

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

Complaint no.	:	497 of 2018
Date of filing complaint:		02.07.2018
First date of hearing:		28.08.2018
Date of decision	:	02.12.2022

1. Ashish Sardana 2. Anita Sardana Both RR/o: TE, BB-block, Janakpuri, New Delhi-110058	Complainants
Versus	
M/s Vatika Limited, Vatika Triangle, 4 th Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Complainant Ashish Sardana in person	
Sh. Mukul Kumar Sanwariya (Advocate) with Sh. Vipin Maria AR	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provisions 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of the licensee	M/s Ganesh Buildtech Pvt. Ltd. & others, C/o Vatika Ltd
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	702, 7 th floor, building no. B
8.	Unit area admeasuring	3335 sq. ft. (super area)
9.	Date of booking	30.04.2015
10.	Date of builder buyer agreement	07.09.2015
11.	Due date of possession	07.09.2019
12.	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</i>

		<i>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 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 off this agreement. Emphasis supplied</i>
13.	Total sale consideration	Rs. 2,27,41,365/- [as per SOA page 154 of complaint]
14.	Amount paid by the complainants	Rs. 60,92,288/- [as per SOA page 154 of complaint]
15.	Payment plan	High Rise Plan (Similar to time linked payment plan) as per annexure-I to the agreement, page 106 of the complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complainant:
 - a. The complainants booked two dwelling units in the project namely Tranquil Heights, phase I, sector 82A, Gurugram bearing nos. HSG-020-B701 and HSG-020-B 702. The former was booked in complainant no.2 Mrs. Anita Sardana's name and the other was jointly booked in the name of complainants, for their personal use.

- b. That the respondent did not disclose the fact from the complainants that the said bookings were being taken in violation of the project licence, and it did not have all approvals at the time of booking and the project layout was only proposed and not approved and was significantly different from the one it had sought approval for from the concerned authorities. The respondent misrepresented about the land that was under its possession for the project. There were other misrepresentations viz. an upcoming metro station in its vicinity, no EWS apartment 80% open area and project delivery timeline of Nov 2018.
- c. The complainants are upright citizens. However, due to personal circumstances between 2015-2017 and noticing respondent's lapses in commitments, and delay in starting construction at project site and in order to avoid penalty or interest, the complainants timely requested either merger of their booking into one unit or cancellation of both their bookings. This request was made in November 2015 within 6 months of booking. The respondent unnecessarily denied/prolonged the complainants request, threatening forfeiture of almost entire amount paid till the date. At the same pretext it kept demanding further payments. It also pressurized the complainants for such payment by levying interest @18% p.a., inspite of delay on its part to start any construction at the site. It was further 6 months thereafter that acknowledging delays on its part, the respondent to assuage complainants concerns and to avoid gaining knowledge of its entire spectra of



deficiencies and fraud changed the payment plan formally making it construction linked.

- d. The complainants were well prepared to make further payments on receiving demand as per revised payment plan. However, in May 2017, they came across a news article mentioning that the project could get tied up for months in a National Green Tribunal case because of respondent initiating construction at the project site without due environmental clearance. After a discussion between the respondent and the complainants, due to continued lapses and delays on the part of the respondent that were blocking complainant's funds and ability to gain ownership of an apartment in their name, respondent itself proposed acceding to a previous request for merger of the units and that the complainant no.2 through an undertaking should withdraw all her interests/rights from HSG-020-B701 which was booked in her name and all the payment that had been made in lieu of that particular unit would be adjusted retrospectively in the second unit which is in both the complainants names. Unbeknownst to the complainants, that move was only to stall refund of their money alongwith interest. The complainants proposal was agreed per the condition that through such retrospective adjustment all the outstanding interest shall also be waived off considering the inordinate delays on part of respondent with commencing the project itself.
- e. The two bookings were merged in flat bearing no. HSG-020-B-702-phase 2, Vatika Tranquil Heights. It is clarified that although committed, the respondent did not waive off the



interest and sought additional undertaking on part of the complainant for such interest waiver, that would have impugned upon their legal rights with regards to the said dwelling/booking as per the buyer's agreement viz. to make cancellation or initiate legal proceedings against respondent for any further deficiencies and would have closed option for complainants to approach RERA or any other authority or forum for redressal of grievance.

