



HARERA
GURUGRAM

Complaint No. 1729 of 2021

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

Complaint no. :	1729 of 2021
Date of filing complaint:	23.04.2021
First date of hearing:	26.05.2021
Date of decision :	21.03.2023

Dr. Narendra Yadav R/o: Anirud Hospital, V.P.O. Pataudi, Gurgaon, Haryana- .	Complainant
Versus	
1. M/s Vatika Limited 2. Anil Bhalla 3. Gautam Bhalla 4. Gaurav Bhalla 5. Anjali Aggarwal All are R/o: 7 th floor, Vatika Triangle, Mehrauli Road, Sushant Lok, Phase I, Gurugram.	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Rahul Yadav (Advocate)	Complainant
Shri Dhruv Dutt Sharma (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 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Heads	Information
1.	Project name and location	"Vatika India Next, Sector 81, 82A, 83, 84 and 85 Gurugram.
2.	Project area	393.358 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP License	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.	Plot no.	Plot no. 33, second floor (page 32 of complaint)
7.	Plot area admeasuring	1365 sq. yds.
8.	Date of allotment	N/A
9.	Date of builder buyer agreement	18.08.2012 (page 29 of complaint)



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, 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 3 (three) 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....Emphasis supplied</i>
11.	Due date of possession	18.08.2015 [Due date of possession calculated from the date of execution of agreement]
12.	Total sale consideration	Rs. 81,58,110/- (as per SOA dated 25.07.2022, annexure R3, page 69 of reply)
13.	Amount paid by the complainant	Rs. 17,17,083/- (as per SOA dated 25.07.2022, annexure R3, page 69 of reply)
14.	Letter issued by complainant for refund	11.04.2018
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. That the complainant entered into a buyers' agreement dated 18.08.2012 with the respondent no. 1 through its authorized signatory Ms. Anjali Agarwal, Vice President Marketing, for the



purchase of unit no. 33, second floor, Sector Road-1, Sector-82, preferential location measuring 1365 Sq. Ft.

- b. That at the time of allotment/execution of said agreement, the complainant has paid a some of Rs. 4,61,000/- as earnest money for booking of said floor for his residence purpose and till date have made payment of installment of which demand is raised, which respondents have received from the complainant in contravention of provisions of The Haryana Apartment Ownership Act 1983, and rule framed thereon and also in total violations of various judgement of the Apex Court.
- c. That as per the said agreement respondents had to develop the said group housing complex in which the aforesaid floor of the complainant is situated within a period of 3 years from the date of the execution of the said agreement as per clause of the 15 of the said agreement.
- d. That after execution of the said agreement the complainant made payments to the respondent no. 1 as per the schedule plan and till date have made payment to the tune of Rs. 17,17,083/. In addition to the complainant has also paid Rs. 1,78,315/- for insurance of the said floor & Rs. 60,298/- as processing fees for the loan amount.
- e. That before execution of the said agreement the complainant seeing the advertisements which were got published by the respondents, the complainant got booked said floor in their said project namely, in Sector-82, Gurugram, and at the time of booking the said floor, the complainant paid an amount of Rs. 4,61,000/- as "earnest money". The said floor was booked



under "Possession Linked Payment Plan" category in the above stated project and the said floor was preferential location floor and the total purchase value of the said floor is Rs. 81,33,328/- inclusive of preferential location charges of Rs. 6,60,000.

- f. That the complainant was allotted unit no. 33, 2nd floor, Sector Road no. 1, Sector-82, floor reference no. 33/360/SF/Sector Rd-1/VIN with preferential location vide allotment letter bearing priority no. 360/SF/063 dated 30-03-2012 and thereafter on dated 18.08.2012 an agreement was executed between the parties.
- g. That after having paid such huge and hard-earned amount to the respondents, the complainant was having no option but to accept and sign the aforesaid floor buyer agreement whose terms and conditions were extremely harsh, stringent and was total in favour of the respondents and against him and were also in violation of The Haryana Apartment Ownership Act 1983.
- h. That in the said agreement as strict penal clause was incorporated which was imposed upon the complainant vide which payment of installments on time i.e., as per schedule plan was made an essence of the said agreement. According to the said clause in case of any default or delay in making the payment by the complainant or to perform or observe other obligations under the said agreement, the agreement would be liable to be cancelled and the developer would be entitled to forfeit entire earnest money + brokerage charges if any paid by the it to the broker in respect of the floor allotted to the complainant, together with any interest paid, due or payable



and other amount of non-refundable nature, if the complainant failed to fulfill his obligations under the said agreement or even in the event the complainant failed to sign and return the aforesaid agreement within 30 days from the date of its dispatch by the respondents. It is further mentioned in the said agreement that these terms and conditions would remain applicable till the execution and registration of the conveyance deed for the said floor. Besides, this there are many more terms and conditions which are equally harsh, stringent and forced upon the complainant, are entirely in violation and in blatant disregard to the provisions of The Haryana Apartment Ownership Act 1933, which are applicable on the builders/developers.

