



HARERA
GURUGRAM

Complaint No. 6825 of 2021 & 2 other
Complaints

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

Date of Decision 02.12.2022

NAME OF THE BUILDER		VATIKA LIMITED		
PROJECT NAME		Tranquil Heights		
SR. NO.	COMPLAINT Nos.	Complainant	versus	Respondents
1.	CR/6825/2019	Ritu Girotra & Anr.	<i>Versus</i>	Vatika limited
2.	CR/6826/2019	Rohit Oberoi & Anr.	<i>Versus</i>	Vatika limited
3.	CR/6837/2019	Kabbir Dang	<i>Versus</i>	Vatika limited

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Raghav Sethi
Sh. Mukul Kumar Sanwariya (Advocates)

Complainant(s)
Respondent

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between the parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely "Tranquil Heights" (Group Housing Colony), Sector 82A2A, Gurugram (Hr.) being developed by the same respondent-promoter i.e., Vatika Ltd. The terms and conditions of the builder-buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest, & litigation expenses.
3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, total sale consideration, amount paid up & relief sought are given in the table below:

Vatika Limited							
Tranquil Heights (Group Housing Colony)							
Sr. No	Complaint No./Title/Date of filing	Reply status	Unit no.	Allotment letter	Date of execution of builder buyer's agreement Due Date	Total sale consideration Amount Paid up	Relief sought
1.	CR/6825/2019 Ritu Girotra & Anr. Vs. Vatika Limited & Anr. D.O. F 06.01.2020	Received	1602, building A (Page 21 of complaint)	10.09.2014	30.07.2015 [page no.22 of complaint] 30.07.2019	TC- Rs.1,07,04,837 /- AP- Rs. 46,26,336/-	1. Refund. 2.Compensation. 3. Litigation Cost
2.	CR/6826/2019 Rohit Oberoi & Anr. Vs. Vatika Limited D.O. F 06.01.2020	Received	1202, building A (page 21 of complaint)	10.09.2014	27.10.2015 [page no. 22 of complaint] 27.10.2019	TC-Rs. TC-Rs.1,07,04,837 /- AP- Rs. 46,52,704/-	1. Refund. 2.Compensation. 3. Litigation Cost
4.	CR/6837/2019 Kabbir Dang Vs. Vatika Limited D.O. F 06.01.2020	Received	1702, building A (page 22 of complaint)	31.10.2013	07.09.2015 [page no.19 of complaint] 07.09.2019	TC-Rs. 1,06,39,762/- AP- Rs. 19,83,784/-	1. Refund. 2.Compensation. 3. Litigation Cost

1. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainants against the promoter M/s Vatika Limited on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligations. In some of the complaints, issues other than refund or independent issues have been raised and consequential reliefs have been sought.
2. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
3. The facts of all the complaints filed by the complainant/allottees are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing CR/6825/2019, titled as ***Ritu Girotra & Anr. versus Vatika Ltd.*** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

4. 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:

CR/6825/2019, titled as Ritu Girotra & Anr. versus Vatika Ltd.

S. No.	Heads	Description
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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.	1602, Building A (page no. 21 of complaint)
8.	Unit area admeasuring	1645 sq. ft. (page no. 21 of complaint)
10.	Date of allotment	10.09.2014 (page 21 of complaint)
11.	Date of builder buyer agreement	30.07.2015 (Page 22 of complaint)
12.	Possession clause	<p>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</p> <p><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 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</i></p>
13.	Due date of possession	30.07.2019 [Due date calculated from the date of execution of BBA]



14.	Total sale consideration	Rs. 1,07,04,837/- [as per CRA page no. 13 complaint]
15.	Amount paid by the complainants	Rs. 46,26,336/- [as per CRA page no. 13 complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Legal notice	25.02.2019 (annexure 15, page 104 of complaint)

B. Facts of the complaint:

The complainant submitted as under: -

5. That the complainant has booked a unit in the respondent project namely "Tranquil Heights". On 10.09.2014 an allotment letter was issued in favour of complainant, wherein a unit no. 1602, tower A, admeasuring 1645 sq.ft. A builder buyer agreement was executed on 30.07.2015, wherein the total sale price was mentioned as Rs. 1,07,04,837/- against which they paid an amount of Rs.46,52,704/-.
6. 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 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.
7. 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. There was no sense of commitment from the respondent's side and they are just interested in extracting money from the complainant. They were forced to send out a legal notice through their lawyer on 25.02.2019. 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.

8. 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.46,26,336/- 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.
9. 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(s):

12. The complainant(s) 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.
13. Despite due service and putting in appearance through the counsel of the respondent, it failed to file any written reply and giving several opportunities. So, the same led to striking off its defence.
14. 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

15. 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

16. 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, the authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

17. 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)(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.

18. 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.
19. 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 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 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."

20. 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.* and *M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by allottee along with interest at the prescribed rate .

G. Findings on the relief sought by the complainant(s).

Relief sought by the complainant: The complainant(s) 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.
20. The complainants booked a unit bearing no. 1602, building A admeasuring 1645 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 30.07.2015. They paid the respondents a sum of Rs. 46,52,704/- against the total sale consideration of Rs. 1,07,04,837/-, 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 prescribed."

(Emphasis supplied)

Clause 13 of the buyer's agreement dated 10.08.2015 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***

21. **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 30.07.2015, therefore, the due date of possession comes out to be 30.07.2019.
22. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 1602, building A admeasuring 1645 sq. ft. of the project known as Tranquil Heights, phase I, sector 82A, Gurugram for a total sale consideration of Rs. 1,07,04,837/-. During the proceeding dated 02.12.2022. The respondent in the reply has admitted that the project could not be delivered due to various reasons and thus the respondent has 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.

23. 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

24. 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.

25. **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
26. 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.
27. 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%.
28. The authority hereby directs the promoter to return the amount received by it 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

29. 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


30. 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 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
31. These directions shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
32. The complaint stand disposed of. True certified copies of this order be placed in the file of each case.
33. Files be consigned to registry.


Sanjeev Kumar Arora
Member


Vijay Kumar Goyal
Member
02.12.2022

Haryana Real Estate Regulatory Authority

