

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

Complaint no. :	6836 of 2019
Date of filing complaint:	03.01.2020
First date of hearing:	15.01.2020
Date of decision :	02.12.2022

Jitin Goel R/o: 34, Arjun Nagar, Safdarjung Enclave, New Delhi.	<b>Complainant</b>
Versus	
M/s Vatika Limited address: Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Raghav Sethi (Advocate)	Complainant
S/Sh. Venket Rao & Pankaj Chandola(Advocates)	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 provisions of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

	<b>Heads</b>	<b>Information</b>
1.	Project name and location	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of the licensee	M/s Ganesh Buildtech Pvt. Ltd. & others, C/o Vatika Ltd
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	802, Building E, floor 8 (page no. 43 of complaint)
8.	Unit area admeasuring	2290 sq. ft. (super area)
9.	Date of allotment	09.10.2014
10.	Date of builder buyer agreement	<b>20.08.2015</b> (page 40 of complaint)
11.	Due date of possession	20.08.2019
12.	Possession clause	<b>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b>  <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a</i>

		<p><i>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 other Clauses 14 to 17 &amp; 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 -I 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 off this agreement. <b>Emphasis supplied</b></i></p>
13.	Total sale consideration	Rs. 1,57,78,100/- [as per SOA dated 10.02.2020 annexure R3]
14.	Amount paid by the complainant	Rs. 65,59,365/- [as per SOA dated 10.02.2020 annexure R3]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Legal notice	30.10.2019 (annexure 17, page 116 of complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complainant:
  - a. That the complainant has booked a unit in the respondent project namely "Tranquil Heights". On 09.10.2014 an allotment letter was issued in favour of complainant, wherein a unit no. 802, building E, floor 8 admeasuring 2290 sq.ft. A builder buyer agreement was executed on 20.08.2015, wherein the total sale price was mentioned as Rs. 1,57,78,100/- against which they paid an amount of Rs.65,59,365/-.

- b. It is submitted that the visits of the complainants to the premises was ceased by the respondent upon knowing that the work as is being stipulated has not even been started. Despite timely payment by the complainants of each and every installment as and when demanded by it, failure of commitment on the its part to initiate, execute and complete the construction process in the specified time mentioned in the brochure and a builder buyer agreement, the delay of around 21 months' time apart from other misleading commitments, led them to withdraw from the said project due to its failure to adhere to their commitment.
- c. The complainant visited the office of the respondent time and again to enquire about the status of the project and sought permission from them to visit the site. The respondent flatly refused permission to them 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, they got to know of the various illegalities as had been committed by it.
- d. That there was no sense of commitment from the respondent's side and that they are just interested in extracting money from the complainant. They were forced to send out a legal notice through their lawyer on 30.10.2019.
- e. That in spite of paying each and every amount within time and never defaulting on any installment as and when demanded by it, the builder buyer agreement was signed after almost 21 months of receiving the booking amount by the respondent,



although, the committed date of delivery was stated to be 48 months from the date of booking. It is pertinent to mention that the as per the government records as received by them, the sanction for the initiation of the project has been received in the year 2017 while on the contrary the committed date of delivery of possession of the unit purchased was also in the year 2017.

- f. Furthermore, it is pertinent to bring to light the fact that, the installments at the pretext of excavation of ground, and foundation work had already been raised by the respondent before it even got a sanction of the layout plan, thus carrying on the work, if any, illegally, although a sum of Rs.65,59,365/- has already been paid to it till date. The said demands were initiated alongwith a penalty clause of charging interest at the rate of 18% in case of any default made by them. It is respectfully submitted by them that the respondent were imposing a penalty clause against the default of the complainant while the respondent were themselves in default of multiple commitments made by it.
- g. Thus, the complainant craves for the indulgence of the authority to direct the respondent to refund the entire amount as paid by them, as well as the interest for the delayed period of 5 years.

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

4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the principal amount of the complainants alongwith interest @ 18% p.a.
  - ii. Direct the respondent-builder to compensate the complainants for the financial loss due to loss of working hours of the

complainant owing to this matter apart from mental harassment and agony caused at 10% of the booked unit(s) value, and Rs 2.5 lac towards actual and ongoing expenses over the matter, due to lapses on the part of respondent as per HRERA - 2017.

- iii. Direct the respondent-builder to to compensate the complainants for the financial loss due to the loss of appreciation and opportunity that has occurred on account of misrepresentations and ongoing project delays directly attributable to the action(s)/inaction(s) of the respondent @ 3.33% per annum on the booking value as per HRERA - 2017.

