

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

Complaint no. : 6789 of 2022  
Complaint filed on : 21.10.2022  
Ordre reserved on: 14.02.2023  
Order pronounced on: 11.04.2023

1. Mrs. Indu Bala Rustagi  
2. Mrs. Anita Rustagi  
Mr. Mukul Rustagi  
All R/o: - 290, Ram Nagar, Behind H Block, Krishna  
Nagar, New Delhi- 110051

**Complainants**

Versus

M/s Tulip Infratech Private Limited.  
**Regd. Office at:** 12<sup>th</sup> floor, Indra Prakash, Building, 21,  
Barakhamba Road, New Delhi - 110001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Member  
Member**

**APPEARANCE:**

Sh. Akshya Chatkara (Advocate)  
Sh. Sudesh Ranjan Singh (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

**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.No. | Heads  | Information   |
|-------|--|---|
| 1.    | Project name and location                      | "Tulip Ace" Sector- 89, Gurugram  |
| 2.    | Project area                                   | N. A  |
| 3.    | Nature of the project                          | Residential   |
| 4.    | RERA Registered/ not registered                | Not registered  |
| 5.    | Unit no.                                       | A2-202,<br>(As alleged by the complainant at page 11 of the complaint)      |
| 6.    | Unit measuring                                 | 4031 sq. ft.<br>(As alleged by the complainant at page 11 of the complaint) |
| 7.    | Date of allotment letter                       | N. A  |
| 8.    | Date of execution of apartment buyer agreement | N. A  |
| 9.    | Total consideration                            | N. A  |
| 10.   | Total amount paid by the complainants          | N. A  |

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -



- I. That the respondent had launched the project namely "Tulip Ace" at situated in sector 89 Gurugram, Haryana. The respondent approached the complainants to invest in the said project and offered a flat measuring 4031 sq. ft.
- II. That the complainants agreed to invest in the said project. Accordingly, they decided to put their life savings and hard-earned earnings in the said project. They bought the flat and made all the requisite payments in due time, to the respondent and who duly acknowledged the receipt of the aforesaid payments.
- III. That subsequently during the process of execution of the conveyance deed, the respondent only proceeded to execute the conveyance deed of the said flat after the payment of an additional amount in the context of VAT which the Haryana Government may impose upon the sale price of the flat with retrospective date, amounting to Rs.4,24,279/-. The complainants out of compulsion duly deposited the said amount in good faith vide cheque no. 000020 dated 11.08.2016 to the respondent. They were made to sign the pre-printed applications while accepting the said deposit amount. It is pertinent to note that such conduct on the part of the respondent is vague and inappropriate and also against the principles of natural justice. Later the complainants came to know that no such amount was demanded by the Haryana Government and accordingly raised



the plea to refund the said amount vide e-mail dated 19.12.2019. Since then, the complainants have been visiting the respondent's office for the purpose of getting the refund of the said amount. However, there has been no progress. Moreover, the complainants were misled and the information, given was vague and conflicting and that too given in a piecemeal manner by the representatives of the respondent. They had also been calling on the landline of the Gurugram office, where several persons kept on answering. When they asked about the status of refund, the representative of the respondent continued to mislead and misguide the complainants and kept on assuring that the refund would be made soon.

- IV. That the complainants tried to also contact the senior management of the respondent several times. However, they always remained untraceable, and the representatives kept them on tenterhooks to gain more time. The true fact is that despite the lapse of so much time, there is no sign of refund as yet, despite the assurances given.
- V. That it is now evident that the respondent has clearly misrepresented the facts to suit their own needs and the same further shows the mala fide intentions and unfair trade practice.
- VI. That the respondent grossly failed to refund back the said amount. In the view of the above, the complainants have gone

through mental stress due to the aforesaid acts and omissions of the respondent. That the respondent has defrauded the complainants and induced them to part with hard-earned money by making false and misleading representations, thereby unjustly enriched itself to the prejudice of the complainants. They immediately raised their concern with the representatives of the respondent to which they never gave any proper satisfactory response and kept on avoiding the complainants.

- VII. That the respondent betrayed the faith of the complainants and has been illegally retaining the amount paid by them for the last several years. It is submitted that the complainants have put their hard-earned money and the respondent has deprived them of it.
- VIII. It is abundantly clear that the respondent has not fulfilled the promise and caused an inordinate delay in refunding the said amount taken on pretext of VAT from the complainants.
- IX. That the complaint is within the time frame/limit as provided in the Act, 2016 and the rules, 2017. This authority has the pecuniary and territorial jurisdiction to entertain and adjudicate this complaint as the subject matter of the dispute, i.e., the said project, is located in sector-89, Gurugram, Haryana
- X. That the cause of grievance arose on 11.08.2016 when the complainants paid an amount of Rs.4,24,279/- vide cheque dated 11.08.2016 bearing no. 000020, to the respondent. It further





arose on 19.12.2019 when complainants sent an e-mail to the respondent to which the respondent has not replied till date. The cause of action still subsists on the date of filing of the complaint as the respondent has failed to make the refund of the said amount to the complainants.

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

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

I. Refund the deposited amount along with delayed interest unfair trade practices and legal cost as per the law be awarded to the complainants.

