

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

Date of decision : 21.03.2023

NAME OF THE BUILDER		VATIKA LIMITED			
PROJECT NAME		Tranquil Heights			
SR. NO.	COMPLAINT Nos.	Complainant	versus	Respondents	Appearance
1.	CR/361/2021	Atul Singh Tyagi	<i>Versus</i>	Vatika limited	C: Garv Malhotra R: Dhruv Dutt Sharma
2.	CR/381/2021	Swarup Orimono Pvt. Ltd.	<i>Versus</i>	Vatika limited	C: Garv Malhotra R: Harshit Batra

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between the parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely "Signature Villa" (Independent floor), Sector 82, Gurugram (Hr.)

being developed by the same respondent-promoter i.e., Vatika Ltd. The terms and conditions of the builder buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest, & litigation expenses.

3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, total sale consideration, amount paid up & relief sought are given in the table below:

Vatika Limited						
Project Name		Signature Villa				
Sr. No	Complaint No./Title/Date of filing	Reply status	Unit no.	Date of execution of builder buyer's agreement Due Date	Total sale consideration Amount Paid up	Relief sought
1.	CR/361/2021 Atul Singh Tyagi vs Vatika Limited	Received	52/St. 82 D2-3/500 Duplex admeasuring 500 sq.ft.	27.07.2012 [page no.32 of complaint] 27.07.2015	TC-Rs.3,47,79,908/- AP- Rs. 84,25,990/-	1. Refund. 2. Compensation
2.	CR/381/2021 Swarup Orimono Pvt. Ltd. vs Vatika Limited	Received	53/St. 82 D2-3/500 Duplex admeasuring 500 sq. ft	01.08.2012 [page no. 30 of complaint] 01.08.2015	TC-Rs.3,47,79,908/- AP- Rs. 70,71,153/-	1. Refund. 2. Compensation

4. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant against the promoter M/s Vatika Limited on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligations. In some of the complaints, issues other than refund in addition or independent issues have been raised and consequential reliefs have been sought.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent

in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of both the complaints filed by the complainant/allottees are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing **CR/361/2021, titled as Atul Singh Tyagi versus Vatika Ltd & Anr.** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Signature Villas", sector 82, Gurugram.
2.	Nature of the project	Independent floor.
	Project area	98.781 acres
4.	DTCP license no.	NA
5.	Name of licensee	NA
6.	RERA Registered/ not registered	Not registered
7.	Villa no.	52/St. 82D2-3/500/Duplex admeasuring 500 sq. yards. (Page 35 of complaint)
	Date of allotment	27.09.2010 (annexure 2, page 22 of complaint)
9.	Date of builder buyer agreement	27.07.2012 (page 32 of complaint)
10.	Date of building plan approval	The counsel for the respondent does not have the details of approval of building plans and neither mentioned in the reply.



11.	Due date of possession	27.0.7.2015 (wrongly mention 01.08.2015 in proceeding of the day dated 21.03.2023) *Note: Date of building plans approval is not given in file. So, the due date is calculated from the date of execution of agreement
12.	Possession clause	10.1 Schedule for possession of the said residential villa <i>The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Residential Villa within a period of three years from the date of release of the approved building plans by the competent authority unless there shall be delay or there shall be failure due to reasons mentioned in clauses (11.1),(11.2),(11.3) and clause (37) or due to failure of Allottee(s) to pay in time the price of the said residential villa along with all other charges and dues in accordance with the schedule of payments or as per the demands raised by the company from time to time or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this agreement.</i> Emphasis supplied
13.	Total sale consideration	Rs. 3,47,79,908/- (as per SOA dated 16.03.2021, annexure R2, page 112 of reply)
14.	Total paid up amount	Rs. 84,25,990/-
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

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

- I. The complainant booked a villa bearing no. 81/500/Duplex for a sale consideration of Rs. 3,47,79,900/- including BSP, PLC, IFMS, EDC, IDC etc under the construction linked payment plan. The respondent vide letter dated 06.05.2011 called upon him for execution of builder buyer

agreement of "Signature Villas" in Sector - 82 at "Vatika India Next-Gurgaon" and asked for the signed buyer's agreement to be sent for execution within 15 days. But no copies of builder buyer agreement were provided to the complainant and thus the same could not be executed. That immediately after 3 days on 09.05.2011 the respondent unilaterally and without any rhyme or reason sent an arbitrary and malafide notice for termination of buyer agreement even before its execution on a false and frivolous contention of non-payment the amount of Rs. 20,69,579/-. It is submitted that there was no breach of the terms of agreement or any other condition by the complainant.

