

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

Complaint no. : 1253 of 2021
Old complaint no. : 3839 of 2020
First date of hearing: 22.12.2020
Date of decision : 24.08.2022

Suresh Chander Gupta
R/O : B-175, Sushant Lok, Phase-I,
Gurugram-122009

Complainant

Versus

M/s Vatika Limited
Office: 7th 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. Akhil Agarwal (Advocate)
Ms. Ankur Berry (Advocate)

**Counsel for the complainant
Counsels for the Respondent**

ORDER

1. The present complaint dated 03.11.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Town Square 2", Sector 82, Vatika India Next, Gurugram.
2.	Nature of the project	Commercial complex
3.	Project area	2.961 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ registered	Registered
6.	Allotment letter	03.01.2013(page 50 of complaint)
7.	Date of execution of BBA	11.03.2013 (page 58 of complaint)
8.	Unit no.	D-704, 7 th floor, tower D admeasuring 910 sq. ft. (page 60 of complaint)
9.	Due date of possession	11.03.2017
10.	Possession clause	10.Subject to the aforesaid and subject to timely payment by the Buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him or as demanded by the Developer, the Developer contemplates to complete construction of the said commercial unit within 48 months of execution of this agreement..... (Emphasis supplied)

11.	Total consideration	Rs. 89,18,000/- [page 61 of complaint]
12.	Amount paid by the complainant	Rs. 36,77,427/- [page 62 of complaint]
13.	Occupation certificate	Not obtained
14.	Intimation of possession	16.11.2017 [page 115 of complaint]
15.	Legal notice	05.03.2020
	Reminder	22.06.2020

B. Facts of the complaint

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

- I. That the complainant visited the office of the respondent along with his property dealer in the first week of January, 2013. That the respondent informed the complainant that all the shops in the retail shopping complex i.e. Block A, Band C of the Vatika Town Square are already sold out and the commercial spaces in the project were being sold for which the construction was in full swing and was likely to be completed by June, 2015 end.
- II. That based on the tempting and magnificent claims, assurances and proposals of the respondent, the complainant was lured into buying a unit in the project. In pursuance of the same, the respondent made the complainant sign the allotment letter dated 03.01.2013 towards allotment of unit no. D-704 located on 7th floor of the building block no. D (hereinafter referred as "Unit") admeasuring 910 square feet super area at the basic sale price (for short "BSP") of Rs. 9,800/- per square feet and therefore, the total sale consideration amounted to Rs. 89,18,000/-. The respondent made the complainant pay the huge amount of Rs. 2,50,000/-

as booking amount and earnest money at the time of signing of the allotment letter mentioned above.

- III. That as per the allotment letter, the builder buyer agreement had to be executed within 15 days of the date of receipt of the same and if the complainant fails to execute and sign the agreement within 15 days, the respondent had the right to forfeit the entire deposit of booking amount and earnest money mentioned above. That despite repeated requests made by the complainant on multiple visits to the respondent's office for signing of the BBA, the same was not provided to the complainant. He was further informed that as per the allotment letter, the complainant was obligated to sign the respondent's standard format of BBA while agreeing to fully abide by the terms and conditions laid out therein.
- IV. That, in addition to the above, the respondent illegally demanded another payment of Rs. 34,27,427/- inclusive of service tax @3.09%, from the complainant on 18.02.2020 as the amount towards the initial payment required for confirming the allotment and signing of the BBA. Having already paid the huge amount of Rs.2,50,000/- as booking amount and earnest money, the respondent had threatened to forfeit of the same in case of non-payment of Rs. 34,27,427/- while also imposing the penal interest of 18%. The complainant was left with no other option but to pay such an illegal demand raised by the respondent. It is of utmost importance to note here that the respondent illegally and with malafide intension took more than 40% of the total sale consideration from the complainant even before signing and executing the BBA.
- V. That the BBA was finally signed and executed between the complainant and the respondent on 11.03.2013. It is of utmost importance to bring in the kind attention of authority that at this stage when the complainant



became aware of the totally one sided and biased BBA, he had already paid more than 40% of the total sale consideration was left with no option but to sign on the dotted lines.