- f. The complainants were alarmed by sudden demand of an additional undertaking and sought to seek if any additional information was hidden by the respondent from them, through means of a prior RTI request and were surprised to find the facts that the project is not only considerably delayed but was in gross violations of its licences which when exposed would jeopardize the further of the project itself. Primarily, the construction at the project was in non-adherence to the approved project plan and the one provided in the builder buyer agreement, both of which were also distinctly different, although it was represented otherwise. In fact, the facilities as mentioned in the builder buyer agreement were also not being developed as the respondent did not get the same sanctioned through TCP in the building plans. With the layout plan of the project unilaterally changed by the respondent without informing or seeking permission from all the stake holders in the project, the project was being carried forward at the whims and fancies of the respondent and by completely giving a go by to the construction by laws as mandated legally.



- g. That due to the lack of transparency in the public domain, the respondent's officials have been showing certain clearances that they have allegedly received from the appropriate authorities which were never issued by them at all. Thus the respondent is guilty of not only misleading the complainants but also of showing public documents which do not exist as being genuine permissions.
- h. While it is established above that the booking from the respondent was sought and received on 30th April 2015, it was not until October 2015 that the final layout of the project was finalized and approved by TCP Haryana, and this is in gross violation of previous rulings/orders passed by Haryana High Court since it implies that the bookings was taken in pre-launch, and the builder buyer agreement was signed counter to law and in bad faith by the respondent.
- i. The complainants after having done a lot of research have also found out through RTI that the respondent made false declarations to various authorities that no dwelling in the project was booked in the period leading upto 2015 and no work was done on the project site and yet the respondent has been regularly making demands for payments to the complainants and other allottees in the said project. Thus, the hiding of material facts amounts to gross misrepresentation, forgery and fraud on the part of the respondent and criminal breach of trust and calls for a severe legal action.
- j. The respondent is in total breach of all the terms and conditions that were committed or agreed in writing or verbally prior to or after the said booking by the complainant and did so

deliberately. The complainants seeing that the project in which they had envisaged a home from themselves would neither be completed and if completed would be engulfed in various litigations due to not having appropriate approvals or for not following guidelines from the government authorities, had no other option but to send various emails and representations seeking refund of the entire amount as paid by them alongwith the same interest rate that the respondent charges and other claims towards harassment, mental agony and loss of time and opportunity. The respondent refused to return the said claims, violating complainants' rights.

- k. The complainants seeing no other option were constrained to send a legal notice dated 14.11.2017 to the respondent, which was duly served upon them. However, inspite of receipt of the notice the respondent did not address complainants' grievance.
- l. That had the respondent maintained transparency by informing project did not have requisite approvals for construction, the complainants would not have made the booking in it, or if they would have informed in end-2015 regarding differences in the Haryana-TCP approved project plan from the one in BBA and provided an exit option per terms of the BBA, then it would have relieved the complainants of financial hardship that they faced and saved significant time and agony. However, the respondent only aggrieved and harmed the complainants by the wrongful acts, conduct and behaviour as well as the deficient services in contravention to the agreed terms of builder buyer agreement within 3 months of signing it. As a result, the complainants have suffered immense mental harassment and agony apart from



financial loss of interest due to money being illegally withheld by respondent, appreciation in property had the money been used to purchase of home in some other project as well as the physical rigours of having to run around from pillar to post to get redressal of their grievances, leading to a loss of 10% working hours over a period of 3 years.