- II. That this was just a mere pressure tactic and a well thought out strategy by respondent to illegally demand and extort more money from the complainant or to illegally forfeit earnest money. He vigilantly and immediately sent a firm response vide letter dated 12.05.2011 that it should be more careful in such correspondences and not threaten the honest complainant in order to dupe him of his hard-earned money as till date no buyer's agreement was received or executed even after 9 months of payment and signing of application for allotment and especially when no dues are remaining.
- III. The respondent vide letter dated 16.12.2011 gave another arbitrary intimation to the complainant that the proposed master plan of Vatika India Next is subject to modifications for various reasons and in that eventuality the developer would offer an alternative plot option to the allottee within the Sectors 82, 82-A, 83, 84 & 85 in Gurugram Manesar Urban Complex, Haryana. The respondent unilaterally changed the location of villa from villa no. 81/500/Duplex to villa no. 52/ST82D2-3

and details of new plot are plot no. 52, block: ST82D2-3, admeasuring 500 sq. yard, park facing.

- IV. That it is for the knowledge and information of the Authority that the alteration or so-called modification in the layout plan of the said project, resulted in reduction in the number of villas from 79 to 50 units and subsequent change in the location of the unit of the complainant in the said project. The respondent without his consent changed the location of the unit and further levied the preferential location charges for park facing. Therefore, he had no other option but to accept the offer of the respondent towards re-allotment and sign on the dotted lines vide an undated letter issued to the respondent.
- V. The complainant also requested the respondent to execute the buyer agreement but it did not pay heed to his request and kept on delaying the execution of buyer agreement.
- VI. That finally on 27.07.2012, a buyers' agreement was duly signed and executed between the parties. On 10.10.2012, the respondent again issued an arbitrary and illegal demand letter of Rs. 34,62,990/- along with service tax of Rs 120911/- to the complainant. He replied the respondent vide letter dated 02.11.2012 stating that no development work has been done or started at the property and the amount is payable only as per the construction linked payment plan as per the buyer agreement.
- VII. That on 10.01.2013 vide its letter the respondent builder sent a statement of account acknowledging all receipt i.e., a total of Rs. 84,25,990/- (81,03,560 + 3,22,430). On 23.10.2017, the complainant received another account statement sent by it reflecting the payments made and adjustment till that date.

- VIII. That on 10.01.2013, 11.02.2013 & 11.03.2013 respectively the respondent-builder issued arbitrary letters demanding Rs 22,85,412/- in respect of unit no 81/500/Duplex towards instalment and was replied vide email dated 22.03.2013 that the demands are no justified as there is no construction work or development at the site at all. The complainant had been to the site with the respondents representative from planning and architectural department and they had not been able to even locate the place of land. Moreover, on 15.07.2013 the complainant sent a letter by asking for withdrawal of arbitrary and illegal demand as no construction work was started at site, providing a reference to the meeting with Ms. Komal along with Mr. Daleep Bhatia and Mr. Anuj Khanna.
- IX. That on 13.02.2013 a letter was sent by respondent confirming receipt of Rs. 15,00,000/- on account of instalment Furthermore, on 26.12.2013 & 15.06.2015 the complainant received letters of respondent for levy of VAT on property.
- X. That to the utter shock and surprise of the complainant on 03.02.2017 arbitrary, malafide, criminal and illegal letter issued by respondent for re-allotment of unit in place of plot no. 52/ST 82D2 was received. It was regarding initiating re-allotment process as the unit allotted to the complainant was not available due to change in plan. When the complainant met the official of respondent namely Mr. Sumit, he assured him that if the alternate villa provided by it is not acceptable to him, then the respondent would refund the entire amount as per buyer agreement.
- XI. That thereafter, the complainant along with one of the official of the respondent visited the alternate villa offered by it. He rejected the said offered property as the property had not the same specification as offered



earlier to him such as firstly, the size of plot was 400 sq. yards instead of 500 sq. yards Secondly, the villa had no lift, the complainant being an elderly person specifically chose a villa with lift. Thirdly, the unit offered by it was not park facing and it has charged PLC for park facing villa Fourthly, the offered property was located at the dead end and was adjacent others' land which was the security concern to the complainant. The complainant conveyed the same to the official of the respondent present on the site.

- XII. That the complainant made payment only on the continuous request of the respondent even when the construction work had not started and yet it made no development work even after receiving the said amount.
- XIII. That, it is pertinent to mention that the respondent cheated the complainant by allotting a villa over a land which still does not belong to it. The respondent allotted the villas to the complainant and other allottees even before acquiring the ownership right over the said land. When the land owners created the issues, the respondent started offering alternate property to the allottees by giving vague excuses. This was all along a well thought out concocted conspiracy to dupe and siphon off the hard-earned money of the complainant along with many other innocent consumers.
- XIV. That time and again, the complainant requested the respondent, to initiate the process of refund as the property allotted earlier to him was not in existence due to change in lay out plan and further the alternate property offered by it was not acceptable to him. But the respondent did not pay any heed to the request of the complainant. Now even after repeated reminders and passage of many years, the respondent has not refunded the hard-earned money of the complainant.

