

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

Complaint no. :	6119 of 2019
Date of filing complaint:	02.12.2019
First date of hearing:	02.12.2019
Date of decision	31.03.2023

Mr. Behari Lal Bakshi R/O: Flat No. 2102, Engineer Appts. Plot No. 11, Sector-18a, Dwarka, New Delhi-110078	Complainant
VSR Infratech Pvt. Ltd.& Another Regd. office: A-22, Hill View Apartment, Vasant Vihar, New Delhi-110057, 2. Mr. Vishal Bakshi, Flat No. 2102, Engineer Appts. Plot No. 11, Sector-18a, Dwarka, New Delhi-110078	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Complainant in person (Advocate)	Complainant
Ms. Shriya Takkar (Advocate)	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 allottee as per the agreement for sale executed inter se.

2. The complaint has been received on 02.12.2019 and reply has been filed by the respondent. The complainant generated proforma B by complaint No. 6119 of 2019. The said complaint i.e., complaint no. 230 of 2018 is clubbed with complaint No. 6119 of 2019.

A. Unit and project related details

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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 of the project	"68 Avenue", Sector 68, Gurgaon
2.	Nature of the project	Commercial Colony
3.	DTCP License no. & validity status	04 of 2012 dated 23.01.2012
4.	Acres	3.231
5.	RERA Registered / not registered	119 of 2017 dated 28.08.2017 upto 30.06.2018
6.	Unit No.	GA-25 (Annexure P-2-page no. 18 of complaint)
7.	Unit admeasuring	267 sq.ft. (Annexure P-2-page no. 18 of complaint)
8.	Allotment Letter	13.07.2012 (Annexure P-2-page no. 18 of complaint)
9.	Date of Excavation	26.07.2012 (Page 15 of written submissions)

10.	Date of execution of buyer's agreement	14.06.2014
11.	Possession clause	31 The Company will, based on its present plans and estimates, contemplates to entitled possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement advertise or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events .
12.	Due date of delivery of possession	14.09.2017 Calculated from date of execution of the agreement being later plus three months grace period
13.	Total sale consideration	27,44,656/- (Page23 of complaint)
14.	Total amount paid by the complainant	25,69,375/- (As alleged by the complainant)
15.	Occupation certificate	15.01.2019 (Annexure C page 53)
16.	Offer of possession	Not offered
17.	Surrender letter	10.06.2017

B. Facts of the complaint:

4. The complainant booked a commercial unit in the project namely "68 Avenue" located in sector 68, Gurgaon and vide allotment letter 13.07.2012 was allotted a unit bearing GA-25 tower A admeasuring 267 sq. ft. for a total sale consideration of Rs. Rs 27,44,656/-.

5. It is pertinent to mention that vide allotment letter dated 13.07.2012, the respondent increased the area of the unit from 500 sq. ft. to 527.22 sq. ft. and the allotted unit was even divided into two units admeasuring 267.380 sq. ft. and 259.840 sq. ft. On 14.06.2014, space buyers' agreement was executed between parties and was allotted unit bearing GA-25 admeasuring 267.380 sq. ft. The execution of the agreement was consciously delayed by the respondent and this conduct of the respondent amounts to unfair trade practice, as the booking amount of the complainant was accepted on 05.01.2012 .

6. The complainant till 26.05.2014 paid an amount of Rs. 25,69,375/-

which is almost 90% of the sale consideration, however, the construction was not even halfway completed. The complainant visited the site for almost three years, to check the status of the construction but from December 2014 to June 2017, no construction work was taking place and even no demand was raised from the respondent side.

7. It is further contended by the complainant that the builder buyer agreement is silent about the actual carpet area allotted to the complainant and even the respondent is taking undue advantage of its position by reducing the carpet area drastically. The carpet area allotted to the complainant is useless and cannot be put to use for any commercial use. Even, the complainants have been fraudulently charged excess consideration by calculating the tentative super area whereas the actual usable area is much less as compared to the consideration paid.

