



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

Complaint no. : 50 of 2020
First date of hearing: 05.02.2020
Date of decision : 03.03.2023

1. Tejas Sinha
2. Rajesh Kumar Sinha
RR/o: E-12, Galaxy Apartment, Sector-43, P.O.
Galleria, Gurugram-122009.

Complainants

Versus

M/s Vatika Seven Elements Pvt. Ltd.
Office: Vatika Triangle, 4th Floor, Sushant Lok
Phase-I, Block-A, Mehrauli Gurgaon Road,
Gurugram-122002, Haryana.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Ms. Yamini Proxy counsel
Sh. Naveen Proxy counsel

**Complainants
Respondent**

ORDER

1. The present complaint dated 13.01.2020 has been filed by the complainant/allottees 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 provisions 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 unit details, sale consideration, the amount paid by the complainants, 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	"Vatika India Next" at sector 81,82A,83,84 and 85, Gurgaon, Haryana
2.	Nature of the project	Independent residential floors
3.	Project area	393.358 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Not registered ✓
6.	Date of allotment	N/A
7.	Date of builder buyer agreement	23.12.2015 (page 13 of complaint)
8.	Unit no.	18/ST.82E-6/360/GF/82E/VIN (page 53 of complaint)
9.	Re-allotment	14.06.2016 (annexure P3, page 52 of complaint) *Note: complainant refused to accept the offer for re-allotment
10.	Possession clause	15. Schedule for possession of the said residential plot <i>The Developer based on its present plans and estimates and subject to all just exceptions,</i>

		<i>force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential Plot within a period of 4(four) years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein.</i>
11.	Due date of possession	23.12.2019 [Due date of possession calculated from the date of BBA]
12.	Total sale consideration	Rs. 1,51,11,246/- as per SOA (annexure P2, page 50 of complaint)
13.	Amount paid by the complainant	Rs. 54,44,668/- as per SOA (annexure P2, page 50 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That believing the false assurances and misleading representations of the respondent, the complainants booked a residential floor in the said project of the respondent by paying a booking amount of Rs. 7,50,000/- on 12.03.2014. Thereafter, the complainants kept making payment as and when demanded, despite the respondent refraining from executing an agreement with them. By January 2015, the complainants had made a payment of Rs.37,50,000/- as against a total sales consideration of Rs. 1,51,11,246/-, making it almost 25% of the total amount without executing the agreement. The said receipt of more than 10% of the total sales consideration without first entering into a written agreement is a clear violation of section 13 of the Act, 2016.

- II. That thereafter, the complainants started pursuing the respondent to execute the agreement and said that only once the agreement is executed, they would make further payments, but to no avail.
- III. That the complainants in February 2015, visited the unit site and were stunned to see that despite lapse of almost 1 year from the date of booking and depositing a huge amount, even the foundation had not been laid down. Upon this, the complainants contacted the respondent and requested to execute the agreement and objected to payment demands without even laying the foundation of the unit, but all in vain as it said that it would not execute the agreement until further payment is made. Having no other option left, the complainants made further payment of Rs. 16,94,668/- on 11.03.2015.
- IV. That thereafter, on 23.12.2015, a buyer's agreement was executed between the parties wherein a residential floor bearing name plot no. 18/ST.82E-6/360/GF/82E/VIN, on ground floor, admeasuring super area of 1725 sq. ft. was allotted to the complainants. As per clause 15 of the said agreement, it undertook to complete the construction and handover possession within a period of 4 years from execution of said agreement, i.e., by 23.12.2019. The complainants made a payment of Rs.54,44,668/- as and when demanded by it till 2015.
- V. That it is pertinent to mention here that throughout the period from booking till execution of agreement and even after that, the complainants showed utmost faith in the respondent company and despite few lapses on the latter's part, they kept making payment as and when demanded. However, to their utter shock, on 14.06.2016, they received a re-allotment letter from it wherein they were informed that there has been a revision in master layout and their unit does not exist anymore and would be re-allotted new unit on the basis of availability. The re-allotment letter also

enclosed a copy of the addendum to be signed by the complainants marking their satisfaction and acceptance of new allotted unit. This left them anguished and shattered.

