



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

<b>Complaint no.</b> :	<b>951 of 2022</b>
<b>Date of filing complaint:</b>	<b>11.03.2022</b>
<b>First date of hearing:</b>	<b>09.08.2022</b>
<b>Date of decision</b> :	<b>10.11.2022</b>

1. Krishan Thaper  
2. Karun Krishan Thaper  
**Both RR/o:** 12, first floor, Shakti Vihar, Pitampura,  
Delhi

**Complainants**

**Versus**

M/s Vatika Limited  
**Office :** 4<sup>th</sup> floor, Vatika Triangle, Mehrauli-Gurgaon  
Road, Sushant Lok, Phase-I, Gurgaon, Haryana-122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Vaibhav Sharma  
Sh. Venket Rao & Pankaj Chandola

**Complainant in person**

**Advocates for the respondent**

**ORDER**

1. The present complaint 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 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 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 and location of the project	"xpressions" at sector 88B Gurgaon, Haryana
2.	Date of booking	11.04.2016 (Page 15 of compliant)
3.	Date of buyer agreement	22.05.2016 (page 25 of complaint)
4.	Plot no.	HSG-028, H-24, Top level (Page 28 of complaint)
5.	Possession clause	<b>13. Schedule for possession of the said residential floor</b> <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to <b>complete construction of the said unit within a period of 48 months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of buyer(s) to pay in time the price of the said commercial unit along with all other charges and dues in accordance with the schedule of payments.....</b></i> <b>(Emphasis supplied)</b>
6.	Due date of possession	22.11.2020 [Due date of possession calculated from the date of BBA + 6 months grace period in view of covid 19]
7.	Total sale consideration	Rs. 81,64,153/- as per SOA dated 05.08.2022 (page 26 of reply)



8.	Amount paid by the complainants	Rs. 20,37,842/- as per SOA dated 05.08.2022 (page 26 of reply)
9.	Occupation certificate	Not obtained
10.	Offer of possession	Not offered
11.	Legal notice	04.09.2021 (page 68 of complaint)

**B. Facts of the complaint:**

3. That the complainants booked a flat, bearing no, HSG-028, plot no.-21, ST.H-24, top level and having a super area of 1350 sq. ft., in the said project. In furtherance of which an application form dated 11.04.2016 was endorsed between M/s Vatika Ltd. and the complainants and in lieu of which the complainants advanced an amount to the tune of Rs.2,00,000/- as token money in respect of booking the said flat.
4. That on 22.05.2016, a builder buyer agreement was executed between the parties wherein it was concurred that the said unit would be bought for a sale consideration of Rs. 81,79,513/-. Further, it was promised to the complainants that the possession of the said flat would be provided within 48 months and same was also consolidated in the said builder buyer's agreement. They paid the rest of the consideration i.e. Rs.18,37,842/- through different transactions.
5. That as per clause 13 of a builder buyer agreement, the respondent was to handover the possession within a period of 48 months from the date of signing of the agreement. However, till date no possession or allotment letter whatsoever has been handed over to the complainants. It is also pertinent to mention that the construction of the said flat is still ongoing and would take almost another 4-5 years to get completed.
6. That a legal notice dated 04.09.2021 demanding refund of the amount of the said flat along-with the delayed interest was sent to the respondent but

till date it has neither responded to the legal notice nor has handed over the possession to the complainants. To the utter dismay of the complainants and despite remittance of almost 35% of the consideration, it has failed to offer them in possession of the flat and thus, infringed the builder buyer agreement.

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

7. The complainants have sought following relief(s):
  - i. Direct the respondent to refund of Rs. 20,37,842/- along with pendent lite interest @ 24% per annum from the due date of payment till the date of actual payment, in favour of the complainants.

**D. Reply by respondent:**

8. That the complainants herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant are raising false, frivolous, misleading and baseless allegations against the respondent with an intent to make unlawful gains.
9. That on 22.05.2016, a builder buyer agreement was executed between the parties wherein, the floor bearing no. HSG-028-Pocket-11-2, top level, 2BR, admeasuring to 1350 sq. ft. was allotted to the complainants for a total sale consideration of Rs. 81,79,513/- in the project. It is imperative to bring to the attention of the authority that as per the agreement so signed and acknowledged by them, the possession of the said unit was proposed to be handed over within a period of 48 months from the date of execution of the agreement unless, there shall be delay or failure due to reasons mentioned in clauses or failure of allottees to pay in time the price of the said unit along with other charges.

10. That the complainants being the habitual defaulter in terms of payment failed to adhere to the payment plan and violated the terms and conditions embodied under clause 7 of agreement. It is to be noted that the complainants merely paid an amount of Rs. 20,37,842/- towards the total agreed sale consideration and still a substantial amount of money is due and payable by them.
11. That the complaint is filed by complainants on baseless and absurd grounds. It is clearly mentioned under clause 16 of the agreement that in case of any unforeseen circumstances faced by respondent in the mid-way of development of the subject project, then extension time would be granted for the completion of the project. It is pertinent to mention, that the complainants in the aforesaid clause so signed and acknowledged, agreed that they would not be entitled for any amount of compensation for such extension caused either due to any act or notice or notification issued by the government or public or competent authority.
12. That subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the unexpected introduction of a new National Highway being NH 352 W proposed to run through the project of the respondent. Initially, HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana government decided to make an alternate highway passing through between sector 87 and sector 88. Further, Haryana Government transferred the land falling in

sector 87, 88 and others sectors to GMDA for constructing new highway. Thereafter, in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs. It is pertinent to note that respondent has already laid down its facilities before such upliftment. As a result, respondent is constrained to uplift the project land and re-align the facilities. Thereafter, GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W. All this process caused considerable amount of delay and thus hampered the project with circumstances which are beyond the control and ambit of developer and which also contributed to the inevitable change in the layout plans.