- XV. In view of the above facts. It can be clearly understood that the respondent just to harass the complainant, grabbed his hard-earned money. The complainant tried every possible way to take refund the entire consideration amount paid to the respondent. The act and conduct of the respondent caused a lot of physical harassment, mental agony and huge financial loss to the complainant. Thus, this present complaint.
- XVI. That the complainant had approached the respondent time and again seeking the information and status of the project and date of offer of possession of the said premises. After repeated reminders, it assured that it would handover of possession soon. Yet no such offer has been made till now.
- XVII. That the possession is delayed for many years. Thus, on account of facing serious financial and emotional hardship on account of the delay, the complainant wishes to withdraw from the project and is seeking refund with interest as prescribed under the Act. The complainant has complied with all the terms and conditions of the buyers agreement, but it failed to meet up with their part of the contractual obligations and thus is liable for refund with interest from date of respective payment till date of realisation.
- That it is humbly submitted that the complainant has suffered great loss in terms of rental income, opportunity to own and enjoy a home in Gurugram, burden of bank E.M.I s against the undelivered unit etc. He has not been able to buy another flat in Gurugram as majority of his life's hard-earned money is stuck in the project. He continues to run from pillar to post to safeguard his hard-earned money to seek justice.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s).



- a. Refund of the entire amount of Rs. 84,25,990/- paid to the respondent along with the interest @ 18 % per annum.
 - b. Compensation of Rs. 40 lacs on account of mental harassment, agony, physical pain, monetary loss etc.
10. 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

11. The respondent has contested the complaint on the following grounds.
- a. That at the outset, respondent humbly submits that each and every averment and contention, as raised in the complaint, unless specifically admitted, be taken to have been categorically denied by it and may be read as travesty of facts.
 - b. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitted 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.
 - c. The reliefs sought by the complainant appears to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
 - d. That apparently, the complaint filed by the complainant is an abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be rejected. 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 builder buyer's agreement. It is submitted that the complainant has frustrated the

terms and conditions of the builder buyer's agreement which were the essence of the arrangement between the parties. 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.

- f. 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 building/ said apartment within a period of 3 years from the date of execution of the agreement unless, there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said apartment.
- g. That the delay in completing the project is due to the reasons beyond its control. 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 of the Respondent 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 the Respondent 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 land-owners.

- 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 labourers 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 labourers 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. Disruptions caused by unusually heavy rains in Gurgaon every year.
- f. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- g. 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.
- h. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- i. 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.
- j. 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 were 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.



- k. The above has resulted in delays in construction of the project, for reasons that essentially are beyond the control of respondent.
- h. That the complainant has failed to make payments 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. It is submitted that out of the sale consideration of Rs 3,47,79,908/-, the amount actually paid by the complainant is Rs. 84,25,990/- i.e., around 24% of the sale consideration of the unit. It is further submitted that there is an outstanding amount of Rs. 1,21,86,994/- to be paid by the complainant as on 16.03.2021 as per the construction linked plan opted by his. It is further submitted that she is a real estate investor who has 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 her calculations and planning have gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless ground. The complainant 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 suffered a lot financially due to such defaulters like the complainant.
- i. 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 is 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 submitted that it is important to understand that one particular buyer who makes payment



in time can also not be segregated, if the payment from other perspective 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. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the hands of developer / builder in proceeding towards timely completion of the project.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. 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

14. 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

15. 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) 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.

16. 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.
17. 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 wherein it was observed 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."

18. 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 objections raised by the respondent:

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

19. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the plea that the construction of the project was delayed due to force majeure conditions such as, shortage of labour, various orders passed by NGT weather conditions in Gurugram and non-payment of instalment by different allottees of the project etc. But all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 27.07.2012. As per terms and conditions of the said agreement, the due date of handing over of possession comes out to be 27.07.2015. The events such as 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 happenings after due date of

handing over of possession. There is nothing on the 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 some of the allottees. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

20. 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."

21. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 27.07.2015 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.

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

22. The complainant has submitted that he booked a unit in the respondent's project namely "Signature Villas". A buyer's agreement was executed between the parties on 27.07.2012 and allotted a unit bearing no. 52/St. 82 D2-3/500/Duplex admeasuring 500 sq. yard. The complainant paid an amount of Rs. 84,25,990/- against the total sale consideration of Rs. 3,47,79,908/-. The due date of possession is calculated as per clause 10.1 of the agreement i.e., 3 years from the date release of the approved building plans. But the respondent neither have the details of approval of building plans and nor mentioned in the reply. Therefore, the due date is calculated from the date of execution of agreement which comes out to be 27.07.2015.
23. 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.
24. The due date of possession as per agreement for sale as mentioned in the table above is 27.07.2015 and there is delay of 5 years 6 months 6 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 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.....”

25. 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

26. 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 allottee, as she 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.

27. This is without prejudice to any other remedy available to the allottee including compensation for which she 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.

28. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid along with interest. However, section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

29. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **21.03.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
31. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 84,25,990/- 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. Directions of the authority

32. 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 functions entrusted to the authority under section 34(f) of the Act of 2016:
- i. The respondent/promoter is directed to refund the entire amount of Rs. 84,25,990/- 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 & 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.
33. These directions shall *mutatis mutandis* apply to the cases mentioned in para 3 of this order.
34. Complaints stand disposed of. A copy of this order be placed on the file of the connected matter.
35. Files be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member
21.03.2023

Haryana Real Estate Regulatory Authority

Dated: 21.03.2023