- m. The complainants further undertake that as and when it is required by this authority, they shall further provide additional detailed documents to prove the malafide of the respondent as have been obtained by RTI, requests and various visits to various authorities, as also details of loss caused to and thereby claimed by the complainant. They recently gained the knowledge that the respondent has obtained a RERA license from the authority, which they could not have obtained by being transparent and honest regarding their conduct and in the absence of the requisite clearances. Thus, firming the complainants' belief that the respondent has obtained the said license on the basis of falsification of facts and basis the same has already started marketing the project to other innocent parties in order to dupe them as well. The respondent has further hidden material facts from this authority for obtaining RERA license.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the principal amount of the complainants alongwith monthly compounded interest @18% p.a., due to their illegal actions as per RERA provisions or as

deemed suitable by the authority, since ordinarily the cost of borrowing for them is well over monthly compounded 18% p.a. be provided when sought by the authority as per HAARERA 2017, and as per powers of the authority under the section 38 of the Act, 2016.

- ii. Direct the respondent to compensate the complainants for the financial loss due to loss of their working hours owing to this matter at Rs. 40,000 p.m, mental harassment and agony caused at 10% of the booked unit value, and Rs 2.5 lac towards actual and ongoing expenses over the matter, aggregating to an amount of Rs. 41 lacs, due to lapse on the part of respondent as per HARERA-2017, and as per powers of the authority under the section 38 of the Act, 2016.
- iii. Direct the respondent to compensate the complainant for the loss due to appreciation and opportunity that has occurred on account of misrepresentations and ongoing project delays directly attributable to the action/inaction of the respondent 3.33% per annum on the booking value as per HRERA-2017.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - (a) The complaint filed by the complainants before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. They have misdirected themselves in filing the above captioned complaint before this authority as the relief being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this authority.



- (b) That it is evident that the claim for refund of sum paid towards said unit with interest and compensation would be only adjudged by the adjudicating officer as appointed under section 71 of 2016 Act and that too keeping in view the facts mentioned in section 72 of 2016 Act. No complaint can be entertained much less before this authority in respect of the matters to be adjudicated by the adjudicating officer. Hence, the authority lacks jurisdiction to deal with the complaint.
- (c) Apparently, in the present case, the complainants are seeking a claim for refund of sum paid towards said unit instead physical possession and along with interest as also the compensation, which, from reading of the provisions of the 2016 Act and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication after due deliberation, if at all, by the adjudicating officer and not by this authority. Thus, on this ground alone, the complaint is liable to be dismissed.
- (d) The complaint is liable to be dismissed as it is pre-mature in nature. The complainants had booked a unit on 30.04.2015. The buyer's agreement was executed between the parties on 07.09.2015 and as per clause 13 of the agreement, the construction of the said unit was to be completed within 48 months from the date of execution of the buyers' agreement unless there shall be delay or there shall be failure due to reasons stated in the agreement. So, the delivery date of the apartment as per buyers' agreement is 07.09.2019. It is also pertinent to mention that the complainants had satisfied themselves in respect of the said project and were duly



informed about the completion date of the said apartment and then other obligations at the time of making application for booking the apartment. The complainants now in early 2018 even before the stipulated date of completion cannot be allowed to raise the concocted, flimsy and frivolous averments/objections at such juncture where the project is yet to reach at its stipulated delivery date.

- (e) The complainants have been in continuous default in making timely and full payments towards the said unit and have now on the basis of false allegations are seeking to rescind themselves from their obligations under the agreement.
- (f) The grounds of prayer made by the complainant are fictitious, baseless, vague and created to misrepresent and misled this authority, for the reasons stated above, none of the relief is sustainable, in the eyes of law. So, the complaint is liable to be dismissed while imposing exemplary cost for wasting the precious time and efforts of the authority and abuse of the process of law, by concealing the true facts of the case and intentionally misleading the authority.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties. They also filed written submissions along with certain documents reiterating their earlier version as contained in the pleadings.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 complainants 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 (Civil), 357*** and 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** 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.

