

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

Complaint no. : 935 of 2021
First date of hearing: 25.03.2021
Date of decision : 23.08.2022

1. Rajesh Mehrotra
2. Jyoti Mehrotra
Both RR/O : C-132, 1st Floor, Sector-15,
Noida, UP-201301

Complainants

Versus

M/s Vatika Limited
Office: Vatika Triangle, 4th Floor, , Sushant Lok-
Phase-I, Block-A, Mehrauli-Gurgaon Road,
Gurgaon-122002.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Shikha Dixit (Advocate)
Sh. CK Sharma & Dhruv Dutt Sharma
(Advocate)

**Counsel for the complainants
Counsels for the Respondent**

ORDER

1. The present complaint dated 17.02.2021 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 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.	2802, 28 th floor, building A (Page no. 48 of complaint)
8.	Unit area admeasuring	1635 sq. ft. (Page no. 48 of complaint)
9.	Date of booking	06.11.2013
10.	Date of allotment	16.09.2014 (page 42 of complaint)
11.	Date of builder buyer agreement	10.08.2015 (page 45 of complaint)
13.	Due date of possession	10.08.2019
14.	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</i>



		<p><i>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 Annexure -I 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.</i></p> <p>Emphasis supplied</p>
15.	Total sale consideration	Rs. 1,19,15,749/- [as per SOA dated 02.12.2020, page 81 of complaint]
	Total basic sales price	Rs. 1,04,14,819/- [as per SOA dated 02.12.2020, page 81 of complaint]
16.	Amount paid by the complainant	Rs. 69,49,019/- [as per SOA dated 02.12.2020, page 81 of reply]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Legal notice	12.12.2020 (page 133 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. The complainant on 06.11.2013, booked an apartment bearing no. 2802, floor 28th, building A admeasuring 1635 sq.ft. in the project namely M/s Vatika Limited called "Tranquil Heights" situated at sector 82A, Gurugram, Haryana and paid Rs. 6,00,000/- as the booking amount of the said apartment. After elapse of 11 months from the date of booking and having collected an amount of Rs. 26,25,513/- towards part consideration,



respondent vide letter dated 29.08.2014 (annexure- 02), invited the complainants to visit their office on 16.09.2014 for the offer of allotment.

- II. That when the issue of in-ordinate delay in execution of buyers agreement for more than one and a half year was raised and complainants sought refund of the amount paid, it was told that in the event of cancellation of booking, they would be charged with 10% of basic sale price and PLC as penalty for cancellation and remaining amount would be refunded without interest and after deduction of service tax and brokerage paid by respondent. The complainants paid a total of Rs.32,29,244/- till 24th February 2015 but the respondent did not execute the Buyer's agreement. The respondent violated section 13 of the Act by taking more than ten per cent (10%) cost of the flat before the execution of the buyer's agreement. The total cost of the flat is Rs.1,13,95,819/- while the respondent had collected a total sum of Rs.32,29,244/- around 28% of the total cost of the apartment till 24th February, 2015.
- III. That finally, the buyers agreement was executed by the respondent on 10th August 2015 after a delay of approx. 2 years from the date of booking and having paid an amount of Rs.32,29,244/-. This agreement contained standard terms and conditions wholly one sided and loaded in favour of the respondent. In terms of the buyers agreement, the total sale price of the unit was Rs.1,13,95,819/- excluding certain other charges and service tax. This agreement had a detailed clause on escalation. This agreement was executed after complainants having paid an amount of Rs.32,29,244/, after approx.2 years from the date of booking. That ill intentions of the respondent were more explicitly evidenced when by taking advantage of his own default in timely execution of the agreement, in terms of clause 13 of this agreement period of possession of the apartment was provided to



be 48 months from the date of execution of agreement i.e. on or before 09.08.2019 disregarding the fact that approx. 2 years from the date of booking has already expired and a considerable amount of part consideration was already collected by the respondent. Further, this agreement loaded with the unfair conditions imposed on the complainants by way of fixing an unreasonably longer date of possession, which was approx. 6 years from the date of booking. However, complainants were not allowed to make any correction/ overwrite. They further paid all installments of payments as and when demanded by it and till date has paid Rs.69,65,114/-, out of the total consideration of Rs.1,13,95,819/-.