- VI. That the complainants had booked the unit with the intention of settling there. But after that they were taken aback by the aforesaid letter of the respondent and immediately rushed to its office in order to seek an explanation. However, its representative namely Ms. Jasleen requested for a meeting on 29.06.2016 and accordingly, they waited until 29.06.2016 wherein they were given ambiguous, unsatisfactory and vague reasons for re-allotment considering the fact that they were informed by it at the time of booking that the layout plan for the colony had already been approved by DTCP in 2011 itself. It cannot be comprehended as to how an approval could have been withdrawn 5 years later. The complainants recorded their queries and submissions and wrote a letter and sent the same vide e-mail dated 30.06.2016 to it. The complainants also sought a copy of the plan from the respondent vide said letter.
- VII. That, thereafter, vide e-mail dated 01.07.2016, the respondent replied to the said letter saying that the company is committed to deliver the allotted unit, but the timelines cannot be proposed to which the complainants refused to take any unit other than the unit allotted to them.
- VIII. That the complainants kept making calls to the respondent and visiting its office requesting to refund back their hard-earned money so retained, but all in vain. Subsequently, on 14.03.2018, the respondent sent an e-mail in reply to the complainants saying that they could be offered other options. However, vide e-mail dated 24.03.2018, they vehemently refused to take any other unit and expressed their disinterest in any other unit apart from the allotted unit.

- IX. That the complainants kept requesting the respondent to give a refund of the amount paid by them. Vide e-mail dated 03.10.2019, they again pursued it to return the amount paid by them but again to no avail. Despite categorical refusal of the complainants to take any other unit instead of the allotted unit, the respondent again vide e-mail dated 03.10.2019 offered other unit at some other location.
- X. That the pictures of the site showing absolutely no construction work itself prove that the respondent played fraud upon the complainants from day one and befooled them despite knowing that the land in question was subject to litigation. The respondent had been virtuous on its part as at least some construction work would have been carried upon the site. However, not even foundation was laid upon the site. It is pertinent to mention here that there is no 'E6' lane at the project site. In fact, after 'E2' the only lane existing is 'E3', 'E4', and 'E5', and no lane by the name of 'E6' exists on the project site, which clearly shows that the money paid by the complainants has been wrongfully retained by it since 2014. Accordingly, the same must be refunded back along with interest.
- XI. That the present complaint has been filed in order to seek refund of the principal amount of Rs. 54,44,668/- paid by the complainants along with interest at the rate prescribed as per Act, 2016 and Rules, 2017 from the date of receipt of payment till the date of refund, along with compensation for the mental stress and torture as well as financial and physical loss suffered by them due to its fraudulent acts. They have not only been left empty handed but also been deprived of the benefit of escalation of price of the said unit had they been handed over possession.
- XII. That the complainants spent their lifetime savings which they got on retirement in order to purchase the said unit. However, their money has been wrongfully and mischievously retained by the respondent, thereby

causing them great financial and mental hardship and agony. Hence, this complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

- a. Direct the respondent to refund the amount paid by the complainants along with interest from the date of making payment till the realization of money.
- b. Direct the respondent to give Rs. 5,00,000/- as compensation on account of loss/injury as well as mental agony suffered by the complainants.
- c. Direct the respondent to pay litigation charges to the tune of Rs. 40,000/-.

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. That the complainants applied for allotment of an independent floor i.e., ground floor on a plot measuring 360 sq. Yds. in sector 82, Gurugram, Haryana under construction linked plan wide application dated 12.03.2014. Thereafter, the respondent sent the two copies of floor buyer agreement on 25.03.2014 for execution to the complainant. But they neglected and did not sign and delivered the agreement back to the respondent for a very long time. Various reminders were sent to the complainants including letters dated 25.03.2014, 19.08.2015 & 10.10.2015 for execution of floor buyer agreement. Finally, on 23.12.2015, after a lot of persuasion, the complainants signed and executed the floor buyer agreement.



