



HARERA
GURUGRAM

Complaint No. 1538 of 2018

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

Complaint no. : 1538 of 2018
First date of hearing: 27.03.2019
Date of decision : 12.08.2022

Baburaoji
Sunil Khawas HUF

R/o: 219, Paramhansa Kuti, behind Dr. Dalavi
Hospital, Garoba Maidan, Nagpur, Maharashtra-
440008.

Complainant

Versus

M/s Vatika Limited

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

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)
Sh. Rishabh Gupta proxy counsel for
(Advocate)

**Complainant
Respondent**

HARERA
ORDER

1. The present complaint dated 17.11.2018 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations



made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	Sovereign Park, Sector 99, Gurugram, Haryana.
2.	Nature of the project	Group housing colony
3.	Project area	10.43125 acres
4.	DTCP license no.	119 of 2012 dated 06.12.2012 valid up to 05.12.2016
5.	Name of licensee	M/s Planet Earthstate Pvt. Ltd. & others.
6.	RERA Registered/ not registered	Registered vide no. 281 of 2017 dated 09.10.2017 area admeasuring 91345.535 sqm. Valid upto 31.03.2021.
7.	Unit no.	202, 2 nd floor, building B (page 36 of complaint)
8.	Unit area admeasuring	2610 sq. ft.
9.	Date of booking	05.02.2013
10.	Date of offer of allotment letter	07.06.2013 (page 21 of complaint)
11.	Date of builder buyer agreement	04.12.2014 (page 33 of complaint)
12.	Due date of possession	04.12.2018 (due date is calculated from the date of BBA)
13.	Total sale consideration	Rs. 2,41,86,700/- [as per SOA dated 05.12.2018 on page 31 of reply]
	Basic sale price	Rs. 2,02,27,500/- [as per SOA dated 05.12.2018 on page 31 of reply]
14.	Amount paid by the complainant	Rs. 73,96,215/- [as per SOA dated 05.12.2018 on page 31 of reply]
15.	Occupation certificate	Not obtained



16.	Offer of possession	Not offered
17.	Legal notice	08.04.2016 (page 72 of complaint)
18.	Notice for termination	14.12.2016 (page 38 of reply)

B. Facts of the complaint

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

I. The complainant booked a unit in the pre-launching project of the respondent on dated 05.02.2013 and paid a sum of Rs. 15,00,000/- to it. After the above said booking, the complainant received a letter dated 07.06.2013 for the invitation to offer of allotment of the unit and wherein the respondent also demanded the next instalment and same was paid on 26.06.2013 to it. After the above said allotment letter, he received demand letter for due instalment on 13.09.2013 and 30.10.2013 for the payment of Rs. 17,49,270/- but did not pay that amount as it did not receive any update regarding the progress of the project whereas it has already paid a huge amount to it.

II. That the complainant in good faith paid a further amount of Rs. 34,98,542/- to the respondent on 04.02.2014 and 13.02.2014 respectively as per raised demand. But it did not bother to sign the buyer's agreement with him. After payment of 10% of BSP, the respondent was required to be sign buyer's agreement. But the respondent failed to do it and demanded the next payment. After a lot of follow up by the complainant at the office of the respondent, it signed BBA on 04.12.2014 after 2 years of the booking which clearly shows the deficiency in service on part of the it.

III. On 04.12.2014, a pre-printed, unilateral, one-sided, arbitrary, and ex-facie buyer's agreement was executed inter-se the parties. As per the buyer's agreement, the respondent allotted an apartment no. 202, on the 2nd floor with a super area of 2610 sq. ft. and the total sale price of the

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unit is Rs. 2,41,86,700/-. As per clause 13 of BBA, the respondent has to give the possession of apartment within 48 months from the date of execution of buyers' agreement i.e., by 04.12.2018.

- IV. After the buyer's agreement, the complainant further paid a sum of Rs. 14.01.673/- to the respondent on 12.05.2015 as per the demand raised by it. The respondent has only raised the demand for the payment of instalment and never updated regarding the project. The complainant became very upset when its karta visited the project site in 2016 and saw the status of the project being transferred from Gurgaon to Chennai. It was not possible for him to visit the site for progress and update. Due to this reason, he visited the office of the respondent for cancellation on many times but it not willing to cancel booking and refund the paid up amount.
- V. The respondent did not want to refund the paid amount to the complainant and after a lot of follows up in its office, the respondent advised him to send a mail for cancellation with the personal request so that it may cancel the booking as per agreement. After that advice, he sent may emails for cancellation and further process but all futile.
- VI. The complainant finally sent a legal notice through counsel on 08.04.2016 to the respondent for refund of the paid up amount of Rs. 72,32,576/- with interest @18% per annum calculated from the date of actual payment but it has not bothered to reply on the said legal notice till now.
- VII. As per the agreement, the respondent promised to deliver the unit within four years from the date of allotment. But the project is already and delayed attitude of the respondent has forced him to file the complaint about all the illegalities & seeking refund of the paid up amount besides interest & compensation.



