



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

Complaint no. : 808 of 2021
First date of hearing: 25.03.2021
Date of decision : 23.08.2022

Mukul Kumar
R/O : 2-B, TG-05, Orchid Garden Suncity,
Sector-54, Gurugram-122003

Complainant

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. Karan Agarwal (Advocate)
Sh. CK Sharma & Dhruv Dutt Sharma
(Advocate)

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

ORDER

1. The present complaint dated 17.02.2021 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	"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 upto 08.10.2022
7.	Unit no.	1701, 17 th floor, tower B admeasuring 3270 sq. ft. (Page no. 33 of complaint)
8.	Date of booking	31.01.2013
9.	Date of allotment	N/A
10.	Date of builder buyer agreement	28.10.2013 (annexure C1, page 30 of complaint)
11.	Due date of possession	28.04.2018 <i>(inadvertently mention 28.08.2017 in the proceeding of the day dated 23.08.2022)</i>
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 Four years Six months from the date of execution of</i>

		<i>this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 17,18 & 42 or due to failure of Allottee(s) to pay in time the price of the said Residential Floor 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 Developer 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>
14.	Total sale consideration	Rs. 2,39,16,580/- [as per SOA dated 16.03.2021, annexure 2, page 34 of reply]
	Basic sale price	Rs. 2,10,91,500/- [as per SOA dated 16.03.2021, annexure 2, page 34 of reply]
15.	Amount paid by the complainant	Rs. 95,04,000/- [as per SOA dated 16.03.2021, annexure 2, page 34 of complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Legal notice	29.06.2020 [page 68 of complaint]

B. Facts of the complaint

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

- I. That with the booking of the said apartment on 31.01.2013, the complainant made payment of Rs. 24,00,000/- towards the registration amount which was deposited as requested by the respondent and the receipt of the same has been acknowledged vide the subsequently entered builder buyer agreement.
- II. That the respondent and the complainant entered into a builder buyer agreement dated 28.10.2013 (hereinafter referred to as "the agreement"), whereby the complainant was allotted a 4 BHK apartment bearing No. B-1701, at 17th floor, tower B, having super built-up Area of 3270 sq. ft at Rs. 6,450/- per sq. ft (herein after referred to the "said apartment") in the said



project with the total sale consideration for the said apartment to be Rs. 2,38,91,580/- (basic sale price of Rs. 2,10,91,500/-) including the PLC charges, EDC/IDC, IFSMD, car parking, club membership etc. (herein after referred to the said apartment).

- III. That the complainant also thereby agreed to the schedule of payments as was provided for by way of the agreement and the respondent agreed and accepted to abide by its contractual obligations under the same.
- IV. That clause 14 of the agreement dated 28.10.2013 mentions that the respondent would hand over the possession of the said apartment within a period of 4 years and six months (54 months) from the date of execution of the agreement subject to some limitations as may be provided in the agreement and timely compliance of the provisions of the agreement by the complainant.
- V. That clause 19 of the agreement provides for remedy available to in event of failure by respondent to deliver the possession of the said apartment to the complainant as per the tenure provided under the agreement. It is provided for the complainant to be entitled to compensation to the tune up to Rs. 5/sq. ft. of the super built area (3270 sq. ft.) per month for the delay after 60 days from the completion of tenure as per the agreement till the date of notice of possession under the provision of clause 14 of the agreement.
- VI. That apart from the registration amount, the complainant thereafter also made the payments to the tune of Rs. 95,04,000/- from 2013 to 2014 on the demands raised at various times by the respondent in pursuance of the agreement dated 28.10.2013, to which he has made to sign on the dotted lines at the footnote of all the pages. The payments so made, as also explained in tabular representation hereunder, have also been admitted



in the account statement of the complainant, procured as prepared from the respondent.

- VII. That it was therefore as per the agreement that the respondent was liable to hand over the actual physical possession of the said apartment on or before 27.04.2018. The construction however was initiated after much delay and that the project has not yet been completed. More to the surprise and shock of the complainant, the same does not even appear to be completed in any time in near future. The respondent has therefore miserably failed to hand over the physical possession of the apartment in dispute till date.
- VIII. That on various complaint being lodged, and after regular follow-up, the respondent did not respond to the communications being made until in 2019 when after 6 long years of booking and more than one and half years of delay in offering possession, it demanded balance payment of the consideration vide Invoice dated 14.05.2019 for Rs. 56,46,264/-, without completing the project on time. Therefore, the complainant, who had already paid substantial consideration amount, out of hard earned money for the said project, was therefore been put to financial and mental predicament.
- IX. That the actual ground reality regarding the status of construction of the said project in dispute is absolutely shocking. It is reiterated that there exists strong reason to believe that the respondent has misrepresented the facts related to the construction status and demanded the entire sale consideration illegally and fraudulently.
- X. That the respondent has committed grave deficiency on its part and adopted serious unfair trade practice with the complainant by failing to



deliver be possession of the unit booked within the prescribed time frame as pre determined in the agreement dated 28.10.2013.

