

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

Complaint no. : 2848 of 2021
First date of hearing: 06.09.2021
Date of decision : 10.11.2022

Sonia Mahajan

54 A/D, Gandhi Nagar, Near Green Belt Park, Jammu &
Kashmir, India.

Complainant

Versus

M/s Vatika Limited

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

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member
Member**

APPEARANCE:

Sh. Nikhil Mittal (Advocate)
S/Sh. Venket Rao & Pankaj Chandola (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 19.07.2021 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 28 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 allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Xpressions By Vatika", Sector 88, distt-Gurgaon.
2.	Nature of the project	Residential floor
3.	Project area	133.022 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
5.	Name of licensee	Malvina Developer Pvt. Ltd. & 20 others Haben Developer Pvt. Lt. & 7 others
6.	RERA Registered/ not registered	Not registered
7.	Date of allotment letter	09.09.2015 (page 19 of complaint)
8.	Date of execution of agreement	16.09.2016 (page 24 of complaint)
9.	Plot no.	Plot no- 14, H-33 admeasuring 1550 sq.ft. (page 26 of complaint)
10.	Total sale consideration	Rs. 1,05,47,987/- (as per SOA, page 39 of reply)
11.	Amount paid up by complainant	Rs. 37,19,902/- (as per SOA, page 39 of reply)
12.	Due date of possession	16.09.2020
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Notice for termination	03.09.2020 (page 38 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. The developer, through its authorized representatives had represented to the complainant that it has proposed a residential project by the name of "The Xpressions by Vatika" at Sector 88B, Gurugram, Haryana and the proposed floors in the said project were on sale to the prospective purchasers. The representatives of the developer had also represented to him that the developer is a company of repute in the real estate business as a colonizer and developer has a very good reputation in the market for providing modern houses with great success of completing projects on time. Based on the said representations, on 09 September 2015, the complainant had made a booking of a 3BHK residential floor bearing priority no. 036/level 2, in the project. It is pertinent to mention that at the time of the booking of the said apartment, a payment of Rs. 2 Lakhs, was made by her on the same date.
- II. That at the time of making the booking amount in September 2015, it was informed to the complainant by it, that a builder buyer agreement encapsulating the entire terms and conditions between the parties shall be executed shortly between the parties. It is pertinent to mention that at the time of making the booking, she had opted for construction linked/milestone-based payment plan. Accordingly, even prior to the execution of a builder buyer's agreement, she had paid a sum of Rs.18,92,217/- to it, basis the demands made by it from time to time.
- III. Thereafter, a builder buyer's agreement was executed between the parties on 16 September 2016. As per the said agreement, the total sale consideration of the said residential floor was Rs. 97,60,500/-. Further, as per the said agreement the complainant was allotted the following floor: HSG -028-Pocket H-2-Level 2. It is pertinent to mention that the booking amount was paid in September 2015 by her, and it took more than one year to execute the agreement. It is submitted that such delay in executing

the agreement was intentional on the part of it so as to create an impression that not much time has elapsed since the signing of the agreement and to safeguard its own interest at the time when there has been inordinate delay in completing the project.

- IV. That as per the specific clause 13 of the said agreement, it was under an obligation to complete the construction of the project and the residential floor within 48 months from the date of execution of the said agreement. It is pertinent to submit that the booking was made in September 2015 and the said agreement was only executed in September 2016. Even otherwise, the period of 48 months with respect to completion of the project and handing over of possession ended on 15 September 2020. However, even today the said project is nowhere near completion, let alone even to think of handing over possession of the residential floor to her.
- V. That the complainant has consistently asked the respondent about the status of the project and the confirmed dates for offer of possession to which no concrete reply was made by it. It is important to mention here that the respondent has till date not handed over the possession of the residential floor. Even though the timelines agreed under the said agreement have lapsed much long ago. It is pertinent to mention that the time was of the essence of the said agreement, since it has said so vis-à-vis the making of payments by her, which accordingly, applied on it as well for the purposes of completion of the project and for handing over of possession.
- VI. Since, the time period stipulated under the said agreement for completion of the project had lapsed and since no response was being received from the respondent with regard to the date of completion of the construction and handing over of the residential floor, the complainant was constrained

to send it's representative to visit the said project and observe the progress of the same in July 2021.

- VII. That upon such visit, it was shocking to know that the project was nowhere near completion even after 10 months of delay from the stipulated time period under the said agreement. The unit of the complainant has not even been plastered from outside and is far from completion for all practical purposes. Even the common areas and facilities are nowhere near completion.
- VIII. It is pertinent to mention that the complainant has made all the payment timely, as and when due or demanded by it. The statement of accounts issued by the respondent shows that the complainant has till date made a payment of Rs. 37,19,902/-, as and when demanded by it, barring one of the demands, wherein, she held back the GST portion charged, as it had charged GST amount of Rs. 2,30,462/- in the demand of March 2018-April 2018, for which clarification was sought and no response till date has been received by her.
- IX. That the complainant has waited long enough for the respondent to handover the completed residential floor in the said project and even as on the date of filling of the complaint, it has failed to complete the said project in all respects and further not yet offered the possession to her.
- X. That the complainant has invested her hard-earned money in the said project on the demands so raised by it, in order to get the possession and start residing there. However, it has clearly failed to honor its commitments under the representations made and also the terms and conditions of a builder buyer agreement dated 16 September 2016.
- XI. That the conduct of the respondent is deficient and vexatious from the very beginning. It is submitted that despite various reminders made by

her about the status of the project, it did not hand over the residential floor.