8. The complainants have further visited the respondent office and vide email dated 10.06.2017, 22.06.2017 and 16.08.2017 has taken up the

issues regarding change in unit and delay in possession, while the respondent did not respond.

9. The complainant has further pleaded that the respondent has contended that there was delay in obtaining occupation certificate was due to stay order of the Hon'ble High Court due to non-installation of water connection, where else this is a misleading statement as the respondent through submitted application stated that, the occupation certificate was not granted as the project was not fully completed till December 2018.

10. That the complainant requested several times by sending emails and also personally visiting the office of the respondent to refund the amount along with interest @ 18% per annum on the amount deposited by him, but respondent has flatly refused to do so. The complainant was left with

no other alternative but to file the present complaint seeking refund of the paid-up amount besides.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s):

- i. Direct the respondent to place on record all statutory approvals and sanctions of the project.
- ii. Direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the competent authority.
- iii. To direct the respondent to refund the entire amount along with compound interest.
- iv. Direct the respondent to pay compensation of Rs. 50,00,000/- on account of harassment, mental agony and hardship caused to the complainant and cost of litigation of Rs. 75,000/-.

D. Reply by respondent:

The respondent by way of written reply made following submissions: -

12. The complainant booked a unit bearing no. GA-25 ground floor Tower A , by paying an amount of Rs. 3,00,000/-. Thereafter, parties entered into space buyer agreement on 14.06.2014, wherein tentative super area of the unit was 267.38 sq. ft., for a total sale consideration of Rs. 27,44,656/-

13. It is further submitted that the complainant booked another unit . It is submitted that all the demands were raised in accordance with the space buyer's agreement signed between the parties. As per clause 31 of the agreement the possession of the unit was to be handed over within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events.

14. It is pleaded by the respondent that the project is completed, and the possession is being offered to the allottees in systematic manner. Further, the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond its control. The following factors caused the delay in the construction of the project, not within the control of the respondent and are force majeure events.

15. That such force majeure events are time and again various orders passed by the NGT staying the construction. The respondent stated that this further resulted in increasing the cost of construction to a great extent. In addition the current government has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts

were only being paid via cash. National green tribunal thereby stopping / regulating the mining activities.

16. It is humbly submitted that the respondent had applied to for occupation certificate on 31.07.2017. The fire NOC for the said tower received on 07.03.2018. The part occupation certificate was granted by the competent authorities after due inspection and verification on 15.01.2019. It is pertinent to mention here that delay has also been caused as the OC could not be issued since Hon'ble Punjab and Haryana vide order dated 16.07.2015 had issued the following direction in the matter titled as: Mukesh Sharma vs. State of Haryana and Ors.

no Occupation Certificate be issued in the sector/area or for building where water supply connection has not been made available by HUDA. It is clarified that these directions are in relation to Sectors 68-80, Gurgaon only

17. That Further, on 19th February 2013 the office of the executive engineer, Huda Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewage treatment plant, Berhampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.

18. Moreover, Orders passed Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. That however there was no sewage treatment plant available which led to scarcity of water and further delayed the project. That said order coincided with launch of project and caused a huge delay in starting project itself.

19. Even, there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

20. The That the delay in the construction of the project due to the force majeure events, do not go against the provisions of the flat buyer's agreement and the agreement itself allows the delays caused by the factors beyond the control of the respondent.

21. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

22. The plea of the respondent 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.1 Territorial jurisdiction

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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

23. 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.

24. 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 complainant at a later stage.

25. 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. 2020-2021 (1) RCR (c) 357*** and 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 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."*

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

F. Findings on the objection raised by the respondent:

F.I Objection regarding force majeure.