- XI. That a legal notice dated 29.06.2020 was sent by the complainant for 'Demand Cum Notice for Cancellation of Apartment in "Sovereign Next" Apartment No. B-1701, Sector 82, Vatika India Next, Gurgaon Haryana' whereby refund of the paid up consideration of Rs. 95,04,000/- was sought from the respondent along with an interest at rate 24% p.a.. But it was also completely neglected and ignored by the respondent as was not even replied to let alone making payments as sought.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to refund the entire sale consideration deposited with them by the complainant till date i.e. Rs.95,04,000/- @ 24% interest rate from the dates on which the amounts were paid till actual date of payment to the complainant.
 - II. Direct the respondent to pay Rs.5, 00,000/- to the complainant for causing mental agony, trauma and harassment and Rs. 1,50,000/- as litigation expenses.
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 complaint filed by the complainant before the adjudicating officer, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected in filing the above captioned complaint before the adjudicating officer as the reliefs being claimed by the complainant, besides being illegal, misconceived and



- erroneous, cannot be said to even fall within the realm of jurisdiction of this adjudicating officer.
- b. 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.
 - c. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof.
 - d. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the agreement. It is submitted that the complainant has frustrated the terms and conditions of the agreement, which were the essence of the arrangement between the parties. Therefore, the complainant now cannot invoke a particular clause, and the complaint is not maintainable and should be rejected at the threshold. 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 complainant 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 4 years 6 months from the date of execution of the agreement unless there shall be delay due to failure of allottee(s) to pay in time the price of the said apartment. As



per statement of accounts, an amount of Rs. 56,91,773.24/- is still due and outstanding from the complainant.

- e. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer, then it shall be automatically entitled to the extension of time for delivery of possession. Further, the developer may also suspend the project for such period as it may consider expedient.
- f. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- i. *Construction, laying down and/ or re-routing of Chainsa-Gurgaon Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the Company was forced to change its building plans, project drawings, greens areas, lying down of the connecting roads and complete lay-out of the township, including that of independent floor.*
 - 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:*
 - a. *No construction activities between 6 pm till 6 am (174 days).*
 - b. *Stop the usage of Diesel Generator Sets (128 days).*
 - c. *Stop entry of Truck Traffic into Delhi.*
 - d. *Close brick kilns, Hot Mix plants and Stone Crushers.*



e. *Stringently enforced rules for dust control in construction activities and close non-compliant sites.*

f. *This year, partial restrictions continued to be in place in NCR region.*

Viii *The several stretches of total and partial construction **restrictions** have led to **significant loss of productivity in construction** of 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 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 complainant 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 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 objection 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. Finding of the relief sought:

G.I Direct the respondent to refund the entire sale consideration deposited with them by the complainant till date i.e. Rs.95,04,000/- @ 24% interest rate from the dates on which the amounts were paid till actual date of payment to the complainant.

15. The complainant submitted that he booked a unit bearing no. 1701, 17th floor, tower B, Gurgaon for a total sale consideration of Rs. 2,39,16,580/- against which paid an amount of Rs. 95,04,000/- A buyers' agreement was executed on 28.10.2013 between the parties and the due date for completion of the project was fixed as 28.04.2018 (*inadvertently mention 28.08.2017 in the*



proceeding of the day dated 23.08.2022). The complainant through counsel issued a legal notice on 29.06.2020 for refund the deposited amount.

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 **28.04.2018 and there is delay of 2 years 9 months 20 days** on the date of filing of the complaint. 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 allottee, as he 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. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
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 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 and Rs. 1,50,000/- for litigation expenses

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

G. 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 to the complainant Rs. 95,04,000/- i.e. the amount received by him along 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.



HARERA
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- 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.K. Goyal
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.08.2022

Dr. K.K. Khandelwal
(Dr. K.K. Khandelwal)
Chairman



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