- i. That as the respondents failed to give possession to complainant within the said mandatory period. In spite of receiving said amount from complainant. The complainant contacted the office of respondents first telephonically and when did not receive any satisfactory answer, went personally to the office of the respondents in Gurugram on dated 12-01-2018 and met their official Mr. Sohail in the office. On the enquiry of complainant as to when possession of the said floor would be delivered to him it was informed by Mr. Sohail to complainant that the floor could not be constructed due to inability of purchase of the land from the farmers due to some issues. Thereafter when the complainant asked him as to why the respondents made false representation in the agreement regarding having license on the said land and further to the effect that the construction is going on, on this he could not give



any satisfactory reply to him. When he was asked to return money which the respondents have received from the complainant dishonestly by way of executing a false agreement, on this he replied that he would have to wait for a year to receive the said amount and presently it is not easy to get it from them/respondents. On hearing from the said official of respondent no. 1, the complainant was in a shock, seeing that the respondent no. 1 being such a reputed company, as was claimed by them at the time of executing the said floor buyer agreement, how can do such a wrongful act and can dishonestly induce complainant who is a doctor by profession by dishonestly making false representation in the floor buyer agreement to the effect that license from the Government has been obtained and that construction is going on, as aforesaid and thus dishonestly inducing the complainant to deliver the respondents the aforesaid amount, which clearly make out a case of cheating, forgery, false representation etc.

- j. That there after seeing act and conduct of the respondents, the complainant vide letter dated 11.04.2018 requested the respondents to refund the amount of complainant and personally handed over the said letter to Mr. Sohail on the said date. When no response was received from the side of respondents, the complainant again on dated 06.06.2018 wrote letter to the respondents for refund of the aforesaid amount, but on the said letter also no reply was received. On dated 09.08.2018 the complainant handed over another letter to Mr. Sajjad, employee of the respondent no. 1 for refunding the amount received from complainant for the said floor, but till



date the complainant has received nothing from the side of respondents. As per para no. 4 of the addendum, it was claimed by the company that the said floor was under construction.

- k. That as per clause 15 of the buyer's agreement that was executed between the respondent no. 1 through his authorized signatory (respondent no. 5) with complainant on dated 18-08-2012, that said floor of the complainant was to be constructed and possession was to be handed over within 3 years from the date of execution of said agreement i.e., upto 18.08.2015.
- l. That in this regard, it is also pertinent to mention that the respondent no. 1 on dated 22.11.2012 also received an insurance amount of Rs. 1,78,315/- from complainant which was financed to him by India Bulls and was directly paid to respondent no. 1 as an insurance amount towards the said flat.
- m. That to make payment of the said floor installments, complainant took loan from India Bulls of an amount of Rs. 60,00,000/- out of which two installments of Rs. 1,46,013/- & Rs. 4,37,396/- were paid directly to the respondent no. 1 on 27.10.2012. It is important to point out that no further demand for rest of the installments, was raised to India Bulls the respondent no. 1 since the construction of the property never took place. It is further submitted that the payment of above-mentioned loan amount was directly made to respondent no. 1 under tripartite agreement executed with India Bulls by complainant and respondent no. 1.
- n. That the respondents not only did aforesaid wrongful act and conduct but also in the guise of said floor buyer agreement,



induced complainant to execute an agreement with India Bulls a tripartite loan agreement for taking loan towards said floor of an amount of Rs. 60,00,000/- out of which two installments as mentioned earlier were directly paid to the respondent no. 1 for the said floor as per the said floor-buyer agreement. At the time of executing the said agreement it was in notice and knowledge of the respondents that there was no land under their ownership and possession for constructing the said floor and inspite of said fact in their knowledge they dishonestly in order to receive from complainant the aforesaid amount illegally executed the said agreements. The respondents on false representation in conspiracy with India Bulls also got insured the said floor for on amount of Rs. 1,78,315/- of which installments stand paid by complainant an amount of Rs. 6,60,000/- preferential location charges without existence of the same by way of making false and forged representation and documentation, which is also a clear cut case of cheating and forgery. Thus, the respondents in criminal conspiracy with India bulls committed aforesaid wrongful act with complainant which amounts to commission of cheating and forgery and false representation.

- o. That the possession was to be delivered to the complainant on dated 18.08.2015 after expiry of the stipulated; but till date, the complainant has not been handed over possession of the above mentioned floor, so the complainant is entitled to receive penalty amount from the respondents as per the Act, 2016.

p. That in view of the delay in giving possession to the complainant; he seeks a refund of the entire amount paid by the complainant to the respondents and India Bulls i.e., Rs. 26,15,456/- along with interest @ 18% compound interest per annum from the date of deposit till the realization of the amount and towards mental harassment and agony caused by the respondents, along with litigation charges Rs. 20,00,000/-.

q. That the cause of action accrued in favour of the complainant and against the respondents on when the complainant had booked the said flat and it further arose when the respondents failed /neglected to deliver the said flat. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

4. The complainant sought following relief(s):

- i. Refund of Rs. 26,15,456/- along with interest @ 18% (or as per HRERA) compound interest per annum from the date of deposit till the realization of the amount.
- ii. To pay Rs. 20,00,000/- towards mental harassment and agony caused by the respondents.
- iii. To pay litigation charges of Rs. 1,00,000/- to each complainant.

