

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

Complaint no. : 481 of 2020
First date of hearing: 20.02.2020
Date of decision : 23.08.2022

Jitender Singh Yadav & Renu Yadav
Both RR/o: Kamla Medical Hall, Ward no. 1, bus
stand , V.P.P Koshli, Rewari, Haryana-123302

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. S. Nanda (Advocate)
Sh. C.K. Sharma & Dhruv Dutt Sharma
(Advocates)

**Complainant
Respondent**

ORDER

1. The present complaint dated 31.01.2020 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	M/s Ganesh Buildtech Pvt. Ltd. & others, C/o Vatika Ltd
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	HSG-020-A-1004, 10 th floor phase 1 (annexure C2 of complaint)
8.	Unit area admeasuring	1645 sq. ft. (Page no. 4 of complaint)
10.	Date of builder buyer agreement	05.05.2015 (page 25 of complaint)
11.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in</i>



		<i>Annexure -I or as per the demands raised by the developer from time to time of any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. Emphasis supplied</i>
12.	Due date of possession	05.05.2019
13.	Total sale consideration	Rs. 1,13,86,690/- [as per SOA dated 03.06.2016, annexure C3, page 61 of complaint]
	Total basic sales price	Rs. 1,03,70,080/- [as per SOA dated 03.06.2016, annexure C3, page 61 of complaint]
14.	Amount paid by the complainants	Rs. 32,34,644/- [as per SOA dated 03.06.2016, annexure C3, page 61 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

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

- I. The complainants had made the booking in the year 2013 and it is 2019 at hand and the project is still under construction and is far away from completion in near future also as the construction work at present has been completely stalled. Moreover, the respondent is giving a tentative date of 2021 for completion of the project. Therefore under no circumstances, the complainants can wait for such long time and are seeking to withdraw from the project and get the refund of their money along with interest. It is submitted that the complainants cannot be made to wait for endless years seeking possession they are legally entitled for their refund as the purpose of booking has been defeated by long delay. It is submitted that being aggrieved by not getting the possession of the unit



booked, the complainants have approached this authority praying for refund along with compensation of the amount deposited by them.

- II. It is submitted that on 05.11.2013, the complainants booked a unit bearing no. HSG-020-A-1004, 10th floor, phase 1 and made the booking amount to the tune of Rs.6,00,000/- in favor of the respondent. The same is evident from the statement of account issued by the respondent wherein it had acknowledged the said payment. The total sale consideration of the said unit Rs. 1,13,86,690/- against which the complainant made payment of Rs. Rs. 32,34,644/-. The booking of the said unit was done in the year 2013 but the respondent kept on delaying the execution of the buyers' agreement for more than 2 years on one pretext or another. The respondent never explained the reason for the delay of 2 years in execution of the agreement.
- III. It can be safely presumed from the conduct of the respondent that to avoid its failure of not being able to complete the construction and deliver the possession, it kept on delaying the execution of the agreement so that they can rely on and hide under their possession clauses which has been drafted in ill front manner favoring mostly the respondents. It is submitted that the as per the agreement, the unit was to be delivered within 48 months from the date of execution of the buyer agreement. Therefore, if the buyer's agreement would had been executed in the year 2013, then the respondent would had been under the obligation to deliver the possession by 2016 which they very well knew that were not in position of doing the same, therefore they kept on delaying the execution of the agreement. That after a lapse of 2 years finally the buyer's agreement was executed between the parties on 05.05.2015. As per the agreement, the possession of unit was to be handed over within a period



of 48 months from the date of the execution of the agreement. As per the agreement, the unit was to be completed by May 2019, which had not happened in the present case. Moreover, the respondent is way behind the scheduled time for construction and is in no position to deliver the unit to the complainants anytime in the near future. Constrained by the same, the complainants have approached the authority for grant of refund of the money deposited by them till date along with a prescribed rate of interest.

IV. That the complainants have fully lost their confidence on the respondent, as the respondent is giving a tentative date of possession was in the 2nd quarter of 2021. The complainants are being to run from pillar to post as they are not getting their refund nor getting the possession on time. Therefore, it is in the interest of justice that this authority may direct the respondent to refund the amount of the complainants along with interest as they cannot be made to wait for endless years for their possession. The application was made way back in 2013 and now the expected completion has been extended to 2021 and surprisingly no surety has been made for 2021 also. That it is only a tactic employed by the respondent to bide the time. The complainants cannot be made to wait for an indefinite period for the delivery of possession, hence have preferred the present complaint.