- VI. That the respondent after a huge gap of three months, finally after repeated requests from the complainant informed about the payment schedule vide letter dated 01.04.2013.
- VII. That it is of utmost importance to note here that the respondent indulged in unfair and fraudulent trade practices since beginning as by making false and misleading assurances lured the complainant in signing the allotment letter and BBA at the BSP of Rs.9800/- per square feet. However, it came to the knowledge of the complainant that the respondent has even allotted the units in the said project at much lower BSPs, even as low as Rs.6000/- to Rs. 7000/- per square feet, to other allottees. Such fraudulent practices being adopted by the respondent are against the law and clearly reflect on its malafide intentions.
- VIII. That as per clause 10 of the agreement, the time for complete construction was stipulated to be 48 months i.e. by 10.03.2017. However, the respondent has monumentally failed to complete the construction of the said project even as stipulated in clause 10 of the BBA.
- IX. That the respondent issued a letter dated 15.12.2016 and raised a fresh demand of Rs.37,456/- from the complainant towards retrospective payment of value added tax @ 1.05% on the gross amount received as per the proposed Amnesty Scheme under Haryana Value Added Tax, 2003 and the same was paid by the complainant vide cheque no.276732 dated 02.01.2017.
- X. That between 11.03.2013, i.e. date of signing of BBA, and 10.03.2017, i.e. stipulated date of completion of project under BBA, the respondent issued



various emails to the complainant in order to put cover on its default and keep him under false impression of the project and the respondent by painting a false and fraudulent picture about the project and the false promises made by it. Such emails were even issued after the scheduled completion date in order to mislead the complainant. These emails clearly establish that the respondent was fully aware about its defaults and failures since day one and with the malicious intentions made misrepresentations to the complainant from time to time.

- XI. That when the respondent failed to complete the project by 10.03.2017, as stipulated in the BBA, the complainant concerned about his money already paid to the respondent made multiple visits to the respondent's office but to no avail. The respondent even refused to give any attention to the grievances of the complainant who had given his lifelong savings to the respondent based on the false and fraudulent promises, assurances and representations. The respondent kept on assuring the complainant that the project was complete and would be handed over to him soon for the possession.
- XII. That the complainant was shocked and surprised to receive the letter dated 16.11.2017 (hereinafter referred as "**Offer of Possession**") from the respondent and the same was titled as "*Intimation of possession for your unit no. RET - 004 - Tower - 7 - 704 at Town Square*". That vide the said offer of possession, the respondent, while claiming the construction of the project to be complete, offered possession of the above mentioned Unit to the complainant and further raised a demand, as the balance payment, of Rs. 60,72,620/- which was in itself illegal. Additionally, vide the said offer of possession; the respondent enforced certain ultra vires conditions on the complainant like imposition of signing of maintenance agreement with

the maintenance agency appointed by the respondent, indemnity-cum-undertaking to be mandatorily signed and obligation to make enhanced payments.

XIII. That on receiving the offer of possession, the complainant visited the project to inspect the status of unit before making the payment as sought by the respondent vide offer of possession. However, to the utter shock and surprise, complainant found that project was still under construction and project site was not even close to be fit for possession. That the seventh floor of the project, where the unit of the complainant was supposed to be located, was just bare columns and without any partitions or markings.

XIV. That after becoming aware of the grave misrepresentation of facts and illegality being committed by the respondent, complainant immediately issued a letter dated 16.04.2018 to the respondent and apprised it of the false claims. The complainant further enquired about the quantum of refund which he would get if he wished to terminate the agreement. However, the respondent, in absolute abuse of its dominance, power and authority, did not respond to the said letter. Instead of paying heed to the grievances of the complainant, the respondent issued another letter dated 08.06.2018 to the complainant vide which it forced and threatened him to complete possession formalities expeditiously and sought an increased payment of Rs. 64,85,667/- without providing any break-up of the same. It is pertinent to note here that the respondent did not even bother to provide break-up of such an increased demand raised by the respondent to the complainant. The respondent further imposed illegal demand of simple interest per annum @ 15-18%, holding charges @ Rs.10 per square feet per month, maintenance charges @ Rs. 7.35 per square feet per month



and restoration costs. That the said demand was wholly illegal since the respondent could not have made such a demand before obtaining the Occupancy Certificate.