13. That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the BBA. It is pertinent to apprise to the authority that the developmental work of the said project was slightly decelerated due to the reasons beyond its control such as due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 stretching its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
14. Apart from the above, the progress of the construction of the project was also affected due to various other unforeseen circumstances such as:
  - a. *Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the Respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.*



- b. *The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.*
- c. *The GMDA vide its letter dated 08.09.2020 had handed over of possession of said properties for construction and development of NH 352 W to the NHAI. This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.*
- d. *Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road levels, however due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.*
- e. *Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.*
15. Despite, after such obstacles in the construction activities and before the normalcy could resume, the entire nation was hit by the world with covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period be excluded while computing the delay. On 24.03.2020, the government of India ordered a complete lockdown in the country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continued in some or the other form to curb the pandemic. In pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to force majeure, the authority has also extended the registration and completion date by 6 months for all real estate

projects whose registration or completion date expired and or was supposed to expire on or after 25.03.2020.

16. Despite, above stated obstructions, the nation was yet again hit by the second wave of covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of covid-19, firstly, night curfew was imposed followed by weekend curfew and then complete curfew. The period during from 12.04.2021 to 24.07.2021, each and every activity including the construction activities effected. It is further imperative to mention herein that Section 18 read with Section 19 of Act, 2016 and rule 15 read with rule 16 of rules provide for the right of the allottee to demand refund along with interest and compensation only on failure of the promoter to offer possession in accordance with the agreement to sale duly completed by the date specified therein.
17. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the authority. The present complaint is an utter abuse of the process of law and hence deserves to be dismissed.
18. 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 submissions made by the parties.

**E. Jurisdiction of the authority:**





19. 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 complainants at a later stage.

**F. Findings on the objections raised by the respondent.**

**F. I Objection w.r.t. force majeure**

22. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT Hon'ble Supreme Court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI and re-routing of high-tension lines passing through the land of the project. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.
23. It is observed that the respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 22.05.2020 and is claiming benefit of lockdown amid covid -19. In view of notification no. 9/3-2020 dated 26.05.2020, the authority has allowed six months relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 22.05.02020 + 6 months, possession is to be handed over by 22.11.2020 but the respondent has failed to handover possession even within this extended period. Moreover, the occupation certificate /part OC is not yet obtained by the respondent from the competent authority.

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

**G.1 Direct the respondent to refund of Rs. 20,37,842/- along with pendent lite interest @ 24% per annum from the due date of payment till the date of actual payment, in favour of the complainants.**

20. The complainants booked a flat, bearing no, HSG-028, plot no.-21, ST.H-24, top level and having a super area of 1350 sq. ft., in the said project. In furtherance an application form dated 11.04.2016 was endorsed between M/s Vatika Ltd. and the complainants and in lieu of which they advanced an amount to the tune of Rs. 2,00,000/- as token money in respect of booking the said flat. On 22.05.2016, a builder buyer agreement was executed between the parties wherein it was concurred that the said unit would be bought for a sale consideration of Rs. 81,79,513/-. Further, it was promised to the complainant's that the possession of the said flat would be provided within 48 months and same was also consolidated in the said builder buyer's agreement. The complainants paid the rest of the consideration i.e. Rs.18,37,842/- through different transactions.
21. The respondent stated in reply that the complainants being the habitual defaulter in terms of payment has failed to adhere to the payment plan and violated the terms and conditions embodied under clause 7 of agreement. It is to be noted that the complainants merely paid an amount of Rs. 20,37,842/- towards the total agreed sale consideration and still a substantial amount of money is due and payable.
22. Keeping in view the fact that the allottee/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.

23. The due date of possession as per agreement for sale as mentioned in the table above is 22.11.2020 and there is delay of 1 year 3 months and 17 days on the date of filing of the complaint.

24. 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....."*

25. 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,RCR(c ), 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.*** 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."*

26. 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 allottees as they 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.
27. The authority hereby directs the promoter to return to the complainants the amount received i.e. Rs.20,37,842/- with interest at the rate of 10.25% (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:**

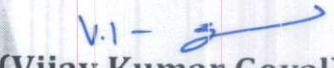
28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent/promoter is directed to return the amount received i.e. Rs.20,37,842/- to the complainants with interest at the rate of 10.25% (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 actual realization.
  - A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
29. Complaint stands disposed of.
30. File be consigned to the Registry.

  
(Sanjeev Kumar Arora)

Member

  
(Ashok Sangwan)

Member

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

10.11.2022