



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

Complaint no. : 1661 of 2019
First date of hearing: 10.09.2019
Date of decision : 09.08.2022

1. Tarun Gupta S/o Jai Narayan Gupta
 2. Shikha Gupta S/o Tarun Gupta
- Both RR/o: I-41, Ashok Vihar, Phase-I, New Delhi-110052

Complainants

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. Rohit Oberoi (Advocate)
Sh. Venket Rao (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 15.04.2019 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.



A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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	"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.	Unit no.	301, tower k (page 18 of complaint)
8.	Unit area admeasuring	2290 sq.ft. (Page no. 18 of complaint)
9.	Date of booking	22.01.2015 (page 18 of complaint)
10.	Date of builder buyer agreement	Not executed
12.	Due date of possession	16.07.2019 (Due date is calculated from the date of issuance of first reminder i.e., 16.07.2015)
	Dates of issuance of reminders for execution of BBA	16.07.2015 & 09.08.2018
13.	Total sale consideration	Rs. 1,56,15,510/- [page 19 of complaint]
14.	Amount paid by the complainant	Rs. 35,03,498/- [page 19 of complaint]
15.	Occupation certificate	Not obtained
16.	Legal notice	31.01.2019 (page 57 of complaint)

	Email w.r.t refund	20.12.2016 to 28.01.2019 (Annexure 5, page 28-36 of complaint)
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B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. The complainants booked a unit no. 301, tower k having admeasured super area 2290 sq.ft. in the project "Tranquil Heights" believing the claims made by the respondent for total sale consideration of Rs. 1,56,15,510/- against which they paid total amount of Rs. 35,03,498/-. However, they did not sign the BBA as the terms of the same were highly oppressive and not as per the commitments and terms stated at the time of taking the booking. They made the entire payment of all the dues as and when were demanded by it. The timely delivery of the flat was of essence as the flat which was booked, for personal use. The respondent hide the fact from them that the said bookings were being taken in violation of the project licence, the project did not have all approvals at the time of booking the layout was only proposed and not approved and was significantly different from the one it had sought approval for from the concerned authorities. The respondent misrepresented the land that was under its possession for the project. There were other misrepresentations viz. an upcoming metro station in its vicinity, no EWS apartment, 80%+ open area and project delivery timeline of March 2018.
 - II. The complainants believed every word of the respondent and thought that they would adhere to their every commitment as was being done by them. However, due to respondent lapses in commitments and delay on in starting construction at project site, requested cancellation of the booking. This oral request was made in November 2016. The respondent unnecessarily denied/prolonged their requests, threatening forfeiture of almost entire amount paid till the date. At the same pretext, it kept



demanding further payments. It also pressurized them for such payment by levying interest @18% p.a., inspite of delays on its part to start any construction at the site.

- III. The complainants were well prepared to make further payments on receiving demand as per payment plan. It is pertinent to submit that no demand for any further payment was made since May 2015. However, in January 2018, complainants came across other allottees who informed them of a news article mentioning project could get tied up for months in a National Green Tribunal case as the respondent starting construction at the project site without due environmental clearance. After a discussion between the parties, due to continued lapses and delays on the part of the respondent that were blocking complainant's funds and ability to gain ownership of an apartment in their name, respondent itself proposed that the complainants can shift to another project. However, seeing through the nefarious designs of the respondent, the complainants requested for a confirmation of the amount paid by them and started gathering information about the illegalities committed by it.
- IV. The complainants were alarmed and were surprised to find the facts that the project was not only considerably delayed but was in gross violations of its licences which, when exposed would jeopardize the further of the project itself, also no work was progressing at the site for many months. Primarily, the construction at the project was in non-adherence to the approved project plan and the one provided in the buyers' agreement, both of which were also distinctly different, although it was represented otherwise. In fact, the facilities as mentioned in the buyers' agreement were also not being developed as the respondent did not got the same sanctioned through TCP in the building plans. With the layout plan of the project unilaterally changed/altered by the respondent without informing



or seeking permission from all the stake holders in the project, the project was being carried forward at the whims and fancies of the respondent and by completely giving a go by to the construction bye laws as mandated legally. Due to the lack of transparency in the public domain the respondent officials have been showing certain clearances that they have allegedly received from the appropriate authorities which were never issued by them at all. Thus, the respondent is guilty of not only misleading them but also of showing public documents which do not exist as being genuine permissions.

- V. While it is established above that the booking from the respondent was sought and received on 22nd January 2015, it was not until October 2015 that the final layout of the project was finalized and approved in principle by TCP, Haryana albeit with certain alterations and terms and that is in gross violation of previous rulings/orders passed by Punjab and Haryana High Court since it implies that the booking was taken in pre-launch, and the buyers agreement was signed contrary to law, prior to the final approval by TCP and further the layout plan as given by the BBA and displayed at the time of the booking was not the actual site plan; thus the booking was obtained by playing a fraud on the complainants and in bad faith by the respondent. It is submitted that the final approval for the site plan was given on 06.01.2017.
- VI. The complainants after having done a lot of research and having other buyers who are in the predicament as they have also found out that the respondent made false declarations to various authorities that no dwelling in the project was booked/sold in the period leading upto 2015 and no work was done on the project site and yet the respondent have been regularly making demands for payments to the complainant and other allottees in the said project. The respondent have also made a



declaration that the project has not even been launched till 22.05.2017, which is patently false to the knowledge of the respondent. This hiding of material facts amounts to gross misrepresentation, forgery and fraud on the part of the respondent and criminal breach of trust and calls for a severe legal action. In fact it has also been proved that as per the land records, the jamabandi was not in the name of the respondent and in fact, there are disputes over the title of the land which are pending adjudication before authorities.

