



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

<b>Complaint no.</b> :	<b>337 of 2019</b>
<b>Date of filing complaint:</b>	<b>28.01.2019</b>
<b>First date of hearing:</b>	<b>09.05.2019</b>
<b>Date of decision</b> :	<b>02.12.2022</b>

Lalit Kumar Chimanlal

**R/o:** Nasser Bin Abdul Latif Alserkal E Building,  
Flat 103/104, Al Majaz Area, Sharjah, UAE

**Complainant**

Versus

M/s Vatika Limited

**Office :** 7<sup>th</sup> floor, Vatika Triangle, Mehrauli-Gurgaon  
Road, Sushant Lok, Phase-I, Gurgaon, Haryana-122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Anuj Chauhan Advocate

**Advocate for the complainant**

Sh. Harshit Batra Advocate

**Advocate for the 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 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 complainant, 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	"Vatika Express City" at sector 88A & 88B, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	Project area	100.875 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019
5.	Name of licensee	M/s Malvina Developers Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022
7.	Plot no.	24, Street no. G-17, block- G (page 16 of complaint)
8.	Plot area admeasuring	301.39 sq. yds.
9.	Date of allotment	13.08.2014 (annexure C1, page 13 of complaint)
10.	Date of builder buyer agreement	14.11.2014 (annexure C2, page 14 of complaint)
11.	Possession clause	<b>9. Schedule for possession of the said residential plot</b> <i>The Company based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential Plot <b>within a period of 48 months from the date of execution of this Agreement</b> unless there shall be delay or there shall be failure due</i>



		<i>to reasons mentioned in other Clauses herein.</i> <b>Emphasis supplied</b>
12.	Due date of possession	14.11.2018 [Due date of possession calculated from the date of execution of agreement]
13.	Total sale consideration	Rs. 2,21,47,644/- (as per SOA dated 24.01.2019, annexure R2, page 28 of reply)
14.	Amount paid by the complainant	Rs.1,21,38,965/- as per complaint para no.4 at page 6 and confirmed by the counsel for the complainant during proceedings. However this amount is after adjustment of Rs.10,900,34/- as per SOA as credit waiver and hence requests for its exclusion from the refundable amount.
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the complainant was allotted the residential plot bearing no.24 G-17, admeasuring 300 square yards in a multi-story housing project named 'Vatika Express City, Sector- 88B, Gurugram vide allotment letter dated 13.08.2014. The complainant entered into builder buyer agreement with the respondent on 14.11.2014 for purchase of the said unit for a total sale consideration of Rs. 2,21,47,644.15/-.
4. That as per the payment plan annexed with the allotment letter, after the initial booking amount which was 10% of the BSP one instalment was to be made within one month of booking and other within 2 months which was 10% less booking amount and 10% of the BSP respectively and the



rest payment was to be followed at level of construction and demand raised. That the complainant made payments totalling to Rs. 1,21,38,965/- which has been acknowledged by the respondent through the issuance of receipts.

5. That as per the agreement, the possession of the said unit was to be given by **14.11.2018** i.e. within 48 months from the date of the agreement. Further, as per clause 15 of the agreement it was agreed that in case of delay in possession, the respondent shall be liable to pay **compensation at the rate of Rs. 75/- Per sq. feet** of the super area per month for the period of delay till the time of actual possession.
6. That the completion of the project was not as per the payment plan, and further the pictures taken by the complainant on the site visit of the respondent showcase that the construction was started but has been left midway by the respondent and the money collected by the respondent have been misused by them. A detailed email communication was carried out between the complainant and the authorized representatives of the respondent company from 05.09.2016 to 12.11.2018 wherein the respondent company has accepted that the work is slow and they might offer the unit in the year 2019 which is also tentative and no fixed dated has been given.
7. That the irresponsibility of the respondent becomes abundantly clear by the fact that the respondent has frequently delayed replying to the complainant. Further, the inconsistent and lethargic manner in which the respondent conducted their business and lack of commitment in completing the project on time has caused the complainant great financial and emotional loss.



8. That such an inordinate delay in completion of the project itself is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between complainant and respondent. The complainant thereby wishes to withdraw from the project and demands refund of the entire amount already paid by him to the respondent by the complainant in terms of section 18(1) read with section 18(3) of the Act, along with principles of justice, equity and good conscience.

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

9. The complainant has sought following relief(s):
- i. **Direct the respondent to refund the paid amount of Rs. 1,22,54,740/- along with interest.**
  - ii. **Award Rupees 1,00,000/- as the cost of the complaint in favour of the complainant and against the respondents.**

**D. Reply by respondent:**

10. 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. The complainant has misdirected them self in filing the above captioned complaint before this authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this Authority. It would be pertinent to make reference to some of the provisions of the Act 2016 and the Rules, 2017 made by the Government of Haryana in exercise of powers conferred by sub-section-1 read with sub-section-2 of section-84 of Act. Section 31 of Act provides for filing of complaints with this authority or the adjudicating officer, sub-

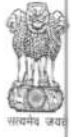


section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-Section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 rules provides for filing of complaint with this authority, in reference to Section 31 of 2016 Act. Sub-clause (1) inter alia, provides that any aggrieved person may file a complaint with the authority for any violation of the provision of 2016 Act or the rule and regulations made there under, save as those proved to be adjudicated by the adjudication officer, in Form CRA. Significantly, reference to the authority, which is this authority in the present case and before the "adjudicating officer", is separate and distinct "adjudicating officer" has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of the section 71, whereas the "authority" has been defined under section 2(1) to mean the Real Estate Regulatory Authority, established under sub-section (1) of section 20. Apparently, under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate Government for the purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be deliberated and taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. It would be pertinent to make reference to



section 18 of 2016 Act. which inter-alia, provides for return of amount and compensation.

