

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

Complaint no. :	4029 of 2019
Date of filing complaint:	11.09.2019
First date of hearing:	13.11.2019
Date of decision :	02.12.2022

Rohit Chadha

R/o: Plot no. 285, Sector 14, Gurugram, Haryana

**Complainant**

Versus

M/s Vatika Limited

Office: Vatika Triangle, 4th Floor, Sushant Lok, PH-1,  
Block-A, Mehrauli-Gurugram Road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. B.L. Jangra Advocate

**Advocate for the complainant**

Sh. Mukul Kumar Sanwariya

**Advocate for the respondent**

**ORDER**

1. The present complaint 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 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 provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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 and location of the project	"Vatika Express City" at sector 88A & 88B, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	Project area	9.548 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. & 20 others
6.	RERA Registered/ not registered	Registered vide no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022
7.	Unit no.	27, Street no.-H-33, block no. Pocket H-2-Top Level (Page no. 26 of complaint)
8.	Unit area admeasuring	927.09 sq. ft. (Page no. 26 of complaint)
9.	Date of application	29.12.2015 (page 3 of complaint)
10.	Letter w.r.t execution of BBA	30.03.2016, 30.05.2016, 20.02.2018 (page 23-25 of reply)
11.	Date of builder buyer agreement	BBA not executed
12.	Due date of possession	30.03.2019  <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a</i>





		<p><i>time period of 3 years would have been reasonable for completion of the contract.</i></p> <p>In view of the above-mentioned reasoning, the date of letter for execution of BBA, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 30.03.2019</p>
13.	Total sale consideration	Rs. 80,70,511/- [as per SOA dated 21.05.2021, annexure R-3, page 28 of reply]
	Basic sale price	Rs. 71,34,108/- [as per SOA dated 21.05.2021, annexure R-3, page 28 of reply]
14.	Amount paid by the complainant till August 2016	Rs. 14,87,457/- [as per SOA dated 21.05.2021, annexure R-3, page 28 of reply]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Notice for termination	04.07.2018 (annexure R4, page 31 of complaint)
18.	Letter for cancellation of allotment letter cum recovery notice	21.10.2020 (annexure R5, page 32 of complaint)

**B. Facts of the complaint:**

3. That the complainant booked a residential unit no. 27, in street no. H-23, on Pocket-H-2-Top Level, in sector-88B having carpet area of 927.09 sq. ft. by paying booking amount of Rs. 2,00,000/- on 29.12.2015 of which total price of Rs. 80,03,011.75/- in the said project of the respondent.
4. That the respondent never executed agreement for sale but it continued raising many demand without signing the agreement to sale which were paid by the complainant. It is pertinent to mention here that the complainant never defaulted in paying the instalments as demand raised



by the respondent. However, the respondent never commenced construction work as promised nor came for signing builder buyer agreement till February 2018.

5. That as per representation made by the respondent at the time of booking of unit the said physical possession of the unit was to be handed over to the complainant within 24 months from the date of booking but failed. He came to know that it had filed declaration in authority to complete by 05.10.2022. The complainant has been regular to ask, after February 2018 to cancel the allotment of unit and refund the sale consideration of Rs. 16 lacs.
6. That on 15.12.2018, the respondent sent an agreement to sell without inserting the date of possession and it was orally stated by the respondent that the possession was to be handed over in year 2022.
7. That despite regular follow up by the complainant, it neither cancelled nor refund the sale consideration amount of Rs. 16 lacs. Therefore, the complainant is left with no other efficacious remedy available except to file the present complaint before the authority seeking refund of money invested along with penalty and interest charges for willful breach of contract.