- XV. That none of the letters issued by complainant, as mentioned above, have been replied to by the respondent even till date. Instead, the respondent, in absolute misuse of its dominant position and authority, issued another letter dated 18.06.2019 vide which it again asked complainant to complete possession formalities expeditiously and sought a further increased payment of Rs. 75,27,265/- without providing any break-up of the same. That respondent further threatened the complainant to cancel the allotment and forfeit the earnest money or any other sum paid by him if he fails to pay the above mentioned sum.
- XVI. That an RTI dated 03.12.2019 was filed to State Public Information Officer to seek the information whether the respondent has been issued occupancy or completion certificate with respect to the project. In response dated 18.02.2020 to the RTI, it was informed by the SPIO -cum- District Town Planner (HQ) that no Occupancy Certificate/Completion Certificate had been issued to the respondent to the project till 18.02.2020 with respect to the said project. The above-mentioned RTI response clearly establishes that offer of possession given by the respondent was wholly illegal and the respondent could not have done the same without obtaining the occupancy certificate.
- XVII. That the complainant sent a legal notice dated 05.03.2020 through its counsel to the respondent and sought refund of Rs. 37,14,883/- paid by him along with the interest of 18% while withdrawing from the project. The complainant sent a reminder legal notice dated 22.06.2020 through his counsel to the respondent and again sought refund of Rs. 37,14,883/-

paid by him to the respondent along with the interest of 18% while withdrawing from the project. However, the same has not been replied to by the respondent even till date.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- I. Direct the respondent to refund the entire amount of Rs. 37,14,883/- paid by the complainant to the respondent.
- II. Direct the respondent to pay an interest of 18% p.a. from the date of receipt of the payment from the complainant till the date of refund.
- III. Direct the respondent to pay Rs. 5,00,000/- as compensation for financial losses, harassment and mental agony suffered by the complainant and Rs. 2,00,000/- towards legal costs.

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 complainants has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers agreement dated 11.03.2013, as shall be evident from the submissions made in the following paras of the present reply.
- b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this



- Id. authority as the reliefs being claimed him cannot be said to fall within the realm of jurisdiction of this Id. authority.
- c. That the complainant had come before this hon'ble authority with unclean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant had instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 11.03.2013. Further, the complainant has failed to pay the last instalment due at the time of offer of possession till date. It is pertinent to mention that the possession of the Unit has already been offered to the complainant on 16.11.2017 and the prayer for refund after 3 years of offer of possession ought not to be entertained. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- d. It is submitted that the complainant entered into an agreement i.e. builder buyers agreement dated 11.03.2013 with respondent owing to the name good will and reputation of the respondent, the respondent in terms with the BBA, promised to deliver the possession the commercial unit within the time frame as defined under clause 10 the BBA subject



to the other terms as envisaged therein. That accordingly the possession was offered on 16.11.2017. That due to external circumstance which were not in control of the respondent, minor time line alterations occurred in completion of the project. That even though the respondent suffered from setback due to external circumstances, yet it managed to complete the project and accordingly the possession was offered on 16.11.2017. That even though the respondent repeatedly informed the complainant about the offer of possession yet he delayed the same on one pretext or the other. The respondent diligently pursued the complainant and sent reminder notices on 08.06.2018, 18.06.2019 and also on 06.04.2020. That even after the respondent's efforts, the complainant has failed to make payment of the instalment due at the time of offer of possession and thus the only option respondent had was to impose holding charges upon the complainant. It is further submitted that the complainant has filed the present complaint after 3 years of offer of possession and is simply making false claims to gain monetary benefits. The present complaint thus, not having a speck of truth and genuineness ought to be dismissed and heavy cost be imposed upon the complainant for wasting the precious time of the hon'ble authority.

- e. That the present complaint in the manner of its portrayal of facts and circumstances creates a façade and attempts to hide the actual truth of the matter. It humbly submitted that the respondent had sent letter dated 16.11.2017 intimating the complainant of the make the remaining payment of Rs. 60,72,620/- by 30.11.2017. That yet the complainant failed to clear his dues and take the physical possession. The said position has already been admitted by the complainant.



- f. That the respondent commitment towards the completion of the project is not to be disregarded. In the matter titled ***Neelkamal Realtors Suburban Pvt. Ltd. and Anr. versus Union of India and Others, Writ Petition No. 2711 of 2017***, the Hon'ble High Court of Judicature at Bombay, in Para 152 held that :

"152. It needs to be emphasized that RERA law is not to be considered as anti-promoter. It is a law for regulation and development of the real estate sector. Under the scheme of the RERA, the interests are also safeguarded and there is a reason for the same. Unless a professional promoter making genuine efforts is not protected, then very purpose of development of real estate sector would be defeated."