- VII. The complainants seeing that the project in which they had envisaged a home for themselves would neither be completed and if completed would be engulfed in various litigations due to want of having appropriate approvals or for not following guidelines from the government authorities, had no other option but to give personal representations seeking refund of the entire amount as paid by them along with the same interest rate that the respondent charges and other claims towards harassment mental agony and loss of time and opportunity. The respondent refused to return the said claims, violating complainants' rights.
- VIII. The complainants seeing no other option were constrained to send a legal notice dated 31.01.2019 to the respondent, which was duly served upon them. However, in spite of receipt of the notice the respondent did not address their grievance. The respondent did not maintain transparency by informing that the project did not have requisite approvals for construction and the complainants would not have made their booking in it, or if they would have been informed in end 2015, regarding differences in the Haryana TCP approved project plan from the one in BBA and provided an exit option per terms of the BBA, then it would have relieved the complainants of financial hardship that they faced and saved



significant time and agony. However, the respondent only aggrieved and harmed the complainants by the wrongful acts, conduct and behaviour as well as the deficient services in contravention to the agreed terms of builder buyer agreement within 3 months of signing it.

- IX. The complainants further undertake that as and when it is required by this authority, they would further provide additional detailed documents to prove the malafide of the respondent as have been obtained by RTI, requests and various visits to various authorities, as also details of losses caused to and thereby claimed by them.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).
- Direct the respondent to refund the amount paid by the complainant along with interest.
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.
- That the complaint is an abuse of the process of this authority and is not maintainable. The complainants have not approached this authority with clean hands and are trying to suppress material facts relevant to the matter. They are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from it.
 - It is submitted that documents annexed with the complaint and mentioned as annexure 9 to 15 has never issued by department to respondent and on even on bare perusal, it can be vouched that on no date, signature and memo no. on the face of said documents to show its



veracity. The alleged annexures seem to be procured by illegal way for which the authority may pass appropriate directions to police for registering the F.I.R against the complainants. It is submitted that photograph annexed with the complaint and mentioned as part of annexure 17 are seemed to be procured from other person as it doesn't show to be of the unit of complaint.

- c. That the general power of attorney filed by the complainants is not valid as same is not properly stamped as per the Stamp Act and attested by the competent authority i.e. by the Indian Consulate. The complainant since May, 2015, did not made the payment towards the total sale consideration of the unit. Despite various letter and reminders, the complainants also failed to execute the buyers' agreement.
- d. It is submitted that the present complaint is premature. There is no cause of action arises in favour of the complainants. *It is submitted that Clause 13 of the Builder Buyer Agreement provides that the construction of the unit of buyer shall be completed within 48 months from the date of execution of the Builder Buyers Agreement. It is pertinent to mention herein that Section 18 read with Section 19 of Real Estate (Regulation & Development) Act, 2016 and Haryana Real Estate (Regulation & Development) Rules (herein referred as RERA) provide for right of Allottee to demand a refund alongwith interest and compensation only on failure of the Promoter to 'offer possession in accordance with the agreement to sale duly completed by the date specified therein'. It is submitted that mention herein, that the said agreement was executed on 10.08.2015. Accordingly, the due date i.e. 'specified date' for completion of construction of the unit could be on 09.08.2019 and thereafter will be handing over the possession and in fact, the due date should be per the averments herein below. Therefore, the present*



complaint being premature, is liable to be dismissed on this ground alone.

- e. That the complaint filed by the complainants before the authority besides being misconceived and erroneous, is untenable in the eyes of law and liable to be rejected. The complainants have misdirected themselves in filing the above captioned complaint before this authority as the reliefs being claimed by them cannot be said to even fall within the realm of jurisdiction of this authority.

8. 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

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. 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.

12. 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.
13. 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."

14. 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.

15. A project by the name detailed above was being developed by the respondent/builder. The complainants booked a unit in it admeasuring 2290 sq.ft. against the total sale consideration of Rs. 1,56,15,510/- in January 2015 and paid a sum of Rs. 35,03,498/- in all against the allotted unit. No BBA was executed between the parties w.r.t. the allotted unit. It has come on record that vide letters dated 16.07.2015 and 09.08.2018, the respondent sent reminders for execution of BBA but with no positive results. It has come in the written reply that the possession of the allotted unit after completion of the project was to be offered within 48 months from the execution of BBA. Since, that was not done, so considering the first date of issuance of reminder i.e., 16.07.2015, the due date for completion of project is calculated as 16.07.2019. Neither the project is complete, nor the builder has offered possession after taking OC. The complainants withdrew from the project by issuance of legal notice dated 31.01.2019. Even prior to that the complainants had been writing to the respondent seeking withdrawal from the project and refund of the paid-up amount as evident from emails (annexure 5 at page 28-36 of the complaint) w.e.f. 20.12.2016 to 28.01.2019.



16. Keeping in view of the above said facts and submission made by complainant, the authority observes that the complainant surrendered the unit vide an email (annexure 5 at page 28-36 of the complaint) w.e.f. 20.12.2016 to 28.01.2019. The deduction 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."

Keeping in view the aforesaid legal provisions, the respondent would 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 order failing which it shall pay the amount due along with prescribed rate of interest.

F. Directions of the authority

17. 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 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



HARERA
GURUGRAM

Complaint No. 1661 of 2019

@9.80% P.A on the refundable amount, from the date of surrender (i.e., 20.12.2016) 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.

18. Complaint stands disposed of.

19. File be consigned to registry.

V.K. - S
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022

[Signature]
(Dr. K.K. Khandelwal)

Chairman



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