**C. Relief sought by the complainant:**

8. The complainant has sought following relief(s):
  - i. **Direct the respondent to refund the amount paid by the complainant for violation of section 18(1)(a) of the Act, 2016.**
  - ii. **Payment of interest to the complainant as per the RERA rules from the booking of unit no. 27 in the said project**

**D. Reply by respondent:**



9. That the complaint filed by the complainant before the authority besides being misconceived and erroneous, is untenable in the eyes of law and liable to be rejected. The complainant has misdirected himself in filing the above captioned complaint before this authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this authority. It would be pertinent to make reference to some of the provisions of the Act 2016 and the Rules, 2017 made by the Government of Haryana in exercise of powers conferred by sub-section-1 read with sub-section-2 of section-84 of 2016 Act. Section 31 of act provides for filing of complaints with this authority or the adjudicating officer, sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-Section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 rules provides for filing of complaint with this authority, in reference to Section 31 of 2016 Act. Sub-clause (1) inter alia, provides that any aggrieved person may file a complaint with the authority for any violation of the provision of 2016 Act or the rule and regulations made there under, save as those proved to be adjudicated by the adjudication officer, in Form CRA. Significantly, reference to the authority, which is this authority in the present case and before the "adjudicating officer", is separate and distinct "adjudicating officer" has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of the section 71, whereas the "authority" has been defined under section 2(1) to mean the Real Estate Regulatory Authority, established under sub-section (1) of section 20.





Apparently, under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate Government for the purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be deliberated and taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. It would be pertinent to make reference to section 18 of 2016 Act. which inter-alia, provides for compensation.

10. That the complainant is not an allottee within the meaning of Act as there is no builder buyer agreement or agreement for sale. Thus, the complaint should be dismissed on this sole ground.
11. It is submitted that the complainant failed to fulfil the obligations towards the payment. The complainant made the payment of only Rs. 14,84,457/- till August 2016 out of total sale consideration of Rs. 80,03,011.75/- i.e. 18% of the total sale consideration. He had been sent several reminders to make the amount due against him. However, the reminders of the respondent fell on deaf ears of the complainant and he did not turn to pay outstanding amount. As such, it is clear that since the booking, the complainant has sole intention to harass the respondent so as to demand for extra money in future.
12. That the complainant failed to remit the due instalments amount, even after several requests and reminders of the respondent. The notice of termination had been served on the complainant vide letter dated 04.07.2018 wherein he had been informed that the allotment of his unit would be cancelled, if he fails to pay the outstanding amount against him in 7 days from the issuance of said letter. It is pertinent to mention that





pre-termination notice had also been served on the complainant vide email date 15.09.2020 so as to give him last opportunity to clear the outstanding dues. However the complainant did not turn to pay the outstanding and hence on 21.10.2020, the respondent cancelled the booking of the complainant.

13. 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:**

14. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

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**

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.*

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.

**F. Entitlement of the complainants for refund:**

**F.1 Direct the respondent to refund the amount paid by the complainant to the respondent for violation of section 18(1)(a) of the Act, 2016.**

**F. 2 Payment of interest to the complainant as per the RERA rules from the booking of unit no. 27 in the said project.**

15. The complainant booked a unit on 29.12.2015, for a total sale consideration of Rs. 80,70,511/- against which he paid an amount of Rs. 14,87,457/- till August 2016. A buyers' agreement was not executed between the parties. The respondent sent letters for execution the buyers' agreement on 30.03.2016, 30.05.2016, 20.02.2018 respectively but the same was not executed between the parties. On 04.07.2018, the respondent sent a notice for termination of the allotted unit to the complainant and thereafter, it issued a cancellation letter of allotted unit dated 21.10.2020. It is pertinent to mention here that the due date of possession was 30.03.2019 and the complainant filed complaint after the





due date i.e., 11.09.2019. After filing the complaint, the respondent cancelled the unit of allottee for not making paying outstanding dues. It is not disputed that the respondent has not received the OC of the project till date. Thus, the said cancellation by the respondent is not valid in eyes of law and the complaint falls within the ambit of the section 18(1) of the Act.

16. The due date of possession as per allotment letter as mentioned in the table above is 30.03.2019 and there is delay of 5 months and 12 days on the date of filing of the complaint.
17. The AR has confirmed that 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 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....."*

18. 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. 2021-2022(1)RCR(c ),357 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 that :

*"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."*

19. 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 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.
20. The authority hereby directs the promoter to return the amount received i.e., 14,87,457/- along 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 Haryana Rules 2017 *ibid*.

**G. 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/promoter is directed to return the amount received i.e., 14,87,457/- along 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 Haryana Rules 2017 ibid.
- 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

Haryana Real Estate Regulatory Authority, Gurugram

  
(Vijay Kumar Goyal)

Member

Dated : 02.12.2022