G. Entitlement of the complainants for refund:

G.I Direct the respondent to refund the paid entire amount paid by the complainants.

13. The complainants initially booked two units in the above-mentioned project of respondent on 30.04.2015 and the same led to execution of buyers' agreements on 07.09.2015. The demands raised upto October 2015 were met by the complainants. But in November 2015, they surrendered a unit and retained the unit in question jointly booked in their names. Though, the complainants paid the respondent a sum of Rs. 60,92,288/- against the total sale consideration of Rs. 2,27,41,365/-, but due to misrepresentations w.r.t the project, sanction of building plans, absence of environment clearance and raising demands without completing the requisite construction as per the construction linked payment plan, they did not pay the remaining amount and are seeking refund of the paid-up amount besides interest from the respondent. But the respondent took a plea that the complaint is liable to be rejected being pre-mature and the same having been filed on 02.07.2018 even prior to the due date i.e., 07.09.2019. Moreover, the complainants are in default and were not paying the demands raised against the allotted unit. Moreover, the issues raised by the parties cannot be decided on the basis of assumptions and presumptions.
14. Vide orders dated 14.09.2019, the authority appointed Mr. Sumit Nain, Engineer Executive along with his team as a local commission to visit the site in dispute and report about its actual position. After visiting the site, a detailed report dated 29.03.2019, was filed observing as under:



- a. The physical progress of tower B in which the unit of the complainants is located is approximately 25-30%.
 - b. The physical progress of overall project is approximately 20%
15. It was also observed by the local commissioner that no environmental clearance was granted to M/s Vatika Limited by the competent authority till now.
16. Thus, in view of the report of local commission detailed above and there being no progress in construction at the site, the complainants were right in stopping making further payments against the allotted unit after the Act of 2016 came into force and as per the provisions of clause 9.2 (i)(ii) of model agreement for sale.
17. The written submissions made by both the parties along with documents have been perused by the authority.
18. It is not disputed that the complainants are allottees of the respondent having been allotted unit no. 702, 7th floor, building no. B of the project known as Tranquil Heights, phase I, Sector 82 A, Gurugram for a total sale consideration of Rs. 2,27,41,365/-. Though initially, they booked two units in that project but surrendered one in November 2015 and retained the subject unit. The amount received against the surrendered/ cancelled unit was adjusted against the allotted unit. Though, the complainants paid substantial amount against the allotted unit from time to time but the same was received without getting environment clearance for the project and the building plans not having been approved due to one reason or the other and not raising construction consummate the amount received. A reference in this regard can be made to documents annexure P3 to P15 & P17 to P21 placed on the file

while filing written submission by the complainants. A perusal of these documents coupled with the report of local commissioner dated 29.03.2019, it is evident that there is no progress of project at the site and the building where the subject unit is located. This fact is further confirmed from the written submissions filed by the respondent along with documents R2 to R4, and wherein it has come that the project has been abandoned and the complainants have been already offered refund of the paid up amount besides interest as prescribed. Thus, the complainants are right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned and the respondent/builder applying for its de-registration as per the provisions of section 18(1)(b) of the Act, 2016 providing for refund of the paid-up amount with interest at the prescribed rate of 10% p.a. from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017. A reference to these provisions of the Act is necessary which provides as under.

18. *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,*

(a)

(b) *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

19. Thus, in view of factual as well as legal position detailed above, the authority is right in allowing refund of the paid-up amount of the complainants deposited against the allotted unit with the respondent from the each date of payment upto the date of actual date of refund of that amount within the timeline provided in rule 16 of the Haryana Rules *ibid*.

G.II Compensation


20. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in case 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 compensation.

H. Directions of the Authority:


21. 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 promoters as per the

functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to return the amount to the complainants received by him i.e., Rs. 60,92,288/- 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.
22. Complaint stands disposed of.
23. File be consigned to the Registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.12.2022