V. That the complainants have been diligently making the payments as per the demands of the respondent company hoping that the possession would be ultimately delivered to them. But their hopes have been completely shattered as the respondent has failed to intimate the complainants of any date of delivery of possession and more importantly failed to complete the construction of the project. That the project is at a stagnant stage with very little/no progress and in no ways the respondent is in a position to deliver the possession of the unit this year. Thus, the

Complainants have preferred the present complaint as they have been financially and mentally harassed by the respondent for several years by illegal retaining their hard-earned money.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the Respondent to refund the amount of Rs.32,34,644/- to the Complainants along with interest at the prescribed rate of interest.
 - b. Direct the respondent to pay a lump sum compensation of Rs 5,00,000/- as compensation for mental agony and harassment caused to the complainants.
 - c. Direct the respondent to pay litigation charges to the tune of Rs. 50,000/-.
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 complaints filed by the complainant before the Ld. Adjudicating Officer, besides being misconceived and erroneous, is untenable in the eyes of law. The reliefs being claimed by the Complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Ld. Adjudicating Officer.
 - b. It is submitted that the Ld. Adjudicating Officer does not have jurisdiction to adjudicate upon the matters pertaining to seeking relief of refund. That in accordance with the amended HARERA, rules the power to grant relief of refund solely vest with the Hon'ble Authority. Meanwhile, the Hon'ble Punjab and Haryana High Court has upheld the amended rules vide its order dated 16.10.2020. Thereafter, the order of



the Hon'ble High Court was challenged in SLP No. 13005 of 2020 before the Hon'ble Supreme Court and the Hon'ble Apex Court has stayed the operation of Hon'ble High Court order dated 16.10.2020. Thus, there is a status quo upon the amended HARERA Rules. Further, the Hon'ble Supreme Court of India in SLP (Civil) Nos. 3711-3715 of 2021 has held that complaints pertaining to refund are to be adjudicated by the Regulatory Authority only. Therefore, the Ld. Adjudicating Officer does not have any jurisdiction to adjudicate upon the complaint seeking refund until the Hon'ble Supreme Court decides the validity of the amended HRERA Rules.

- c. The complainants have miserably and willfully failed to make payments in time or in accordance with the payment plan. It is submitted that the complainants have defaulted in making timely payment of due installments right from the inception. It is pertinent to mention here that as per the records maintained by the respondent, the complainants have not fulfilled their obligation and have not paid the installments on time that had fallen due, despite receipt of repeated demand letters and reminder letters.
- d. It is submitted that the complainants have frustrated the terms and conditions of the allotment, which were the essence of the arrangement between the parties and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainants have also misdirected in claiming refund and interest on account of alleged delayed offer for possession.
- e. it is submitted that the respondent has proposed to deliver the possession of the unit within 48 months from the date of signing of the



buyer's agreement by the complainants. However, in the present case, the complainants have till date not signed the buyer's agreement.

- f. Further in the present case, it is a matter of record that the complainants have not fulfilled their obligation and have not even paid the installments on time that had fallen due. Accordingly, no relief much less as claimed can be granted to the complainants.
- g. That the complainants have failed to make payments in time and in accordance with the payment plan and as such the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs. 1,13,86,690/- of the flat, the amount actually paid by the complainants is Rs. 32,45,948/- i.e. approx 28% of the sale consideration of the unit booked by them. It is submitted that even though the complainants agreed that the payment will be made as per the payment plan (construction-linked payment plan) but the complainants, however, defaulted in making payments towards the agreed sale consideration of the unit from the very inception and the last payment was made by the complainant on 15.05.2015 that is much before the alleged due date of possession. That various demand letters and reminders were sent to the complainants to make the outstanding payment but the respondent's request fell on deaf ears, they did not pay the outstanding dues pending against the said unit. The complainants after defaulting in making timely payments now wants to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainants. It is submitted that under such facts and circumstances, the complainants are not entitled to any relief as prayed for by the complainants in the present complaint.



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

14. The respondent builder took a plea that the problems and hurdles faced by it such as increased cost of construction, payment to its workers, contractors, material suppliers, etc. would be considered while adjudicating complaints of the prospective buyers. The authority observes that the respondent is very clear in expressing the hurdles faced by it but failed to

provide any specific force majeure circumstances that lead to hurdles faced by it such as increased cost of construction, payment to its workers, contractors, material suppliers, etc. It is further observed that it was obligation of the respondent to complete the project as per terms of the agreement to which no excuse can be taken. 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 paid amount along with interest.

15. The complainants have submitted that they booked a unit in the project of the respondent for a total sale consideration of Rs. 1,13,86,690/- on 05.11.2013 and out of which they made a payment of RS. 32,34,644/-. The respondent assured the complainants to handover the said unit within 48 months from the date of execution of BBA i.e., 05.05.2019 but with no results as neither OC has been received nor offer of possession has been made.
16. Keeping in view the fact that the allottee/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

05.05.2019 and there is delay of 8 months 25 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 they have 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.....”

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

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 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.

This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

18. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 32,34,644/- 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. II Direct the respondent to pay a lump sum compensation of Rs. 5,00,000/- as compensation for mental agony and harassment caused to the complainants.



G.III Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses to the complainants.

19. The complainants are also seeking relief w.r.t litigation expenses. 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.

H. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent/promoter is directed to refund the entire amount of Rs.32,34,644/- paid by the complainants along with prescribed rate of interest @ 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development Rules, 2017) from the date of each payment till the actual date of refund of the amount.



ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 23.08.2022



HARERA
GURUGRAM