



HARERA
GURUGRAM

Complaint No. 5178 of 2019

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

Complaint no. : 5178 of 2019
Date of filing: 11.11.2019
Date of decision : 14.03.2023

Mr. Ashish Sharma
R/o: H.no-129, GF, Navjiwan Co-operative Housing
Society, New Delhi-110017.

Complainant

Versus

M/s Vatika Ltd.
Office: Vatika Triangle, 4th Floor, Sushant Lok-I,
MG Road, Gurugram- 122002, Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member
Member**

APPEARANCE:

Sh. Rishabh Gupta (Advocate)
Sh. Anurag (Advocates)

**Complainant
Respondent**

ORDER

HARERA

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 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	"Town Square-2" at Sector 82, Vatika India Next, Gurgaon, Haryana.
2.	Nature of the project	Commercial complex
3.	Project area	1.6 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid up to 31.05.2018 71 of 2010 dated 15.09.2010 valid up to 14.09.2018 62 of 2011 dated 02.07.2011 valid up to 01.07.2024 76 of 2011 dated 07.09.2011 valid up to 06.09.2017 66 of 2014 dated 15.07.2014 valid up to 14.07.2019
5.	Name of licensee	Sh. Tej Pal
6.	RERA registered/ not registered	40 of 2021 dated 10.08.2021 valid upto 31.03.2022
7.	Unit no.	004-Tower D-5-506 (page 5 of complaint)
8.	Unit area admeasuring	1080 sq. ft. (page 5 of complaint)
9.	Date of booking	01.04.2013 (page 6 of complaint)
10.	Date of builder buyer agreement	Not executed
11.	Possession clause	Not provided
12.	Due date of possession	01.04.2016 <i>Fortune Infrastructure and Ors' vs' Trevor D' Lima and Ors.</i> (12.03.2018 SC); MANU/SC/0253/2018 observed that "a person cannot be made to wait indefinitely for 'the possession of the Flats allotted to



		them, and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period 'stipulated in the agreement' a reasonable time has to be taken into consideration' In the facts and circumstances of this case' a time period of 3 years would have been reasonable or completion of the contract' In view of the above-mentioned reasoning' the date of signing of application for booking of shop, ought to be taken as the date for calculating due date of possession' Therefore, the due date of handing over of the possession of the unit comes out to be 01.04.2016
13.	Total sale consideration	Rs. 1,08,90,720/-
14.	Amount paid by the complainant	Rs. 33,32,370/-
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Legal notices dated	03.07.2019 (page 54 of the complaint)

B. Facts of the complaint

3. The complainant has made the following submissions:

- I. That the complainant believing false representation made by respondent, about its project namely "Town Square" booked a unit bearing no. 004, tower D 5- 506 admeasuring 1080 sq. ft and accordingly paid an amount of Rs. 2,50,000/- as initial payment for the purpose of registration. The respondent thereafter issued a receipt for the same on 31.08.2012. The complainant in a bonafide belief made a further payment of Rs. 8,55,626/- & 11,13,372/- respectively as per the demand as stipulated in the agreed sale consideration in accordance with the payment schedule and accordingly, it issued a payment receipt for the same on 01.12.2012 & 02.01.2013 and again at the instance of the demand raised by it, the



complainant made a further payment of Rs. 11,13,372/- on 31.01.2013. From the perusal of the statement of account, it is evident that the complainant had made a total payment of Rs. 33,32,230/- in total within the period of 3 months from the date of booking.

- II. It is further the case of complainant that he also had booked a unit in another project of the respondent namely "Seven Elements" in the year August 2013 and had paid a total sum of Rs. 16,45,068/-. The respondent failed miserably in showcasing any substantial progress in the project and the conduct of the respondent was contrary to the statements and assurances of its Authorized agents/local representatives and the very facts concerned the complainant as he had complied with the various demands raised by it but against such demands, no substantial project can be highlighted.
- III. That the complainant finding himself tricked in such a situation at the pretext of the respondent had found it more relatable to withdraw the allotment in the project "Vatika Town Square" as in accordance with the provisions of the Act, 2016 and further find it suitable to transfer the respective withdrawal amount of Rs. 33,32,370/- along with other interest to the other project under the name and style "Seven Elements".
- IV. That apart from raising concerns to the respondent through e-mails, the complainant was regularly approaching the authorised agents of the respondent and was also paying visits to the office, but no heed was paid to the different alarms raised by him with respect to the pendency of project and no appreciable progress with the project and also other inquiries of the complainant. The respondent vide letter dated 29.03.2016, 13.05.2016, 19.09.2017, 13.11.2017 & 11.12.2017 again raised demands without resolving the queries of the complainant and threatened the complainant using their dominant position to cancel the



booking after forfeiting the earnest money. It is abundant from this demand that the various requests of the complainant for withdrawal from allotment of unit were being ignored by the respondent.