27. The respondent stated that the part occupation certificate was granted by the competent authorities after due inspection and verification on 15.01.2019. It is pertinent to mention here that delay has also been caused as the OC could not be issued since Hon'ble Punjab and Haryana vide order dated 16.07.2015. The authority is of the considered view that if there is lapse on the part of any competent authority concerned in granting the occupation certificate within reasonable time then the

respondent should approach the competent authority for getting the time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

28. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, water supply for a period of 6 months, Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants, stay of construction by order of National Green Tribunal, and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all the unit in question was allotted in the year 2012. These periods were for very short duration of time. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainants for refund:

G.I Direct the respondent to place on record all statutory approvals and sanctions of the project.

29. The respondent - builder has already filed all the statutory approvals and sanctions of the project.

G.II Direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the competent authority.

30. In view of the relief no. III wherein complainant is seeking withdrawal from the project of the respondent, the aforesaid relief has become redundant.

G. III Direct the respondent to refund the amount along with interest.

31. In the present case the complainant approached the Authority in year 2018 to seek refund of the amount paid by him, while the authority vide order dated 22.11.2018 directed the respondent to pay interest of every month of delay from due date of possession i.e., 09.08.2016 to 07.03.2018. Thereafter, the complainant approached the Appellate Tribunal against the order passed by the authority dated 22.11.2012, seeking refund of the amount paid by him along with compensation on account of mental agony, harassment, and unfair trade practices. The same appeal was allowed and set aside the order passed by authority dated 22.11.2018. Later, the Appellate Tribunal remanded back before the Learned Adjudicating officer on 16.09.2019 to file fresh complainants for further proceedings.

32. Thereafter, vide order 15.02.2021 the Adjudicating officer in view of judgment dated 11.11.2021 in title **M/s Newtech Promoters and Developers Pvt. Ltd. Vs Sate of UP & Ors. Etc** passed by the Apex Court stated that the AO has no jurisdiction to adjudicate this complaint and transferred the complaint to the Authority. However, on 31.05.2022 the authority decided that the authority cannot review its own order, hence the doctrine of functus officio will apply.

33. However , the complainant again approached the Appellate tribunal and vide order dated 15.11.2022 the Tribunal decided that the order dated 31.05.2022 passed by the authority is set aside and remanded back to the authority for disposal of the complaint. Hence, the parties were directed to approach the authority on 21.11.2022 for further proceedings

34. In the present case, the subject unit was allotted to the complainant on 13.07.2013. He paid a sum of Rs. 25,69,375/- towards total consideration of allotted unit.

35. It is an admitted fact that a buyer's agreement with regard to the allotted unit was executed between the parties on 14.06.2014. The due date for completion of the project and offer of possession of the allotted unit comes to be 14.09.2017. The occupation certificate was obtained on 15.01.2019. But now the situation is that the complaint has email the respondent on 10.06.2017 that is before the due date for refund of the paid up amount and hence is liable for refund after forfeiture of 10% of total sale consideration.

36. So, 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 consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases 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."

37. Keeping in view the above-mentioned facts and since the complainant has sent the surrender letter before the due date on 10.06.2017, so the authority hereby directs the promoter to return the amount after forfeiture of 10% of total sale consideration with interest on balance

amount at the rate of 10.70% (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 surrender i.e 10.06.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

G. IV Direct the respondent to pay compensation of Rs. 50,00,000/- on account of harassment, mental agony and hardship caused to the complainant and cost of litigation of Rs. 75,000/-.

38. The the complainant is seeking above mentioned 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. 2021-2022 (1) RCR (c) 357*, 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:

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-promoter is directed to refund the amount paid by the complainant i.e Rs. 25,69,375/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 with interest @10.70% p.a. on the refundable amount from the date of surrender i.e., 10.06.2017 till the actual date of refund of the amount.
- ii) A period of 90 days given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.


40. Complaint stands disposed of.

41. File be consigned to the registry.



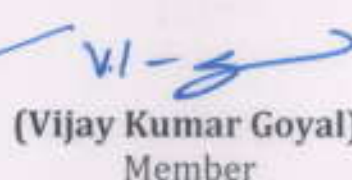
(Sanjeev Kumar Arora)

Member



(Ashok Sangwan)

Member



(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.03.2023