

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

Complaint no. : 1738 of 2021
First date of hearing: 24.08.2022
Date of decision : 10.11.2022

Brig JJS Bhinder & Gunnet Bhinder
Both RR/o: 455/1, Sector 44A, Chandigarh

Complainants

Versus

Vatika Limited
Regd. office: 7th floor, Vatika Triangle, Sushant
lok-phase 1- Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri. Garvit Gupta
S/Shri. Venket Rao & Pankaj
Chandola

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 28.04.2022 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.No.	Heads	Information
1.	Project name and location	"Primrose floor", sector 83, Gurugram
2.	Nature of the project	Residential floors
3.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
4.	HRERA registered/ not registered	Not registered
5.	Allotment letter dated	21.04.2011 [As per page no. 30 of the complaint]
6.	Unit no.	29, SF admeasuring 881.41 sq.ft. (as per page no. 39 of complaint)
7.	Date of execution of buyer's agreement	12.05.2011 [As per page no. 37 of the complaint]
8.	Possession clause	10.1 Possession <i>That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building / said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be delay or there shall be failure due to</i>

		<i>reasons mentioned in Clauses (11.1),(11.2)(11.3) and clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company 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.</i>
9.	Total consideration	Rs. 25,96,638/- [as per page no. 39 of BBA]
10.	Total amount paid by the complainant	Rs. 10,23,672/- [as alleged by the complainant]
11.	Due date of delivery of possession	12.05.2014
12.	Termination letter	14.11.2018
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

- That the respondent offered for sale units in a group housing complex known as 'Primrose Floors' developed by the respondent as a part of 'Vatika India Next' which claimed to comprise of several facilities. It also claimed that the DTCP, Haryana had granted license bearing no. 113/2008 01.06.2019 to its subsidiary's companies for development of a group housing colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.



4. That the complainants, induced by the assurances and representations made by the respondent, decided to book a residential floor in its project as the complainants required the same in a time bound manner for their own use. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the residential floor to be allotted to them would be positively handed over within the agreed time frame. After going through the application form, they realized that the recitals contained in the said application form were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of it and were totally unbalanced and unwarranted and the said application form.
5. That it is pertinent to mention herein that it was stated in the application form that in the event of non-payment of instalment amount by the complainants, they would be liable for penalty @18% per annum. However, no such provision for any delay on the part of it in completing the project was mentioned in the said application form.
6. That the complainants made vocal their objections to the arbitrary and unilaterally clauses of the application form to the respondent. They repeatedly requested it for execution of an application form with balanced terms. During such discussions, the respondent assured them that the terms of the application form are tentative in nature and that the terms of the agreement which would be sent by it in due course of time would be more balanced. The respondent-promoter



refused to amend or change any term of the pre-printed application form and further threatened them to forfeit the previous amount paid towards the unit if the application form is not signed and submitted. It is pertinent to mention herein that Rs. 2,59,663/- had already been paid towards the unit in question before signing the application form. The complainants were left with no other option but to sign the one-sided application form.

7. That vide letter dated 21.04.2011, the respondent informed the complainants that its architectural department had issued the proposed site plan of the independent floors along with the numbering scheme and invited them vide the said letter for the allotment of the unit in their favour. The respondent on the basis of the application made by the complainants allotted plot no. 29, second floor, Primrose St.83E-5, Sector 83, Vatika India Next in its project vide allotment offer letter dated 26.04.2011. It is very important to mention herein that it had issued the allotment offer letter to them after almost 1.5 years from the date of booking. It is pertinent to mention herein that the payment plan in question was a construction linked payment plan which meant that the demands were to be raised by it as per the completion of the respective construction milestones. After the allotment of the unit by the respondent, it had sent demand letters to them and all the demands were met by them strictly as per the terms of the allotment.



8. That it is pertinent to mention herein that while in the case of the complainants making the delay in the payment of instalments, the respondent is shown to be entitled to charge interest @ 15% per annum (for first 90 days of delay) and an additional interest @3% per annum (for period after 90 days), the complainants are shown to be only entitled to a meagre amount of Rs. 5/- per sq.ft of the built up area of the independent dwelling unit per month for the period of delay in offering the possession of the residential floor beyond the period stated by it.
9. That moreover the fact that the respondent was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainants and is further evident from Clause 9.1 of the agreement wherein it limited the power of the allottees including them to claim compensation.
10. That the above stated provisions of the apartment buyer's agreement besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the abuse of dominant position is all pervasive in the terms and conditions of the agreement executed by it vide various clauses imposing all the



liabilities on them, while conveniently relieving itself from all obligations on its part.