- XII. That as recent as in June 2021, the respondent has raised another demand payable by 15 July 2021. However, it has miserably failed to complete the construction within the stipulated time period. Accordingly, the complainant does not wish to continue with his booking with the respondent anymore and is now requesting it to refund all the amount paid till date with interest, equivalent to the rate of interest chargeable by it in the event of delay in payment by her under a builder buyer agreement i.e., at the rate of 18%.
- XIII. That as on date almost 5 years have passed since the complainant made the booking in the said project of the respondent. However, till date it has failed to complete the project and handover the possession of the allotted unit to the complainant. She has lost all hope of delivery of possession, leave alone the timely delivery of possession as the said date has long passed. She is no longer interested in retaining the residential floor in the said project, which has still not been completed and have lost all trust on it. She now wants to recover all the amounts already paid to it.
- XIV. It is submitted that the respondent has, by exercising its dominant position arbitrarily stated a very minimal rate of interest receivable in case of delay in handing over possession of the said unit in the agreement. The rate of interest should ideally have been in parity with the rate of interest in case of delay in making payments for demands raised by it which is calculated at the rate of 18% per annum. The said part of the agreement is against the public policy.
- XV. It is pertinent to submit that the complainant has always performed his part of the agreement within the stipulated times and paid all the installments without any delay. However, it is the respondent, who has

failed to perform its obligations under the agreement and has caused immense delay in handing over the possession of the unit booked by her.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to refund the amount paid by the complainants along with interest @18% p.a.
 - b. Direct the respondent to pay compensation too the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - a. That the complainant herein, has failed to provide the complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That she is raising false, frivolous, misleading and baseless allegations against it with intent to make unlawful gains.
 - b. It is submitted that the authority does not have jurisdiction to adjudicate upon the matters pertaining to seeking relief of refund. In accordance with the amended HARERA, rules the power to grant relief of refund solely vest with the authority, meanwhile, the Hon'ble Punjab and Haryana High Court has upheld the amended rules vide its order dated 16.10.2020. Thereafter, the order of the Hon'ble High Court was challenged in SLP No. 13005 of 2020 before the Hon'ble Supreme Court and the Hon'ble Apex Court has stayed the operation of Hon'ble High Court's order dated 16.10.2020. Thus, there is a status quo upon the amended HARERA Rules. Therefore, the authority does not have any jurisdiction to adjudicate upon the complaint seeking refund until the

Hon'ble Supreme Court decides the validity of the amended HRERA Rules.

- c. It is imperative to note, that the complainant herein, learned about the project launched by the respondent titled as 'Vatika Expression City' situated at Sector 88 B, Gurgaon and approached it repeatedly to know the details of the said project. She further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- d. That after having keen interest in the project constructed by the respondent the complainant herein, booked a unit bearing priority no. 036/Level 2, in the said project. After numerous reminders vide allotment letter dated 16.04.2016, the unit no. HSG-028-Pocket plot no.14, ST.H-33-Level 2, was allotted to her. It is pertinent to note, that since starting the respondent has made every effort to complete the project within time.
- e. That on, 12.05.2016, a builder buyer agreement was served to the complainant through post for signatures and she was duty bound to return the same within 30 days. Further on 22.07.2021, it again reminded her to sign and execute the agreement. Yet, she failed to return the same within time.
- f. That after much pursuance of the respondent, on 16.09.2016, a builder buyer agreement was executed between the parties, wherein, unit no. HSG-028-Pocket plot no.14, ST.H-33-Level 2 was allotted to the respondent. It is to note, the mere delay on account of the complainant in taking allotment and the returning the signed copy of the agreement was the sole reason why the agreement was executed after such delay.
- g. It is submitted that the respondent was aware of terms and conditions under the aforesaid agreement and post being satisfied with each and



every term agreed to sign upon the same with free will and consent without any demur.

- h. That the complainant herein has filed the present complaint on baseless and absurd grounds. Under clause 13 of the agreement so signed and acknowledged by her, it herein, clearly mentioned that the possession would be granted within 48 months unless there shall be delay in the midway of the development of the said project for the reasons beyond the control of it as mentioned in other clauses in the agreement.
- i. It is a matter of fact, that inspite after knowing that during the construction of the aforesaid project the respondent had faced several obstacles which were beyond the control and the construction of the project was ought to be interrupted due to the same. However, it is necessary to brought into the knowledge of the authority that as on date she has only paid one partial amount of the total sale consideration and she while concealing such fact has filed this complaint with malafide intention.
- j. It is pertinent to note, that since May 2018, the complainant has not paid any amount for the allotted unit in the said project and the payment has now been delayed for more than two years. The complainant herein, has merely paid partial amount of the total consideration and yet a substantial amount of money is still. However, several reminders were made to her but the same were left unanswered.
- k. It is submitted that despite after agreeing the complainant has failed to make timely payments for the allotted unit has always ignored the reminders made by it. As on 24.05.2018, an amount of Rs. 20,44,241/-.
- l. That inspite after knowing that payment has to be made as per the stage wise development of the allotted unit the complainant herein has breached the terms of the agreement. On account of not receiving



payment from her for last three years it bound to issue a termination letter for the allotted unit.