**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:
  - (a) That at the very outset it is submitted 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.
  - (b) That the present complaint is filed with the oblique motive of harassing the respondent and to extort illegitimate money while making absolutely false and baseless allegations against the respondent.
  - (c) It is brought to the knowledge of the authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of his intention.
  - (d) That, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations



made against the respondent are nothing but an afterthought and a concocted story. Hence, the complaint filed by the complainant deserves to be dismissed with heavy costs.

- (e) The complaint is an abuse of the process of the authority and is not maintainable. The complainant has not approached authority with clean hands and is trying to suppress material facts relevant to the matter. He is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.
- (f) It is submitted that documents annexed with the complaint and mentioned as annexure 7 to 15 has never issued by department to respondent and on even on bare perusal it can be vouched that the on no date, signature and memo no. on the face of said documents to show its veracity. The alleged annexures seem to be procured by illegal way for which the authority may pass appropriate directions to police for registering the F.I.R against the complainant.
- (g) It is submitted that photograph annexed with the complaint and mentioned as part of annexure 18 are seems to be procured from other person as it doesn't shown to be of the unit of complaint.
- (h) That the complaint filed by the complainant before the authority besides being misconceived and erroneous, in untenable in the eyes of law and liable to be rejected. He has misdirected himself in filing the above captioned complaint before the authority as the reliefs being claimed by the



complainant cannot be said to even fall within the realm of jurisdiction of the authority. It is submitted that the complainant is seeking relief under section 35 which does not falls within the realm of authority.

- (i) It is further submitted that the complaint is filed by Mr. Dinesh Goel on behalf of Jatin Goel through a general power of Attorney which is not valid. The complaint should have been filed through a special power of attorney duly registered. The Attached power of attorney neither mentions the name of the court before which the claim of Mr. Jatin Goel was to be filed nor registered. Therefore, the complaint is liable to be dismissed.
  - (j) That the complainant has also filed another complaint bearing no. 6217/2019 with the same parties and also the respondent has received on Performa B of another complaint bearing no. 3998/2019 with the same parties before the authority seeking the same relief and has served a copy of the same to the respondent. however, with an ulterior motive of gaining unlawful financial profits and to harass the respondent, the complainant has filed the complaint before the authority seeking the same relief as sought before the authority. therefore, the complaint is liable to be dismissed on this ground.
6. 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:**

7. The plea of the respondent 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**

8. 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**

9. 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.*

10. 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.
11. 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."*

12. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.** The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of *M/s Newtech Promoters (supra)*, the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of**

*India and others. (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

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

**G.1 Direct the respondent to refund the paid entire amount paid by the complainants.**

14. The complainants initially booked a unit bearing no. 802, building E, floor 8 admeasuring 2290 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 20.08.2015. They paid the respondents a sum of Rs. 65,59,365/- against the total sale consideration of Rs.1,57,78,100/-, but due to misrepresentations w.r.t. the project they did not pay the remaining amount and 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 prescribe***

*(Emphasis supplied)*

15. Clause 13 of the buyer's agreement dated 20.08.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

**13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT**

*The Developer based on its present plans and estimates and subject to all 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 other 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 -I 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. **Emphasis supplied***

16. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 20.08.2015, therefore, the due date of possession comes out to be 20.08.2019
17. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 802, building E admeasuring 2290 sq. ft. of the project known as Tranquil Heights, phase I, sector 82A, Gurugram for a total sale consideration of Rs. 1,57,78,100/-. A perusal of the document submitted by the respondent, wherein it has come that the project has been abandoned. Thus, the complainants are right in withdrawing from

the project and seeking refund of the paid-up amount besides interest as the promoter failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned.

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. (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."*

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) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee,

as 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 the unit with interest at such rate as may be prescribed.

20. **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 of 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.*

21. 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.

22. 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%.

23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 65,59,365/- 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.II Litigation expenses & compensation**

24. The complainant is also seeking relief w.r.t. litigation expenses & 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 & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.



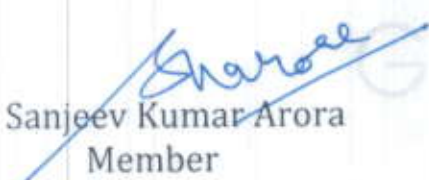
**H. Directions of the Authority:**

25. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the entire amount of Rs. 65,59,365/- paid by the complainant along with prescribed rate of interest @ 10.35% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual date of refund of the amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to the Registry.

  
Sanjeev Kumar Arora  
Member

  
Vijay Kumar Goyal  
Member  
02.12.2022

Haryana Real Estate Regulatory Authority, Gurugram