- V. That the complainant on seeing no progress with the prevailing scenario at the end of the respondent, sent another legal notice dated 03.07.2019 to the respondent stating therein about the laissez faire attitude towards him and continuously receiving consistent and disjoint response and also pointed about the project nowhere near completion. It was also pointed out about the failure of the promotor for non-fulfilment of its obligations. But the respondent without giving an opportunity of being heard to the complainant and taking advantage of its dominant position, unilaterally rejected his request without assigning any valid reason for the same and *malafidely* had resorted to unfair trade practices by harassing him by way of making several demands along with interest without highlighting any remarkable progress in the project.
- VI. The respondent in order to extract money from the complainant had been raising different demands by crystallizing interest over the same and also first provided with the vague picture to him on account of his withdrawal from the allotment and refund of amount. Further, without appreciating his concern seeking details of the documents forming the basis of such illegal deductions and in a unilateral manner rejected the request of withdrawal from the allotment and raised demands to pay the dues along with interest.
- VII. The complainant observed that there is no progress in the construction of the project for a long time and raised his concern before the respondent. Though the complainant was always ready and willing to pay the due instalments if there is sustainable progress in the project, and it is also to



mention that despite of all efforts, it was difficult for him to get the actual status of the construction.

VIII. The respondent has utterly failed to fulfil his obligations to deliver the possession in time or refund the money along with the interest and has caused mental agony, harassment and huge loss to the complainant and hence the present complaint seeking refund of the paid up amount besides interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to refund the amount paid by the complainant along with interest from the date of making payment till the realization of money.
 - b. Compensation.
5. Though, the respondent put in appearance through its counsel Sh. Anurag but failed to file any written reply despite giving a number of opportunities and imposing costs. So, in such a situation the authority was left with no alternative but to struck off the defence of the respondent for non-payment of costs.
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 those undisputed documents and submissions oral as well as written (filed by the complainant) 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, 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

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) 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.

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 cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" 2021-2022(1) RCR(C), 357 &

**M/s Sana Realtors Private Limited & other Vs Union of India & others SLP
(Civil) No. 13005 of 2020 decided on 12.05.2022 and wherein it was held
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."

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

F. Findings on the relief sought by the complainant.

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

13. It is not disputed that the complainant booked a unit in the project of the respondent namely "Seven Elements", situated in a Sector 89 A, Gurugram on 01.09.2012. The complainant paid a total sum of Rs. 33,32,230/- against the allotted unit from time to time as per the demands raised by the respondent. No buyer's agreement w.r.t. the allotted unit was executed between the parties for one reason or the other. It has also come on record

that the complainant also booked another unit in the project of respondent namely Vatika Seven Elements and paid a sum of Rs. 16,45,068/-. Though, a request for transfer of that amount to the account of the subject unit was mailed by the complainant but the same was not acceded to. The complainant admittedly made a total payment of Rs. 33,32,230/- to the respondent against the allotted. It is the case of complainant that seeing a progress of both the projects, he sought to withdraw from Vatika Town Square and sought transfer of the deposited amount in the account of the subject unit. A reference in this regard has been made to email dated 06.08.2015 along with its reply dated 07.08.2015 has been made. But that request of the complainant was rejected as evident from email dated 13.08.2015 (C/4). So, in such a situation the complainant sought procedure for withdrawal from both the project by writing emails dated 14.08.2015 and 19.08.2015 respectively. But neither there was any progress of the project at the spot nor any satisfactory reply to the above-mentioned emails was received. Rather, the complainant raised his concerns to the respondent vide email dated 02.09.2015, 23.10.2015 & 25.01.2017 respectively. But instead of acting on his representations and finding a solution to the concerns raised, the respondent sends a final reminder for payment of the dues vide letter dated 15.02.2016.

14. A perusal of above-mentioned correspondent exchanged between the parties shows that the respondent did not care to attend the concerns of the complainant and rather sent reminders' for making remain payment and

which led to him to withdraw from the project by issuance of legal notices dated 03.07.2019.

15. The booking of the unit was made in favour of the complainant vide letter dated 01.09.2012 and upto that time the respondent has already received Rs. 33,32,230/- from him against the subject unit. No buyer's agreement was executed between the parties w.r.t. to the subject unit. So, the due date for completion of project and offer of possession is being taken as 3 years from the date of booking as 01.09.2015 in view of judgment of the Hon'ble Supreme Court in case of *Fortune Infrastructure & Anr. VS Trevor D'lima & Ors., [(2018) 5 SCC 442]*. Neither the respondent has yet completed the project nor made any offer of possession. So, the complainant does not want to continue with the project.
16. 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 its failure to complete or inability to give possession of the unit in accordance with the terms of allotment/agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
17. The due date of possession as per agreement for sale as mentioned in the table above is 01.09.2015 and there is delay of 4 years 2 months 10 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.....”

18. 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

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for

sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

20. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
21. The authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. Rs. 33,32,230/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Compensation

22. 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.

F. Directions of the authority

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to refund the entire amount of Rs. Rs. 33,32,230/- paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development Rules, 2017) from the date of each payment till the actual date of realization of the amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.03.2023