Thus, in this regard it is pertinent to mention that the respondent was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the respondent such as the follows:

- 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, greens areas, lying 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, it imposed a set of partial, some which are:*
- No construction activities between 6 pm till 6 am (174 days).*
 - Stop the usage of Diesel Generator Sets (128 days).*
 - Stop entry of Truck Traffic into Delhi.*
 - Close brick kilns, Hot Mix plants and Stone Crushers.*
 - Stringently enforced rules for dust control in construction activities and close non-compliant sites.*
 - 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 our projects. We have 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.*
- g. That the respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide External Development Works & Infrastructure Development Works. It is submitted that upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the government authorities. The incompleteness of such development works resulted in minor alterations in timelines of the project, however the respondent yet managed to complete the project and handed over the possession of the residential unit/apartment/flat to the complainants. It is pertinent to mention that in the matter titled, Credai-NCR vs. Department of Town and Country Planning, Government of Haryana & Anr. before the competition commission of



India - Case No. 40 of 2017, it has been opined and well conveyed by the hon'ble commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended and the respondent lacked any control in the subsequent deference of the project. That since the hurdles faced by the respondent were beyond the control of the respondent, there was unintentional delay in completion of the project.

h. That the respondent on 05.01.2021 has received the in-principal approval of occupation certificate but till date complainant has not accepted the possession. Without prejudiced to our rights/legal remedies, complainant should come forward and take the possession of his unit.

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 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 objections raised by the respondent.

F. I Objection regarding force majeure conditions.

14. The respondent-promoter has raised the contention that the construction of the project in which the apartment is situated, has been delayed due to force majeure circumstances such as HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land, gas pipeline passed through the sanctioned project, NGT issued directives and measures to counter deterioration in air quality in the Delhi-NCR region, and many other reasons. It is observed by the authority that the construction of the project

was delayed on account of gas pipe line passing through land of the subject project & HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. The said factors might be taken into consideration however, the respondent may get the required period declared as "zero period" from the competent authority. Till then the said period cannot be excluded while calculating the delay in handing over of the possession. Moreover, as far as NGT orders to directives and measures to counter deterioration in air quality in the Delhi-NCR region, cannot be taken into consideration as the same were imposed for a shorter period of the time. In view of these circumstances, no grace on account of force majeure circumstances can be allowed to the respondent/builder.

G. Findings on the relief sought:

G.I Direct the respondent to refund the entire amount of Rs. 37,14,883/- paid by the complainant to the respondent.

G. II Direct the respondent to pay an interest of 18% p.a. from the date of receipt of the payment from the complainant till the date of refund.

15. The complainant has submitted that he booked a unit in project namely "Town Square" and allotted a unit no. D-704, 7th floor, tower D vide allotment letter dated 03.01.2013 for a total sale consideration of Rs. 89,18,000/- against which he made payment of Rs. 36,77,427/-. On 11.03.2013 a buyers' agreement was executed between the parties and the possession was offered by 10.03.2017. On 16.11.2017, the respondent issued offer of possession which is invalid as the respondent has not received the OC till date. The complainant further enquired about the quantum of refund which he would get if he wishes to terminate the agreement, but the respondent did not reply the same. On 14.06.2018 & 20.08.2018 the complainant issued reminder letters to the respondent and sought the information w.r.t to the refund.

Thereafter, an RTI dated 03.12.2019 was filed to State Public Information Officer to seek the information whether the respondent has been issued OC or CC with respect to the project. In response dated 18.02.2020 to the RTI, it was informed that no OC or CC had been issued to the respondent. It is also pertinent to mention here that the complainant sent a reminder legal notice dated 22.06.2020 through counsel to the respondent and again sought refund of Rs. 37,14,883/- paid by the complainant.

16. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and 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 **11.03.2017 and there is delay of 3 years 11 months 20 days** on the date of filing of the complaint.
17. 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....."

18. 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"

19. 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 allottee, as ahe wishes 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.
20. The authority hereby directs the promoter to return the amount received by him along with interest at the rate of 10% (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*.

G III. Direct the respondent to pay Rs. 5,00,000/- as compensation for financial loses, harassment and mental agony suffered by the complainant and Rs. 2,00,000/- towards legal costs.

21. The complainant is 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

22. 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. 36,77,427/- along with interest at the rate of 10% (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.

23. Complaint stands disposed of.

24. File be consigned to registry.

V.I. - 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2022


(Dr. K.K. Khandelwal)

Chairman