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 contested the complaint on the following grounds: -

a) That ex-facie, the instant complaint is misleading and malicious thus is non-maintainable and therefore, deserves dismissal forthwith on this sole ground.

b) That none of the allegedly entailed averments herein the complaint unfolds any cause of action against the respondent, and so the complaint deserves instant dismissal.



- c) That the complainants have not come to this authority with clean hands and deliberately suppressed material facts and information and therefore, the complaint deserves dismissal forthwith.
- d) That the present complaint is liable to be dismissed at its threshold as its alleged contents nowhere negates the terms envisaged therein the flat buyer agreement and/or conveyance deed have been truly and fairly stand accepted by the complainants. Henceforth, it unequivocally establishes the unambiguous and unbigoted nature of the said terms and conditions.
- e) That, pertinently, one of the major & undisputed terms envisaged therein the flat buyer agreement & the conveyance deed is regarding the payment of taxes levied by the different authorities retrospectively, retroactively and/or prospectively on the transactions related to the projects wherein the flats/units stand located. Thus, in view thereof, this complaint de-hors from provisions of the Act of 2016.
- f) That, significantly, this aspect has been manifested by the complainant post expiry of 3 (three) long years thus, it falls beyond the scope of limitation as well. The conveyance deed as executed in September 2016 further physical possession of the flat received on 05.09.2016. The complainants sought refund of amount made in the claim in respect of amount deposited on 11.08.2016 (which was already deposited in the account of competent authority by the respondent) and thus, the claim filed by the complainants in October 2022 is barred by the law of limitation.
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 these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

8. The authority has complete territorial 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.

**F. Findings on the relief sought by the complainants.**

**F. I. Refund the deposited amount along with delayed interest unfair trade practices and legal cost as per the law be awarded to the complainants.**

10. The complainants have submitted that they have booked the unit in the project namely "Tulip Ace" situated in sector- 89 Gurugram being developed by the respondent/promoter. Subsequently, the respondent proceeded to execute the conveyance deed of the said flat after the payment of an additional amount of Rs.4,24,2799/- an amount of VAT which the Haryana Government has impose upon the sale price of the flat. The complainants duly deposited the said amount vide cheque no.





000020 dated 11.08.2016, with the respondent. Later, the complainants came to know that no such amount was demanded by the Haryana Government and accordingly raised the plea to refund the said amount vide e-mail dated 19.12.2019. There is nothing on the record which shows that respondent-builder had refunded the said amount to the complainants. Thereafter, the complainants approached the respondent/promoter for refund of the deposited VAT amount. The complainant being tired of the neglectful behaviour of the respondent filed the present complaint seeking refund of the VAT amount as per provisions of law before this authority.

11. The respondent vide reply dated 25.01.2023 submitted that the complaint is time barred by limitation as the complainants made the payment in the year 2016, and the flat buyer's agreement & the conveyance deed is regarding the payment of taxes levied by the different authorities retrospectively, retroactively and/or prospectively on the transactions related to the project wherein the flats/units stand located. Thus, in view thereof, this complaint de-hors from provisions of the Act of 2016.
12. On the documents and submission made by both the parties, the authority observes that there are no supportive documents i.e., booking application form, allotment letter, buyer's agreement, and conveyance deed in this regard. Further, the respondent submitted that occupation certificate of the project in question was obtained, and the complaint is barred by limitation as the conveyance deed has been executed in



September 2016 and physical possession of the flat was taken way back on 05.09.2016. The complainants sent an email for refund the said amount paid on 11.08.2016 only on 19.12.2019 and present complaint has been filed in 21.10.2022 which is beyond 3 years of limitation period. But the counsel for the complainants submitted that since no refund was made by the respondent after execution of the conveyance deed, it is subsisting liability and is not barred by limitation.

13. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the compliant on the ground of the limitation but in view of settled proposition of law, the present complaint of complainants is barred by limitation. As discussed earlier, the execution of conveyance deed of the subject unit was done in September 2016 and physical possession of the flat was handed over to the complainants 05.09.2016. So, limitation if any, for a cause of action would accrue to the complainants on 11.08.2016 when the said amount was paid by the complainants. The present complaint seeking refund of the deposited VAT amount was filed on 21.10.2022 i.e., beyond three years w.e.f. 11.08.2016.
14. While filing the complaint, the allottees have sought refund of HVAT amount deposited with the respondent on 11.08.2016. It is pleaded that the respondent illegally charged and recovered that amount from the complainants, and they are entitled to refund of the same. No doubt the authority has already decided in the above paragraph that the validity of raising demand of VAT is beyond limitation but the issue with regard to the refund of HVAT is not the prerogative of the authority and accordingly the allottees can challenge this issue before appropriate forum.



15. There has been complete inaction on the part of the complainants for a period of more than Six years till the present complaint was filed in October 2022. The complainants remained dormant of their rights for more than 6 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise the extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
16. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]***, the Hon'ble Supreme Court held that "*Law assists those who are vigilant and not those who sleep over their rights.*" Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.
17. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein seeking



refund of HVAT amount paid after executing the conveyance deed, is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.

18. File be consigned to registry.

**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.04.2023

**(Vijay Kumar Goyal)**

Member