

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

<b>Complaint no.</b> :	<b>5749 of 2019</b>
<b>Date of filing complaint:</b>	<b>26.11.2019</b>
<b>First date of hearing:</b>	<b>06.12.2019</b>
<b>Date of decision</b> :	<b>02.12.2022</b>

1. Hitin Chopra
2. Richa Gautam

**Both RR/o:** 2-B, Nishant Bagh, Behind B.D. Flour Mill,  
Ambala Cantt., Haryana-133001

**Complainants****Versus**

M/s Vatika Limited

**Office :** Vatika Triangle, 4<sup>th</sup> Floor, Sushant Lok,  
Phase-I, Block-A, MG Road, Gurugram - 122002

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Sanjeev Kumar Arora

**Member****APPEARANCE:**

Sh. Raghav Sethi (Advocate)

**Complainants**

S/Sh. Venket Rao & Pankaj Chandola

**Respondents****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 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	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	M/s Ganesh buildtech Pvt. Ltd. & others, C/o Vatika Ltd.
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	102, Tower-E (page no. 35 of complaint)
8.	Unit area admeasuring	2290 sq. ft. (page no. 35 of complaint)
9.	Date of booking	10.11.2013 (page 24 of complaint)
10.	Date of allotment	30.09.2014 (page 35 of complaint)
11.	Date of builder buyer agreement	<b>Not executed</b>
12.	Due date of possession	30.09.2017  <i>Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> 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 <b>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 time period of 3 years would have been reasonable for completion of the contract.</b> In view of the above-mentioned reasoning, the date of signing of allotment letter, 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 30.09.2017
14.	Total sale consideration	Rs. 1,64,14,420/- [as alleged by the complainants on page 11 of CRA]
15.	Amount paid by the complainants	Rs. 58,59,388/- [as alleged by the complainants on page 11 of CRA]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Legal notice	30.03.2019 (annexure 20, page 84 of complaint)

**B. Facts of the complaint:**

- That on 10.11.2013, the complainants visited vatika office and who marketed **TRANQUIL HEIGHTS PROJECT** in Sector 82A claiming all licenses in place and project delivery/possession time line of March, 2018. they, were also assured customization of units, 80%+ open area in the project and proximity to the upcoming metro station in Sector 82/82A and also provided project layout plan. There was no mention of EWS flats in the project. The initial booking amount was also paid on the same day with the commitment that the allotment letter shall be issued immediately. The respondent time and again demanded the next installment as per the agreed payment schedule and also promised to deliver the allotment letter immediately although the complainants keep requesting for the issuance of an allotment letter. However, the same was not provided.
- That on 30.09.2014, the complainants are requested for the issuance of an allotment letter. However, the same was not provided. Finally after almost 11 months of the booking, the respondent finally provided them with the allotment letter wherein unit no. 102, Tower E, sector 82A having an area of 2290 sq. ft. being a corner flat was allotted to them.

5. On 04.03.2015, the respondent demanded another payment on account of increase in area, although it was unbelievable for the complainants, that the construction has not even been initiated and such an absurd demand is being made. But the complainants thereafter made the payment. The respondent after numerous requests having been placed by the complainants for issuance of the builder buyer agreement, after 10 months of the issuance of the allotment letter, allegedly sent a builder buyer agreement, which was never received by them and thus, they placed another request for a BBA, which was not acceded to.
6. That the complainants thereafter even provided the fresh address, however the BBA was never received at that address as well. The complainants thereafter requested for a fresh BBA and the respondent directed the complainants to furnish certain documents to show that the BBA which they never received has been lost. The respondent also directed the complainants to lodge an FIR. The complainants who are residing in the United States of America, came to India and after many visits and requests and after complying with many requirements as placed by the respondent, failed to provide BBA to them.
7. That the complainants had made it clear that they shall be requiring a loan and in fact had got sanction for the loan but since the respondent was unable to provide the necessary approvals, the loan did not get sanctioned from HDFC. The respondent thereafter suggested the name of India Bulls Housing Finance who in spite of the complainants repeatedly providing the necessary documentation, failed to sanction the loan. The complainants even requested the respondent to help but it failed to provide the same.

