

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

Complaint no.	:	2154 of 2022
Date of filing complaint:		13.05.2022
First date of hearing:		24.08.2022
Date of decision	:	10.11.2022

1. Nitin Kumar Gupta
 2. Sonal Gupta
- Both RR/o:** 61/1, Emila-1, Lantana Street, Sector-49, Sohna road, Gurgaon, Haryana-122018

Complainants

Versus

M/s Vatika Limited
Office : 4th 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. Nitin Kumar Gupta with Sh. Garvit Gupta **Complainant in person with advocate**
Sh. Venket Rao & Pankaj Chandola **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. No.	Heads	Information
1.	Project name and location	Seven Elements, Sector 89, Gurugram, Haryana.
2.	Date of builder buyer agreement	19.09.2016 (page 22 of complaint)
3.	Project area	14.30 acres
4.	Nature of the project	Group housing colony
5.	DTCP License	41 of 2013 dated 06.06.2013 and valid up to 05.06.2017
6.	Name of the licensee	Strong Infrabuild Pvt. Ltd. & Anr.
7.	RERA Registered/ not registered	Registered vide memo no. 281 of 2017 valid up to 31.03.2011
8.	Date of builder buyer agreement	19.09.2016 (page 22 of complaint)
9.	Unit no.	B-501, 5 th floor, 4 court tower 2 (annexure C6, page 37 of complaint)
10.	Unit measuring (super area)	2195 sq. ft
11.	Possession clause	13. Schedule for possession of the said apartment <i>The Developer based on its present plans and estimates and subject to all</i>



		<i>just exceptions, contemplates to complete construction of the said 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 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-1 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>
12.	Due date of possession	19.03.2021 [Due date of possession calculated from the date of BBA + 6 months grace period in view of covid 19] (wrongly mention in proceeding 19.03.2017) (calculated from the date of execution of buyer's agreement)
13.	Total sale consideration	Rs. 1,61,33,250/- (page 8 of complaint) Rs. 1,70,83,970/- (As per SOA dated 18.08.2022 page 21 of reply)
14.	Amount paid by the complainants	Rs.35,51,221/- (as alleged by the complainants) Rs. 35,51,221/- (As per SOA dated 18.08.2022 page 21 of reply)
15.	Occupation Certificate	Not received
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants booked a unit in the respondent's project namely "Seven Elements" and subsequently, a unit bearing no. B-501, 5th floor, 4 court, tower 2 was allotted in their favour. On 19.09.2016 a buyer agreement was executed between the parties.
4. That the complainants paid an amount of Rs. 35,51,221/- as part payment towards the total cost of the unit i.e. Rs. 1,61,33,250/-.
5. That according to the clause 13 of the agreement, it was settled and agreed that the possession of the said unit would be delivered within 48 months which is September 2020. But unfortunately the possession of the unit is delayed and due since September 2020 and till date.
6. That as there was delay in handing over of possession and till date, no OC has been obtained by it, they wished to withdrawal from the project and seek refund of the amount paid.

C. Relief sought by the complainants:

7. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the amount Rs. 35,51,221/- paid by the complainants along with prescribed rate interest.
 - ii. Compensation for mental pain, torture, agony, hardship etc.

D. Reply by respondent:

8. That the complainants, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

9. That on 19.09.2016 a builder buyer agreement was executed between the parties for the unit bearing no. B-501, 5th floor, fourth court admeasuring to 2195 sq. ft. in the said project for a basic sale price of Rs. 1,61,33,250/-. It is pertinent to bring into the knowledge of the authority that as per the agreement so signed and acknowledged, the respondent herein provided and estimated time period 48 months for completing the construction of the project and the same was subject to various hindrances in midway of construction of the project purely beyond the control of the respondent.
10. That the builder buyer agreement was signed and executed on 19.09.2016 and as per the same the respondent was bound to handover the possession of the unit subject to any delay beyond its control by 19.09.2020.
11. That the complainants were well aware of every term of the said agreement and agreed to sign over the same after being satisfied with each and every term at free will and without any protest or demur. It is to note that as per the agreement, the complainants were aware that the possession of the said unit was subject to timely payment of instalment and the same was essence of the contract.
12. That despite, being aware of the payments schedule and the fact that timely payment is essence for completion of the project, the complainants failed to make the requisite payment of the instalments as and when demanded by the respondent in accordance with the payment schedule. It is a matter of fact that the complainants have merely paid an amount of Rs. 35,51,221/-

against the total sale consideration of Rs. 1,61,33,250/- and still a substantial amount of money is due and payable to the respondent.

13. 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 owing to take over of land by the Government for making Highway. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted group housing/commercial/institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high tension lines passing through these lands and which also contributed to the inevitable change in the layout plans.
14. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company. It was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the company's projects. To further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project. forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the company resulted in the company being unable to deliver.

15. 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 NHA. 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.*
16. 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 hon'ble authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good & Services Act,

2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

17. In past few years the construction activities have also been hit by repeated bans by the courts/tribunals/authorities to curb pollution in Delhi-NCR region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/1-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
18. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi- NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labour to return to their native towns/states/villages creating an acute shortage of labour in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the hon'ble Apex Court.
19. The current covid-19 pandemic resulted in serious challenges to the project with no available labour, contractors etc. for the

construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-1(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, 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. Various State Governments including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities in pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory 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 March 25, 2020.

20. Despite such obstacles in the construction activity and before the normalcy could resume, the entire nation was hit by 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.

21. Despite after 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 12.04.2021 to 24.07.2021, each and every activity including the construction activities was effected. It is further imperative to mention herein that section 18 read with section 19 of Act 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.
22. 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.
23. 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:

24. 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

25. 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.

26. 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

27. 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.
28. 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 19.03.2021 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 19.09.2020 + 6 months, possession is to be handed over by 19.03.2021. 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 respondents to refund of the amount Rs. 35,51,221/- paid by the complainants along with prescribed rate interest.

29. That the complainants booked a residential space in the project developed by the respondent namely "seven elements". An apartment no. B-501, 5th floor of building fourth court admeasuring 2195 sq. ft. sector 89A, was booked by the complainants and the builder buyer agreement was executed between the parties on 19.09.2016. The complainants paid an amount of Rs. 35,51,221/- as part payment towards the total cost of the unit i.e. Rs. 1,61,33,250/. According to the clause 13 of the agreement, it was settled and agreed that the possession of the said unit would be delivered within 48 months which is March 2021 and unfortunately, the possession of the unit is delayed and due since March 2021 and till date.
30. Keeping in view the fact that the allottee/complainant 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 plot 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.

31. The due date of possession as per agreement for sale as mentioned in the table above is 19.03.2021 and there is delay of 1 year 1 months and 24 days on the date of filing of the complaint.
32. 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....."*
33. 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 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."

34. 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.
35. This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
36. The authority hereby directs the promoter to return to the complainants the amount received by him i.e. Rs.35,51,221/- 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*.

G.2 Compensation for mental pain. Torture, agony, hardship etc.

37. The complainants are also 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. (supra)*, 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 may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

38. 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 by him i.e. Rs.35,51,221/- 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.
- ii. 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.
39. Complaint stands disposed of.
40. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

10.11.2020