D. Reply by respondent no. 1:

5. The respondent made the following submissions in its reply:

- (a) That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been

categorically denied by respondent and may be read as travesty of facts.

- (b) That the complaint filed by the complainant before the court, besides being misconceived and erroneous, is untenable in the eyes of law.
- (c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- (d) That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- (e) That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the buyer's agreement. The complainant has frustrated the terms and conditions of the buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession. It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and



not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said residential floor within a period of 3 years from the date of execution of the agreement unless there shall be delay due to failure of allottee to pay in time the price of the said residential floor.

(f) That the delay in completing the project is due to the reasons beyond the control of the developer. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:

- a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and it was forced to reevaluate its construction plans which caused a long delay.
- b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the project. The matter has been further embroiled in sundry litigations between HUDA and landowners.
- c. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labour regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the Respondent, as it has been difficult to retain labour for longer and stable periods of time and complete construction in a smooth flow.
- d. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble



High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.

- e. Manufacturers of construction material were prevented from making use of close brick kilns, hot mix plants and stone crushers.
- f. Disruptions caused by unusually heavy rains in Gurgaon every year.
- g. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- h. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- i. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- j. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November 2016 to December 2019.
- k. Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
 - i. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
 - ii. The usage of Diesel Generator Sets was prohibited for 128 days.
 - iii. The entries of truck traffic into Delhi was restricted.
 - iv. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites
- (g) The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent



was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.

- (h) The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.
- (i) Due to the above said reasons, the unit of the complainant could not be completed and the same has already been communicated to the complainant vide email dated 21.10.2020. It has already been provided various alternate options but till date complainant has not agreed for any alternate unit.
- (j) That the complainant has failed to make payment in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such the



complaint is liable to be rejected. The complainant defaulted in making payments towards the agreed sale consideration of the Unit from the very beginning. It is submitted that there is an outstanding amount of Rs. 14,16,842/- including interest to be payable by the complainant as on 21.05.2021. The complainant is real estate investor who have made the booking with the respondent only with an intention to make speculative gains and huge profit in a short span of time. However, it appears that their calculations and planning have gone wrong on account of severe slump in the real estate market and the complainants are now raising several untenable pleas on highly flimsy and baseless grounds. The complainants after defaulting in complying with the terms and conditions of the buyer's agreement, now wants to shift the burden on the part of the respondent whereas it has suffered a lot financially due to such defaulters like the present complainants.

- (k) That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is important to understand that one particular buyer who makes payments in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while

adjudicating complaints of the prospective buyers. The slow pace of work affects the interest of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. The irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer/builder in proceeding towards timely completion of the project.

6. 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:

7. 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

8. 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

9. 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;

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.

10. 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.
11. 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.*** SCC Online SC 1044 decided on 11.11.2021 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."

F. Findings on the objections raised by the respondent.

F.I Objection w.r.t. force majeure

12. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 18.08.2012 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 18.08.2015. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the

respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

13. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

14. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 18.08.2015 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak

itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant:

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

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

16. Clause 15 of the buyer's agreement dated 18.08.2012 provides for the handing over of possession and is reproduced below for the reference:

"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 4 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..... **Emphasis supplied.***

17. **Entitlement of the complainant for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 3 years from date of execution of builder buyer's agreement. The buyer's agreement was executed *inter se* parties on 18.08.2012. Therefore, the due date of possession comes out to be 18.08.2015.
18. The complainant booked a unit in the above said project for a total sale consideration of Rs. 81,58,110/-. A buyer's agreement was executed between the parties on 18.08.2012 and a plot bearing no. 33, second floor allotted to him. As per clause 15 of the said agreement, the unit was to be handed over within **3** years from the signing of the agreement i.e., by 18.08.2015.
19. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter 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.
20. The due date of possession as per agreement for sale as mentioned in the table above is **18.08.2015** and there is delay of 5 years 8 months and 5 days 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 considerable 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.....”

21. 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 as under:

“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."

22. 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) of the Act. 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 he 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.
23. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
24. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 17,17,083/- 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*.
25. The complainant in compliance of order 21.03.2023, filed an NOC dated 21.03.2023 wherein, it has been stated that the loan amount

has been repaid in full and no further dues lies payable on behalf of the complainant.

G.II Litigation cost and compensation.

26. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

27. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

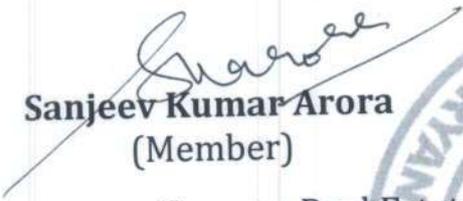
- i. The respondent/promoter is directed to refund to the complainant the entire amount of Rs. 17,17,083/- paid by him along with prescribed rate of interest @ 10.70% p.a. as

prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited 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.

28. Complaint stands disposed of.

29. File be consigned to the registry.


Sanjeev Kumar Arora
(Member)


Ashok Sangwan
(Member)


Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2023

HARERA
GURUGRAM