- b. That the complainants only paid the time linked demand payments raised by the respondent till 12.03.2015. Thus, by 12.03.2015, they had paid the amount payable only within 12 months of booking. Later on, the respondent refrained from raising any demand.
- c. That as per clause 12 of the buyer's agreement, the complainants have agreed that time is the essence of the agreement with respect of allottee obligations to pay price of the said residential floor to be paid on or before the due date or as when demanded by the developer as the case may be. It is further stated in the clause that it is not obligatory on the part of the developer to send demand notices/reminders regarding the payments and in case of default/delay in the payments by the allottees, the allotment would be liable to be cancelled and entire earnest money deposited by the allottees was liable to be forfeited. However, inspite of the default of the complainants in making the schedule of the payments, the respondent has been lenient and forbade from the cancelling of the booking for the reason it was at all times interested in adhering to its part of obligations.
- d. That as per the booking and floor buyer's agreement clause 15, the respondent has contemplated that based on its present plans and estimates and subject to all exceptions to complete the construction of the said floor, the period of completion of construction was 4 years from date of agreement. Hence, the respondent had time upto 23.12.2019 for completion of the unit but the same could not be constructed due to the certain unavoidable and force-majeure reasons beyond its control.
- e. That as per clause 8 of the buyer's agreement and in the event the completion of the residential unit delayed may be due to various reasons cited for instance due to delay in sanction plan/building plan by the competent Authority, as per clause 13 of the buyer's agreement,



the layout was tentative and subject to change. The respondent contacted the complainants for allotment any other similar unit in the same vicinity, as there was a change in the master layout of the project and the unit, which was booked, was unavailable. The respondent was constrained to change and modify the layout plans. The respondent vide letter date 14.06.2016 made an offer to allot alternative unit to complainants and requested them to visit the office of respondent for re-allotment on 29.06.2018.

- f. That due to the cogent reasons beyond the control of the respondent, some unit in the project was deferred. The main reasons behind the deferment of unit allotted to complainants in the project was due to the non-acquisition of sector roads by HUDA, initiation of GAIL corridor passing through the "Vatika India Next" and project, non-shifting of defanged high-tension lines passing through the project by DHBVN. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted floor/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. The respondent in good faith offered re-allotment to the complainant and asked them to visit the office for re-allotment of alternate unit. However, they refused to accept the same and raised a number of irrelevant and vague questions vide email dated 30.06.2016.
- g. That the offer of suitable alternative unit was again made to the complainants on 14.03.2018 and 23.04.2018. But by email dated 23.04.2018, the complainants refused to accept any alternative unit. Thus, the complainants never intended to have the possession of the



alternate allotment. The original allotted unit being unavailable due to change of layout plan, the respondent could not construct the unit unless the complainant accepted the alternative unit and the consent of which was not received from them.

h. That the complainant did not seek refund till 03.10.2019 as earlier, they were insisting for allotment of the same unit, which was booked by them, inspite of the fact that they were aware the an alternate allotment was offered by the respondent. This shows that they were mere investor who had no bonafide need of the home and whose intention was only to keep holding to the unit by making part payment and thereby earn premium due to increase in re-sale price of the unit. However, when the real estate market crashed, the complainants were unable to sold the unit for the premium they have started demanding refund with heavy interest. This fact is evident from the fact that the wife of complainant no. 1 had booked unit no, 360/GF/ST.E-2/plot no. 6/VIN in Sector 82 on 15.04.2015 which she further re-sold for speculative gains and profit to one Mr. Walia Babloo Singh.

i. That the complainants demanded refund after a gap of more than three and half years of respondent's offer of alternate allotment and lastly vide email dated 03.10.2019 and on the same day, the respondent offered an upgraded unit to the complaints for amicable settlement of the issue. But the complainants did not accept the same and filed this complaint on false premises and to harass the respondent.

7. 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

8. 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

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:

"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 an 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 relief sought by the complainants.

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

14. The complainants have submitted that they booked a unit in the respondent's project namely "Vatika India Next". A unit bearing no. 18/ST.82, E-6, GF admeasuring 360 sq.y rds. was allotted in favour of complainants for a total sale consideration of Rs. 1,51,11,246/- against which they paid an amount of Rs. 54,44,668/-. Thereafter, on 23.12.2015 a

builder buyers' agreement was executed between the parties and as per clause 15 of the said agreement the due date of handing over of possession was 23.12.2019.

15. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on its failure to complete or inability to give possession of the unit 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is 23.12.2019 and there is delay in completion of the project on the date of filing of the complaint. 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 certain 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.....”

17. 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

18. 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 allottees, as they wish 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.
19. This is without prejudice to any other remedy available to the allottee including compensation for which they 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.



20. The authority hereby directs the promoter to return to the complainants the amount received by them i.e., Rs. 54,44,668/- with interest 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 each payment till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Compensation & Litigation

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

F. Directions of the authority

22. 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):
- The respondent is directed to refund the entire amount of Rs. 54,44,668/- paid by the complainant along with prescribed rate of



interest @ 10.70% 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 realization 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.

23. Complaint stands disposed of.

24. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2023