11. That the complainants yet again made vocal their objections to the arbitrary and unilateral clauses of the apartment buyer's agreement to the respondent. It is pertinent to mention herein that prior to the signing of the agreement, they had made payment of Rs. 5,74,013/- out of the total sale consideration of Rs.28,80,708/-. Since they had already parted with a considerable amount of 20% of the sale consideration, they were left with no other option but to accept the lopsided and one-sided terms of the apartment buyer's agreement. They felt trapped and had no other option but to sign the dotted lines. Hence the apartment buyer agreement dated 12.05.2011 was executed.
12. That the complainants have till date made the payment of Rs. 10,23,672/- out of the total sale consideration amount of Rs. 28,80,708/- strictly as per the terms of the allotment and the construction linked payment plan and no default in making timely payment towards the instalment demands have been committed by the complainants. It is submitted that the respondent-promoter used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainants without any delay.



13. That it is pertinent to mention here that despite having drafted the apartment buyer agreement dated 12.05.2011 containing terms very much favorable as per its wishes, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the residential floor within the promised time frame, which in the present case has been delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.
14. That as per clause 10.1, the possession of the unit along with specifications as set out in annexure V of the agreement was to be handed over by the respondent within a period of three years from the date of execution of the agreement. As per the terms and conditions of the apartment buyer's agreement, the due date to handover the possession of the allotted unit is to be computed from the date of execution of the apartment buyer's agreement i.e 12.05.2011. The due date of delivery of possession as per the agreed terms of the apartment buyer's agreement has thus elapsed way back on 11.05.2014.
15. That the complainants throughout kept on seeking updates from the respondent vide emails with respect to the construction status of the residential floor allotted to them. The respondent vide its email dated 04.08.2012 informed them that the construction was going on as per



the stages and that the respondent was developing the infrastructure in and around the project.

16. That since the due date to handover the possession of the residential floor had lapsed, the complainants vide their email dated 11.09.2015 again enquired with it about the construction status of the allotted unit. Vide email dated 14.09.2015, it shared the account statement with the complainants and stated that the relevant team would inform them with the construction status. However, no response was received from it or by any of its 'relevant' team as was stated in the email dated 14.09.2015.
17. That moreover, when the complainants went to meet the representatives of the respondent at the project site to enquire about the possession of the unit, they were shocked to see the construction status. No construction activities were going on at the project site and it was clear that the work has been at standstill since several months. The actual ground reality at the construction site was way different than what the respondent had claimed to the complainants regarding the completion of the project. They met with the representatives of the respondent who assured them that the possession of the allotted unit would be handed over to them shortly. However, the respondent failed to adhere to its obligations as per the terms of the agreement.
18. That the complainants on the receipt of another demand dated 10.11.2016 again contacted the representatives of the respondent and



made it clear them to that since there is an inordinate delay on the part of the respondent in completion and handing over the possession to the complainants, they would not make payments until the delayed possession charges are adjusted and possession be handed over. The respondent yet again, with mala fide motives, gave an assurance that it would adjust the delayed possession charges in the subsequent demand letters and that the complainants should make the payment towards the due amount. Although they were reluctant to believe the representations made by it, they made the payment of Rs. 10,425/-. However, yet again, the assurances made by it turned out to be false. No concrete steps were taken by the respondent for completion of the unit in question. The respondent kept on misleading the complainants by giving incorrect information and assurances that it would hand over the possession to them very soon.

19. That the complainants all this while were ready and willing to honour their contractual obligations of making payment towards the remaining sale consideration towards the unit in question. However, the respondent deliberately, mischievously, fraudulently and with malafide motives cheated the complainants by abiding to their contractual obligations and instead sent a termination/ cancellation intimation dated 14.11.2018 to them. They were informed vide the said letter that it was willing to return the principal amount along with interest of 6% per annum. The said cancellation was wholly unilateral,



arbitrary and was not in accordance with the terms of the allotment and without any sufficient cause. There has been deliberate lethargy, negligence and unfair trade practice by the respondent. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern towards the buyers.

20. That even in the said cancellation letter, in order to create false evidence against the complainants, the respondent mischievously concocted a completely false and frivolously story as an afterthought in order to somehow cover up its own wrongs, delays and laches. It is submitted that the respondent in the said letter dated 14.11.2018 wrongly stated that the due to certain events which were beyond its control, it was not able to carry out the necessary works for the completion of the unit in question. No detailed explanation was given by it to explain as to what those conditions were which limited the scope of construction by it. Moreover, the respondent wrongly stated that it had offered an alternate unit in the same project and that the same was not acceptable to the complainants. No such alternate unit was ever offered to the complainants by the respondent. The non-completion of the project was not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by it.