C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to refund the entire amount of Rs. 72,32,576/- paid by the complainant and duly acknowledged by the respondent.
 - b. Direct the respondent to pay interest @24% p.a. on the aforesaid principal amount.
 - c. Direct the respondent to pay compensation for mental agony, harassment, and financial losses.
 - d. Direct the respondent to pay towards the cost of litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - a. The present complaint is an abuse of the process of this authority and is not maintainable. The complainant is trying to suppress material facts relevant to the matter. He is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.
 - b. It is submitted that the complaint is premature. There is no cause of action arises in favour of the complainant. It is submitted that the buyer's agreement was executed on 04.12.2014. Accordingly, the due date i.e., specified date for handing over the possession of the unit could be on 04.12.2018.
 - c. The unit was booked and allotted in the name of Sunil Babu Rao ji Khawas and not in the name of any individual. The complaint filed by

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him in his individual capacity and not behalf of HUF or in the capacity of karta of HUF. Mr Sunil Khawas in his individual capacity has filed the affidavit alongwith complaint. On account of mis-joinder of necessary parties the complaint is liable to be dismissed at threshold.

d. The complainant is trying to shift its onus of failure on the respondent as it is he who failed to comply his part of obligation and miserably failed to pay the instalments in time despite repeated payment reminders being sent by it from time to time. It is the complainant who wants to cancel the unit booked with the respondent.

7. 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 on the basis of those undisputed documents and written submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:



Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1)RCR(C), 357 and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others*** dated 13.01.2022 in CWP bearing no. 6688 of 2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time,



when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the object raised by the respondent

F.I Mis-joinder of parties

14. While filing written reply, a plea was taken by the respondent w.r.t mis-joinder of parties. It is pleaded that the unit was allotted to Sunil Babu Rao Ji Khawas (HUF) and the complaint seeking refund of the paid up amount was filed by Sunil Khawas (HUF) in the individual capacity. So, on this score, the complaint is liable to be rejected. But the plea of the complainant is that the booking of the unit was made in the capacity of Karta of HUF family and in the same capacity, the complaint has been filed.

15. A perusal of annexure C-2 to C-5 placed on the file by the complainant shows that Sunil Babu Rao Ji Khawas (HUF) applied for a unit in the project of the respondent and the same was allotted to it for certain amount. When the respondent/builder failed to comply with the obligations as per the buyers' agreement, a complaint seeking refund of the paid up amount was filed. No doubt while filing the complaint the complete name of HUF as Sunil Babu Rao Ji Khawas has not been mentioned, but that cannot be said



to be fatal for the case in view of the provisions of Order I Rule 9 of Code of Civil Procedure, 1908. Secondly, while filing written submissions, it has been clarified on behalf of the complainant that the complaint has been filed on behalf of HUF by Sunil Khawas being Karta of that firm and not in his individual capacity. No rebuttal to the same is there. Thus, the complaint filed against the respondent is to be treated to have been filed by HUF namely Sunil Babu Rao Ji Khawas through its Karta Sunil Khawas and the objection w.r.t mis-joinder of parties is not tenable.

G. Findings on the relief sought by the complainant.

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

16. The complainant submitted that he booked a flat in the residential project namely "Sovereign Park" for a total sale consideration of Rs. 2,41,86,700/- against which he paid Rs. 73,96,215/-. But after paying the amount, he realized that the said project is not going to be completed on time. The complainant due to that reason requested the respondent to cancel the unit and sought refund. But it did not refund the paid amount to the complainant and after a lot of follows up its official advised him to send a mail for cancellation with personal request so that it may cancel the booking as per agreement. Thereafter, the complainant sends many mails for cancellation and further process but all futile. Subsequently, he finally sent a legal notice through his counsel on 08.04.2016 to it for refund of his paid amount with interest but the respondent did not bother to reply on the said legal notice till now.
17. Keeping in view of the above said facts and submissions made by complainant, the authority observes that the complainant surrendered the unit by filing complaint on 17.11.2018 (*inadvertently mention 15.06.2022 in*



the proceeding of the day dated 12.08.2022) i.e., before the due date. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the amount of the real estate i.e., apartment/plot/building as the case may be in all case where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

Keeping in view the aforesaid legal provisions, the respondent would refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this order failing which it shall pay the amount due along with prescribed rate of interest.

F. Directions of the authority

18. 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 is directed to refund the deposited amount after forfeiting 10% of the basic sale price of the unit being earnest money as per Haryana Real Estate Regulatory authority Gurugram (Forfeiture of earnest money by the builder) Regulation, 2018 along with an



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interest @9.80% P.A on the refundable amount, from the date of surrender (i.e., 17.11.2018) till the date of realization.

- 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.


19. Complaint stands disposed of.

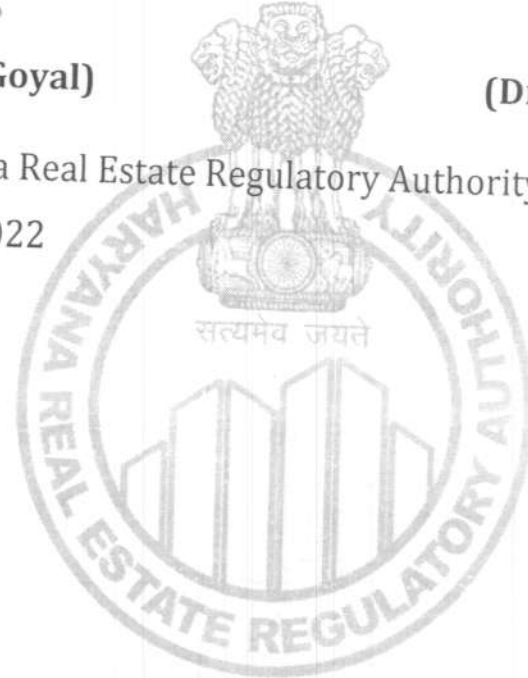
20. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022


(Dr. K.K. Khandelwal)
Chairman



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