Rs. 1,83,37,724/- 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.

22. Complaint stands disposed of.

23. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 09.08.2022