21. That after the receipt of the said cancellation letter, the complainants vide letter dated 31.01.2019 informed the respondent that no message regarding allotment of alternate unit was ever received by them and that they are willing to continue with the project of the respondent in question. Vide the said letter, they requested the respondent to inform them about the alternative options available with it. Despite several attempts made by them to contact the respondent telephonically, no positive response was made by it. Moreover, no response was sent by it to the letter dated 31.01.2019 sent by them and they again vide letter dated 16.07.2020 demanded alternative options for consideration and made it clear to the respondent that in its failure to offer alternate options, they would have no option but to seek return of the amount deposited with it along with interest @18% per annum calculated till the date of realization.
22. That the complainants are aggrieved as the very purpose of making the booking has been defeated. Due to the faults of the respondent, they have been deprived of roof over their head for so long and have suffered very badly. On account of complete failure of the respondent to abide by its obligations, they requested the respondent in their meeting held on 12.01.2021 with it to refund the amount paid by them along with compensation/damages and interest. It is pertinent to mention herein that respondent vide its email dated 15.01.2021

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acknowledged the same and stated that it would be processing the refund calculation.

23. That it is submitted that even as per the terms of the agreement, the complainants are entitled to full refund of the amount paid to them on account of default on the part of the respondent.
24. That vide email dated 18.01.2021, the respondent sent the calculation sheet to the complainants wherein it calculated the refund amount along with interest @6% per annum payable by it to them. The respondent vide the said email admitted their liability of refunding back the principal amount along with interest and requested them to submit certain documents. All the documents as asked by it, were submitted by them vide letters dated 22.01.2021.
25. That vide letter dated 31.01.2021, complainant no.1 again demanded the refund of the principal amount along with interest till the date of realization. The respondent in its reply to the letter dated 31.01.2021 vide its emails dated 05.03.2021 and 26.03.2021 again admitted and acknowledged its liability to make the payment to the complainants and assured that the due amount would be credited in the account in four equal instalments. It was further assured that the first instalment would be transferred to them in the first week of April 2021. However, all the assurances and representations made by the respondent turned out to be false as till date not even a single penny has been credited by



it to them despite several admissions by it in the course of time and they were again constrained to send a letter dated 02.03.2022 to it.

26. There is inordinate delay in developing the project well beyond what was promised and assured to the complainants. They have been duped of hard-earned money paid to it regarding the residential floor in question. They requested the respondent several times to refund back the principal amount along with interest, but it has been dillydallying the matter. They have been running from pillar to post and have been mentally and financially harassed by the conduct of it.
27. That the respondent is enjoying the valuable amount of consideration paid by the complainants out of their hard-earned money and on other hand the complainants after having paid the substantial amount towards the unit are still empty handed. It has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainants and are unconcerned about the return of the amount despite repeated assurances.
28. It is, thus clear that the respondent-promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainants at its mercy wherein and the complainants questions have been left un-answered and the respondent-promoter



is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017.

29. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when it failed to handover possession and compensation for the delay on its part, when it specifically assured them for return of the amount along with interest and finally about a week ago, when it refused to refund the amount paid by them along with compensation/damages and interest.

C. Relief sought by the complainants:

30. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount paid by the complainants along with interest.
31. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

32. The respondent has contested the complaint on the following grounds.
- That the complainants have not approached the authority with clean hands and has suppressed relevant facts. It is submitted that



the complaint under reply is devoid of merits and the same should be dismissed with cost.

- ii. At the outset, in around, the complainants herein learned about the project launched by it titled as 'Primorse Floors' situated at NH 8 Gurgaon and approached the respondent repeatedly to know the details of the said project. They further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
- iii. That after having keen interest in the project constructed by the respondent the erstwhile allottee desired to book a unit and applied for the same vide application form dated 21.12.2009 and paid an amount of Rs. 2,59,663/- for further registration.
- iv. It is pertinent to mention herein that the complainants were well aware of the terms and conditions under the application form and agreed to sign upon the same post being satisfied with each term and without any protest any demur.
- v. That on 21.04.2011, the respondent vide offer for allotment letter requested and called upon the complainants to be present at the office of it for the accepting the allotment of the respective unit which is to be allotted to them.