11. That the builder buyer agreement was signed between the parties on 14.11.2014 for purchase of the said plot for a total sale consideration of Rs. 2,21,47,644.15/-. It is submitted that the complainant never adhered the payment schedule and defaulted in making payment as per the payment schedule.
12. That the complainant booked the plot for speculative financial gains for investment purpose and due to the huge slump in real sector now the complainant wants to back out from the project and shifting his onus on the respondent for illegal gains. The respondent issued various demand letters whereas, the complainant kept mum of all the demands and made default in clearing outstanding dues as per the demands raised or schedule of payments mentioned in the agreement. That the respondent issued various demands to the complainant on 27.09.2013, 23.07.2014, 08.10.2014, 04.02.2015 and 20.04.2015. That the complainant till date paid only Rs. 1,22,54,740.10/- out of the total sale consideration.
13. That the complainant ignored all the demand raised and made partly payments after termination of stipulated time. This gesture clearly shows that the complainant is defaulter by nature and has malicious intention to back out from the project due to huge slump in the real estate sector.
14. That the delay in handing over of the possession is due to reason beyond the control of the respondent as per the clause 12 of the agreement. It is submitted that the time limit for handing over the possession given in clause 9 of the agreement was subject to other terms and conditions of the agreement such as timely payment of the instalments by the complainant



and reason of delay which are beyond control of the respondent. It is further submitted that the respondent regularly updated the complainant about the status of the project. The complainant requested the alternate allotment despite the fact that the construction of work of the project of the respondent is nearly complete and same communicated to the complainant vide email dated 28.08.2018 and 12.11.2018. It is pertinent to mention here that as on date the project of the respondent is nearly complete and possession of the complainant plot is schedule in the third quarter of 2019 as already communicated to the complainant in mail dated 12.11.2018.

15. That the grounds of prayer made by the complainant are fictitious, baseless vague, wrong and created to mispresent and misled this authority, for the reasons stated above, none of the relief is sustainable, in the eyes of law. So, the complaint is liable to be dismissed while imposing exemplary cost for wasting the precious time and efforts of the 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 submission made by the parties.

**E. Jurisdiction of the authority:**

17. The plea of the respondents 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**





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.*

20. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.I Objection regarding entitlement of DPC on ground of complainants being investors.**

21. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs.1,14,49,659/- to the promoter towards purchase of an apartment in its project. At this



stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

22. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

- G.1 Direct the respondent to refund the paid amount of Rs. 1,22,54,740/- along with interest.**



23. That the complainant was allotted the residential plot bearing no.24 G-17, admeasuring 300 square yards in a multi-story housing project named 'Vatika Express City, Sector- 88B, Gurugram vide allotment letter dated 13.08.2014. The complainant entered into builder buyer agreement with the respondent on 14.11.2014 for purchase of the said unit for a total sale consideration of Rs. 2,21,47,644.15. The complainant made payments totalling to Rs. 1,21,38,965/-. As per the agreement, the possession of the said unit was to be given by **14.11.2018**. That such an inordinate delay in completion of the project itself is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between complainant and respondent. The complainant thereby wishes to withdraw from the project and demands refund of the entire amount already paid by him to the respondent by the complainant.
24. The respondent states in reply that it issued various demand letters whereas, the complainant kept mum of all the demands and made default in clearing outstanding dues as per the demands raised or schedule of payments mentioned in the agreement. That the respondent issued various demands to the complainant on 27.09.2013, 23.07.2014, 08.10.2014, 04.02.2015 and 20.04.2015. That the complainant till date paid only Rs. 1,22,54,740.10/- out of the total sale consideration. The complainant requested the alternate allotment despite the fact that the construction of work of the project of the respondent is nearly complete and same communicated to the complainant vide email dated 28.08.2018 and 12.11.2018. It is pertinent to mention here that as on date the project of the respondent is nearly complete and possession of the complainant

plot is scheduled in the third quarter of 2019 as already communicated to the complainant in mail dated 12.11.2018.

25. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter dated in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
26. The due date of possession as per agreement for sale as mentioned in the table above is 14.11.2018 and there is delay of 2 years 14 days on the date of filing of the complaint.
27. 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....."*

28. 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 that :

*“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

29. 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.
30. The authority hereby directs the promoter to return the amount received i.e., 1,21,38,965/- by them 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*. However, if any amount has already been paid to the complainants, the same shall be adjusted/deducted from the refundable amount.

**F. II Award Rupees 1,00,000/- as the cost of the complaint in favour of the complainant and against the respondents.**

31. The complainant is also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**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:
- The respondent/promoter is directed to return the amount received i.e., 1,21,38,965/- along with interest at the rate of 10.35% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on

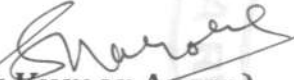


date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of its actual realization. However, if any amount has already been paid to the complainants, the same shall be adjusted/deducted from the refundable 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.

34. Complaint stands disposed of.

35. File be consigned to the Registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Vijay Kumar Goyal)

Member

Dated: 02.12.2022

HARERA  
GURUGRAM