- m. It is submitted that as per the agreement so signed and acknowledged, the complainant herein, was aware that the respondent shall not be liable for any events beyond the control of it and further extension time would be granted for completion of the project.
- n. It is pertinent to mention, that the complainant in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the government or public or competent authority.
- o. It is further submitted that the allottee in the said agreement so signed and acknowledged agreed that she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any government rules, orders or notification.
- p. It is to note, that the respondent committed to complete the development of the project and deliver the unit of the allottees as per the terms and conditions mentioned under the agreement. It is pertinent to appraise the authority that the developmental work of the said project was slightly delayed due to the reasons beyond its control. Due to the impact of the Goods and Services Act, 2017 which came into force after the effect of demonetisation in the last quarter of 2016, which left long lasting effect on various real estate and development sector even in 2019. It is a matter of fact that it has to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST.
- q. That in the recent years, various construction activities in the real estate sector were stayed due to constant ban levied by various



courts/tribunals/authorities/ to curb pollution in Delhi-NCR Region. It is pertinent to mention, that recent years the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019, bearing no. EPCA-R/2019/L-49 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019. And, subsequently the EPCA vide its notification bearing no. R/2019/L-53, dated 01.11.2019, converted the same into a complete ban 01.11.2019 to 05.11.2019 The Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" has 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 Court vide its order dated 14.02.2020. That due to ban levied by the Competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. And, even after lifting of ban by the Hon'ble Court the construction activities could not resume at full throttle due to such acute shortage.

- r. Despite, after such obstacles on the construction activity in the real estate sector and before the normalcy could resume, the entire nation was hit by the worldwide 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 shall be excluded while computing the delay.
- s. That the current Covid-19 pandemic resulted in serious challenges to the project with no available labour, contractors etc. for the construction of the project. On 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM-I (A) recognised that

entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020.

- t. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various state governments, including the government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. 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.
- u. Apart from the above, the progress 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 the 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 the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (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, it 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 it.
- e) Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.
- f) 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. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was halted in the State due to the adverse effect of the pandemic.

It is a matter of fact, that despite after lifting the restrictions it was bound to resume with the construction activity in a hybrid mode i.e., only with the labours that were available within the region and nearby to the construction site. Due to such acute shortage of labour the project was deemed to be delayed due to above said circumstances which were not in control of neither the respondent nor the complainant.

- v. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against it. She has not approached the authority with clean hands. Hence, the complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the authority that she is guilty of placing untrue facts and are attempting to hide the true colour of her intention.
- w. That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has misled the authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant is sustainable before this authority and in the interest of justice.
- x. 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. Hence, deserves to be dismissed.

E. Jurisdiction of the authority

7. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(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.*** 2021-2022(1)RCR(C), 357 and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 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, is 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. 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. Finding on the objections raised by the respondent

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

13. 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 flat buyer's agreement was executed between the parties on 16.09.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 16.09.2020. 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 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 wrong.

14. 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."

15. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.09.2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much 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. Findings on the relief sought by the complainant.

G. I Direct the respondent to refund the paid amount along with interest.

16. The complainant has submitted that he purchased a plot at "Xpressions by Vatika" and allotted a plot bearing no. 14, H-33 admeasuring 1550 sq.ft. vide allotment letter dated 09.09.2015 and paid an amount of Rs. 2,00,000/-. The total sale consideration of the unit is RS. 1,05,47,987/- against which the complainant paid Rs. 37,19,902/-. A buyer agreement was executed between the parties on 16.09.2016. As per clause 13 of the agreement the due date is calculated i.e., 48 months from the date of execution of buyer's agreement. Therefore, the due date comes out to be 16.09.2020. It is pertinent to mention here the respondent even today not completed the construction of the project that the respondent neither obtained occupation certificate nor offered the possession of the allotted unit.
17. It is also pertinent to mentioned here that the respondent issued notice for cancellation dated 03.09.2020 for non-payment of demand by the allottee-complainant. However, there is nothing on record to show that the respondent has proceeded with cancellation of the allotted unit.
18. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is 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. The due date of possession as per agreement for sale as mentioned in the table above is 16.09.2020 and there is delay of 10 months 3 days on the date of filing of the complaint.

19. 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 for which he has paid a considerable amount towards the sale consideration 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....."

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

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

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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

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee 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.

20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 37,19,902/- 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*.

F. Directions of the authority

21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs.37,19,902/- paid by the complainant along with prescribed rate of interest @ 10.25% p.a. 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.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

22. Complaint stands disposed of.

23. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2022