- vi. Thereafter, the respondent vide allotment letter dated 26.04.2011, allotted a plot bearing no. 29, SF, St. 83E-5 in the aforesaid project, in favour of the complainants.
- vii. That on 12.05.2011, a builder buyer agreement was executed between the parties for the said unit bearing no. 29, SF, St. 83E-5, for a total sale consideration of Rs. 34,29,909/- in the aforesaid project of it. It is submitted that they were well aware of the terms and conditions of the project and agreed to sign upon the same upon their own judgment and investigation.
- viii. It is a matter of fact, that the complainants herein were aware of every terms of the said agreement and agreed to sign upon the same after being satisfied with each and every term without any protest or demur. It is submitted that as per the agreement so signed and acknowledged the complainants knew that the possession of the said unit was subject to timely payment of amount due by the complainant.
- ix. Despite, being aware of the payment schedule and the fact that timely payment is essence for completion of the project. They have failed to make the requisite payment of the instalment as and when demanded by it in compliance with the payment schedule and, have merely paid an amount Rs. 9,92,864/- towards the total agreed sale consideration.

- x. It is submitted that the present complaint is filed by complainants on baseless and absurd grounds. It is clearly mentioned under clause 11.3 of the agreement that in case of any unforeseen circumstances faced by it in the mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- xi. 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, public or competent authority.
- xii. It is submitted that as per the agreement executed for the said plot, the complainants were well aware that respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under the category of force majeure.
- xiii. It is submitted that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time





- by the company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- xiv. Subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /group housing/commercial/institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high-tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
- xv. That based on our representation, a letter dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa- Gurugram -Jhajjar-Hissar natural gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram. A meeting was held between Gail and the administrator Huda on 07 July 2009 to discuss feasibility which was approved. GAIL requested the administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana. On 05-Aug-2009, by District town planner to Gail India, proposed re-



routing of gas pipe line should be through green belt/ corridor proposed master plan. Further a civil writ petition no. 16532 of 2009 (O & M) date of decision 21st Dec'09- **Petitioner Shivam Infratech Pvt. Ltd Versus Union of India & others** was also filed by Vatika. GAIL has denied for the re-routing alternative proposal. Due to non-issuance of consent by state of Haryana, GAIL without waiting further has executed & completed gas pipeline work as per original schedule, thus approx. 90-100 plots effect due to this layout of GAIL pipeline.

- xvi. Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, Vatika Limited applied for license pertaining to the said project. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide its letter dated 04.03.2011 that passes through the project land.
- xvii. Although, GAIL had reduced the ROU by 10 mtrs. but since they had denied the re-routing of the GAIL corridor, vatika not only lost number of plots but had to re-design the project land that consumed money and time and hence the construction of project get delayed.
- xviii. The Govt of Haryana had notified Gurgaon Manesar Urban Complex 2021 vide their notification dated 05.02.2007 and the

- licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. accordingly.
- xix. However, the acquisition of sector dividing road 84/85 was de-notified by the Govt in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr. roads have resulted in massive delay in laying of services, thus impacting development.
- xx. After de-notification of sector road as mentioned in sub para (a) of (iii) above, the Govt. had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure "Integrated Infrastructure Development. Including roads, water supply, drainage, electricity, telecom etc. By virtue of said policy, the farmers have to surrender their land to the Govt. and have to obtain TDR certificate there from in lieu of his/her land. Thereafter, the farmers have to sale the TDR certificate to the developers. Director Town & Country Planning, Haryana, in a joint meeting held at Gurgaon had directed developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the



request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers. Munadi and public notice was published in leading newspapers on 29.11.2013 but it was very difficult to buy the land falling exactly within the proposed road section. Vatika had faced issues in purchasing land under TDR policy due to the reasons such as; (i) farmers, whosoever is interested in selling his land would like to sell his/her entire land/ownership irrespective of the thing that Developer want the entire land parcel or a piece of the same, (ii) there is no recourse or timeline for farmers who do not agree to sell their lands falling within roads result delay in acquisition by developer, (iii) farmers do not wish to follow the lengthy acquisition process as same involves surrender of land to govt., obtaining of TDR certificate, negotiation with developers, selling of land in full or part to developers etc. and (iv) farmer is not satisfied with the amount of sale consideration offered by the developer and demanding huge amount which is much higher than the market rate.

