

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

Complaint no.	71 of 2021
Date of filing complaint	12.01.2021
First date of hearing	02.02.2021
Date of decision	18.11.2022

1. Kamal Kishore R/o: 9305, 3 rd floor, garden Villas, DLF Phase-4, Gurugram, Haryana	Complainants
2. Rajesh Goel R/O: 936, Sector 22-B, Gurugram, Haryana	
Versus	
M/s VSR Infratech Private Limited Regd. Office: Plot no-14, Ground Floor, Sector44, Gurgaon -122003, Haryana	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Harsh Jain (Advocate)	Complainant
Sh. Shriya Takkar (Advocate)	Respondent

ORDER

- 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 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 thereunder or to the allottee 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. N.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114, Village Bajghera, Gurugram, Haryana
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 21.07.2011 valid up to 20.07.2024
6.	Name of licensee	AMD Estate and Developers Pvt. Ltd
7.	RERA Registered/ not registered	Registered vide no. 53 of 2019 dated 30.09.2019
8.	Unit no.	G-82, Ground floor (Page no. 51 of complaint)
9.	Unit area admeasuring	527.44 sq. ft. (Page no. 51 of complaint)
10.	Date of start of construction	Not provided

11.	Date of execution of space buyer agreement	30.10.2012 (Page no. 50 of the complaint)
12.	Possession clause	32 Possession The company shall give possession of the said unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later. (Page 60 of the complaint).
13.	Due date of possession	30.10.2015 (Calculated from the date of execution of space buyer agreement, as date of construction is not provided)
14.	Total sale consideration	Rs.38,91,979/- (As per on page 53 of complaint)
15.	Amount paid by the complainants	Rs.39,64,119/- (As alleged by the complainant on page 6 of complaint)
16.	Occupation certificate /Completion certificate	17.02.2021 (As per on page 146 of reply)
17.	Offer of possession	20.03.2021 (As per on page 149 of reply)

B. Facts of the complaint:

3. In the month of July 2011, the respondent launched a commercial colony in Sector 114, Revenue Estate of Village Bajghera ,Gurgaon, Haryana under the name of '114 Avenue' (hereinafter referred to as 'Project'). The complainants booked a commercial unit with builders vide application



no. 127 on 14.07.2011 and were allotted a unit bearing G82, located at ground floor, admeasuring 527.44 sq. ft. of super area. However, the respondent vide its allotment letter dated 01.05.2012, changed the super area of the unit to, 527.44 sq. ft.

4. On 30.10.2012, space buyer agreement was executed between the parties, as per which the possession the unit was to be handed over within a period 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later. The due date of deliver the possession was 30.10.2015.
5. That the complainants made several payments as per the payment plan and demand raised by the respondent. That till 2020 the complainants have paid a sum of Rs. 39,64,119.69/- to the respondent.
6. That the complainants sought help and sent email dated 01.10.2020 to ask the respondent about the status and when they can expect the offer of possession of the abovementioned unit. However, there was no reply from the respondent. The complainants again wrote to the respondent on 30.10.2020 and asked about the update and timeline for possession, but to no avail as the respondent failed to oblige the complainants and has defaulted in complying with the terms of the agreement and thereby the respondent has failed to fulfil the contractual duties.
7. The respondent has chosen to ignore the requests made by the complainants and has not even bothered to acknowledge or respond to the requests. The respondent, in utter disregard of their responsibilities, has left the complainants in lurch and the complainant have been forced

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to chase the respondent for seeking possession of rental pool serviced apartment. Thus, the complainants have no other option but to seek justice from this hon'ble authority and hence the present complaint.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
 - i. Direct the respondents to refund the entire amount paid by the complainant along with interest at prescribed rate from the date of payment till the date of refund.
 - ii. Direct the respondent to pay the litigation cost.

D. Reply by respondent:

The respondents by way of written reply made following submissions:

9. It is submitted that the complainants were allotted commercial unit bearing no. G-82 having super area 704.400 sq. ft. in 114 Avenue vide allotment letter dated 05.07.2012. It is submitted that the area of the unit was decreased and the same was informed to the complainants vide letter dated 24.12.2012. The space buyer's agreement was executed between the parties on 30.10.2012. The price of the property as per the agreement is Rs. 38,91,979/- plus IFMS, taxes, duties and levies.
10. That after making sincere efforts despite the force majeure conditions, the respondent completed the construction and thereafter applied for the occupancy certificate (OC) on 15.07.2020. That the OC has been received by the respondent on 17.02.2021. That immediately after the receipt of the OC on 17.02.2021, the respondent sent a letter dated 23.03.2021 along with the statement of accounts requesting the

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complainants to come forward and clear their dues and start the process of fit outs.

11. That the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond its control. The following factors caused the delay in the construction of the project, not within the control of the respondent and are force majeure events. One of the major reasons for the delay was the non-completion of Dwarka expressway a part of Master Plan 2031. The Dwarka expressway was plagued by land acquisition issues, causing a delay in the completion of the basic infrastructure. This is a major hindrance in the real estate development in the belt. Because of non-availability of basic infrastructure, which was supposed to be developed by competent authorities, it is very difficult for the real estate developers to meet the timeline.
12. That the delay in the construction of the project due to the force majeure events, do not go against the provisions of the space buyer agreement and the agreement itself allows the delays caused by the factors beyond the control of the respondent.
13. All other averments were denied in toto.
14. 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 these undisputed documents and submission made by the parties.



E. Jurisdiction of the authority:

21. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

15. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

16. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) of the act 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.

17. 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.

18. 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.*" SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s 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."



19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Entitlement of the complainants for refund:

F.I Direct the respondents to refund the entire amount paid by the complainant along with interest at prescribed rate from the date of payment till the date of refund.

20. That the complainants booked a unit in the project of the respondent namely, "114 Avenue" and were allotted a unit bearing no. 82, ground floor vide allotment letter 01.05.2012. Thereafter, a BBA was executed between the parties on 30.10.2012. The complainants paid a sum of Rs. 39,64,119/- against the total price. The due date of possession as per space buyers agreement as mentioned in the table above was 30.10.2015 and there is delay of 5 year 2 months on the date of filing of the complaint. So, 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.

21. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of present complaint by the complainants for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee have already wished to withdraw from the project and they have become entitled to their right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by it from the allottee in respect of that unit with interest at the prescribed rate.

22. 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

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. 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/complainants, as they wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

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

25. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 39,64,119 /- with interest at the rate of 10.35% (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 rules.

F.II Direct the respondent to pay litigation cost.

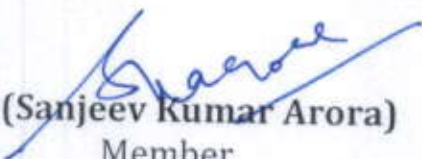
26. The complainant in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation,

H. Directions of the authority:

27. Hence, the authority hereby passes this order and issue 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/promoter is directed to refund the amount i.e., **Rs. 39,64,119/-** received by them from the complainants along with interest at the rate of 10.35% 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
28. Complaint stands disposed off.
29. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.11.2022