8. That the complainant no. 2's brother visited the office of the respondent time and again to enquire about the status of the project and seek permission from them to visit the site. The respondent flatly refused permission to the complainants and thereafter, they got in touch with various other buyers who had purchased flats in the property. It was only upon coming in contact with the said buyers that the complainants got to know of the various illegalities as had been committed by the respondent.
9. That on 30.03.2019, the complainants seeing that there was no sense of commitment from the respondent side and that they are just interested in extracting money from the complainants. They were forced to send out a legal notice dated 30.03.2019 through their lawyer.

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

10. The complainants have sought following relief(s):
  - i. Direct the respondent to refund the paid amount of Rs. 58,59,388/- along with interest.

**D. Reply by respondent:**

11. That around 2013, the complainants herein, learnt about the project and repeatedly approached the answering respondent to know the details of the said project. The complainants further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
12. That after having keen interest in the above said project launched by the respondent i.e., "Tranquil heights", the complainants upon their own examination and investigation desired to purchase a flat, in the year 2013, and approached the respondent and on 10.11.2013, booked a unit bearing

no. 102, admeasuring super area 2290 sq. ft. for a total sale consideration of Rs. 1,64,14,420/-.

13. That as per the agreement so signed and acknowledged by the respondent herein provided and estimated time period of 48 months for completing of the construction for the project i.e., "**Tranquil Heights**", and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project, which were unavoidable and purely beyond the control of it. Further, it is pertinent to mention that the project could not be completed and developed on time due to various hindrance such as government notifications from time to time and force majeure conditions, breakdown of Covid-19 pandemic, laying of GAIL pipe line, acquisition of sector road land parcels in the township and other such reasons stated above, which miserably affected the construction and development of the above said project as per the proposed plans and layout plans, which were unavoidable and beyond the control of it.
14. That the respondent after failure to complete the project as per the proposed plan and layout plan due to the aforesaid reasons elaborately, filed a proposal bearing "In Re: Regd. No. 359 of 2017 dated 17.11.2017, for the De-Registration of the **Project "Tranquil Heights"**, and settlement with existing allottees before the registry of this authority on 30.09.2022. The intention of the respondent is *bonafide* and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project as the project could not be delivered due to various reasons beyond the control of the respondent as stated above.
15. The complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the authority. The complaint is an utter abuse of the process of law. The complaint under reply is liable to be

dismissed and the complainants may be directed by this authority to approach it as and when the application for proposal for de-registration of the project "**Tranquil Heights**" filed by it comes to finality by this authority.

16. 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:**

17. 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**

18. 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**

19. 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.

20. 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 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 cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.I Objection regarding force majeure conditions:**

21. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was not executed between the parties. So, the due date is calculated as per judgment *fortune infrastructure and Ors. Vs. Trevor D'lima and Ors. (12.03.2018.SC, wherein it was* 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 time period of 3 years would have been reasonable for completion of the contract.* In view of the above-mentioned reasoning, the date of signing of allotment letter, 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 30.09.2017. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on the record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

22. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

23. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 30.09.2017 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event

of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

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

**G.1 Direct the respondent to refund the paid amount of Rs. 58,59,388/- along with interest.**

24. The complainants booked a unit in the project of the respondent detailed above for a total sale consideration of Rs. 1,64,14,420/- on 10.11.2013 and out of which they made a payment of Rs. 58,59,388/-. The buyers' agreement has not been executed between the parties till date. In view of the above-mentioned reasoning in the table, the date of signing of allotment letter, 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 30.09.2017. The complainants have surrendered their unit vide legal notice dated 30.03.2019 but that letter was issued after the due date. The complainants are seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference

**Section 18: - Return of amount and compensation**

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (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: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed*

25. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 102, tower E admeasuring 2290 sq. ft. of the project known as "Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,64,14,420/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and thus, the respondent filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site. Thus, the complainants are right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned.
26. 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 as under:

*"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*

27. 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) 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 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.
28. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

*"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

29. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is

reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **02.12.2022** is 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
31. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 58,59,388/- 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 *ibid*.

**G. Directions of the Authority:**

32. 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., Rs.58,59,388/- 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.

33. Complaint stands disposed of.

34. File be consigned to the Registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 02.12.2022

V.I.   
(Vijay Kumar Goyal)

Member



**HARERA**  
**GURUGRAM**