- IV. The complainants approached the respondent and pleaded for delivery of possession of apartment as per the buyer's agreement on various occasions. The respondent did not reply to their emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of the apartment, thereby the respondent violated section 19 of the Act.
- V. The respondent has in an unfair manner siphoned off funds meant for the project and utilized the same for his own benefit for no cost. The respondent being builder and developer, whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However, in the present scenario, the respondent utilized funds collected from the complainants and other buyers for his own good in other projects, being developed by it. That is why, the project has not yet been completed even after a period of more than 7 years from the date of booking.

VI. That the respondent despite promising the complainants that the project would be delivered by 10th August, 2019 as per the buyers' agreement has neither offered possession nor has paid interest on the paid amount for the delay caused by the respondent, thus constitutes unfair trade practices & deficiencies in service. As per obligations on the promoter under section 18(1) as the promoter has failed to give possession of the apartment as per the terms of the agreement for sale duly completed by the date specified therein which was 10th August 2019, the complainants wish to withdraw from the project and therefore seeks return of the amount received by the respondent in respect of the apartment alongwith interest at the rate of 10.75 per cent per annum alongwith compensation as prescribed in the Act, 2016 and the Rules, 2017. Accordingly, the respondent is liable to refund the principal sum of Rs.69,65,114/-paid towards the flat alongwith interest of Rs.38,58,661/- calculated till 31.01.2021 aggregating to Rs.1,08,23,776/- and recurring interest of Rs.62,396/-per month for delays beyond 31.01.2021.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - i. Direct the respondent to refund the amount in a sum of Rs.69,65,114/- already paid by complainants towards the price of the apartment to the respondent, together with interest @ 10.75% or such other rate of interest as the authority deems fit and proper till date;
 - ii. Direct the Respondent to pay legal expenses of Rs.1,00,000/- as cost of litigation to the complainants.
 - iii. Direct the Respondent to pay compensation of Rs.25,00,000/- or any compensation, other damages, interest, relief which the authority,



Gurugram may deem fit and proper under the circumstances of the case may kindly be passed in favour of the complainants and against the respondent.

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 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.
 - b. That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
 - c. That the respondent contemplates to complete construction of the said apartment within a period of 48 months from the date of execution of the agreement unless, there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said apartment.
 - d. 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 the developer would 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.



- e. 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. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and the respondent was forced to reevaluate its construction plans which caused a long delay.
 - ii. Delay caused by the Haryana Development Urban Authority in acquisition of land for laying down sector roads for connecting the project. The matter has been further embroiled in sundry litigation between HUDA and land owners.
 - iii. 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, 2016 to December, 2019.
 - iv. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labor supply, due to laborer's regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain laborer's for longer and stable periods of time and complete construction in a smooth flow.



- v. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana. Disruptions caused by unusually heavy rains in Gurgaon every year.
 - vi. Due to the slump in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
 - vii. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
 - viii. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as the respondent was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.
- f. That it is not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no laborer's were available. Inf act all the developers are still facing hardship because of acute shortage of laborer's and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the force majeure clause and therefore, there cannot be said to be any delay in delivering the possession by the respondent.



- g. That the project "Tranquil Heights" (for Phase-1) has been registered with the authority vide registration no. 359 of 2017.
- h. 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 perspective 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

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

9. 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.

10. 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.

11. 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."

12. 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 .

13. 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 paid amount of Rs. 69,65,114/- to the complainants along with a prescribed rate of interest.

14. The complainants booked a unit on 06.11.2013. On 16.09.2014, an allotment letter was issued to them and allotted a unit bearing no. 2802, 28th floor, building A for a total sale consideration of Rs. 1,19,15,749/- (inadvertently mentioned 1,19,15,7749/- in proceeding dated 23.08.2022) against which they paid Rs. 69,49,019/-. Thereafter, on 10.08.2015, a BBA was executed between the parties and the due date of possession is 10.08.2019 as per clause 13 of the BBA. The complainants sent an legal notice dated 12.12.2020

(page 133 of complaint) and requested to cancel the unit and refund the money and was never replied by the respondent.

15. Keeping in view the fact that the allottees/complainants wish 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is **10.08.2019 and there is delay of 1 years 6 months 7 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. The authority hereby directs the promoter to return the amount received by him i.e., Rs. **69,49,019/-** with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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):

- i. The respondent is directed to return the amount received by him i.e., Rs. 69,49,019/- with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.

V. I. 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 23.08.2022