- xxi. Since the 24m road / sectoral plan roads function as sub-arterial roads of the development and also serve as infrastructure conduits for connecting independent licensed colonies / projects located within the sector with external services network i.e., water supply, sewerage, drainage, electricity, Telecom etc., it is important for us to have the same in our township/project land. Two sector roads



- (24 mtr.) are falling in the Project land and due to non-acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc. to the project land has become big challenge for us.
- xxii. That owing to the hindrances in midway of the construction of the Project in question the Respondent herein was bound to re-allot the Unit being allotted to the Complainants and accordingly allotted a Plot bearing No. 29./ST. 83E/240/SF/83E/Vatika India Next in the afore said Project vide Letter dated 10.07.2013.
- xxiii. It may be noted that the complainants in the present matter were well aware of the re-allotment and have agreed and signed upon the letter dated 10.07.2013 and were willing to continue the project.
- xxiv. It is submitted that while adopting a customer centric approach the respondent in the present matter had already offered an alternate unit to the complainants since the unit in question was hampered due to many reasons beyond its control.
- xxv. That on 14.11.2018, the respondent herein was bound to terminate the re-allotted unit being allotted to the complainants since they were not willing and ready to take the new allotment.
- xxvi. It is to note, that the respondent in the present matter was ready and willing to allot and alternate unit to the complainants. However, the complainants themselves failed to take any new unit



- and were constrained to take refund only. The same is well evident in the letter dated 16.07.2020.
- xxvii. It is an evident fact that the despite being aware of the payment schedule the complainants herein have failed to make the requisite payment of the instalment due towards the said plot. It is submitted that as on dated on an amount of Rs. 9,92,864/- is paid towards the total sale consideration of the said Plot.
- xxviii. It is further submitted that as per the agreement so signed and acknowledged the respondent herein was not under any obligation to issue and send any reminder or demand notice calling upon them to make the requisite payment and were duty bound to comply with the same.
- xxix. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before the authority and in the interest of justice.
33. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority



The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

34. 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

35. 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

36. So, in view of the provisions of the Act of 2016 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 complainant at a later stage.

G. Findings on the relief sought by the complainants

Relief sought by the complainants:

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

37. In the present complaint, on consideration of the documents available on the record and submission made by both the parties regarding contravention of the provisions of the Act. The authority observes that the buyer's agreement was executed between the parties. The total consideration of the said unit is Rs. 25,96,638/- against which the complainants paid Rs. 10,23,672/-which is approx...40% of the basic sale consideration. It is pertinent to mention here that the respondent has terminated the builder buyer agreement dated 12.05.2011 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. Moreover, it has been overserved via termination letter dated 14.11.2018 that the respondent offered



the alternated unit but the complainant did not accept the same. The respondent also offered refund the amount to the complainant along with 6% interest p.a. but the same was also not collected by him. The relevant portion of the letter dated 14.11.2018 is reproduced below:

Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Company, it is unable to execute and carry out all the necessary work for the completion of your unit in the above said Project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's projects. To further add to the woes of the Company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forcefully unauthorized occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the Company have resulted in the Company being unable to deliver. Therefore, in the backdrop of the uncertainties involved as detailed hereinabove and keeping in mind your interests, the Company offered in various discussions to you an alternate unit in the same Project, however, you did not accept this alternate option despite our subsequent numerous discussions with you. Thus, the Company is constrained and left with no choice but to terminate the Agreement.

We take this opportunity to state that as per terms of the Agreement, the Company is required to pay interest @6% p.a on the refund amount. As such, in furtherance of our obligations under the Agreement and in order to make up for our inability to deliver in view of the extraordinary circumstances attending upon this unfortunate event, as a bonafide measure we are hereby willing to return the principal amount [paid by you from your own resources] in respect of the booking alongwith an interest of 6% per annum calculated thereon till 14-Nov-2018.

You are requested to kindly get the above refund cheque collected from our office at Vatika Triangle, 5th Floor, Sushant Lok Phase1, Gurugram, Haryana after 30 days with prior appointment of receipt of this letter.

38. Upon perusal of above-mentioned paragraphs, the authority observes that, the subject unit has already been cancelled and builder buyer agreement has been terminated on 14.11.2018 narrating the detailed



reasons for cancellation of the unit and termination of builder buyer agreement on account of *inability of the promoter to make available the said unit. The promoter has failed to develop the unit and cancelled it on account of his own fault/omissions, accordingly.* So, he is duty bound to refund the amount alongwith interest at the prescribed rate (i.e. 10.25%) on the each amount received till date of payment without any deduction keeping in view the provisions contained in Section 18 of the Act, 2016.

39. 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 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.

40. 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.
41. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 10.25% p.a. from the date of payment of each sum till its actual realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

H. Directions of the authority

42. 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. 10,23,672/- 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
43. Complaint stands disposed of.
44. 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