

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

Complaint no. : 6082 of 2019
First date of hearing: 06.02.2020
Date of decision : 09.08.2022

1. Sanjay Mathur
2. Neera Mathur

Both RR/o: B4-404, Sahara Grace, MG Road,
Behind Sahara Mall, Chakarpur, Gurugram-122002

Complainants

Versus

M/s Vatika Limited

Office: Vatika Triangle, 4th Floor, , Sushant Lok-
Phase-I, Block-A, Mehrauli-Gurgaon Road,
Gurgaon-122002.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Mudit Gupta (Advocate)
Sh. CK Sharma & Dhruv Dutt Sharma
(Advocates)

**Counsel for the complainants
Counsels for the Respondent**

ORDER

1. The present complaint dated 10.12.2019 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations

made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika One India Next Pvt. Ltd.", Sector 81,82, 82A, 83, 84, 85 Gurugram, Haryana.
2.	Nature of the project	Commercial complex
3.	Project area	281.58 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018
5.	Name of licensee	Browz Technologies Pvt. Ltd. & 38 Anr. Blossom Properties Pvt. Ltd. & 43 Anr.
6.	RERA Registered/ not registered	Not registered
7.	Date of booking	17.11.2015 (page 22 of complaint)
8.	Date of allotment	15.02.2016 (page 28 of complaint)
9.	Date of builder buyer agreement	N/A
10.	Unit no.	P-287 (page 28 of complaint)
11.	Unit area admeasuring	500 sq.ft. (Page no. 28 of complaint)
12.	Due date of possession	15.02.2019 (in absence of BBA, the due date is calculated from the date of allotment letter)
13.	Total sale consideration	Not given in file

14.	Amount paid by the complainants	Rs. 44,53,291/- (page 15 of complaint)
15.	Occupation certificate	Not obtained
16.	Undertaking cum indemnity	08.04.2019 (Page 40 of complaint)

B. Facts of the complaint

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

- I. That the complainants submitted application form, dated 17.11.2015, for allotment of a commercial unit in the project of the respondent. The complainants also issued a cheque bearing no.000006, dated 17.11.2015, for a sum of Rs.2,00,000/- towards the booking amount of a commercial unit in the said project. It is pertinent to mention here that the aforesaid cheque was duly encashed by the respondent and a receipt, dated 08.12.2015, was also issued by it acknowledging the receipt of the same. On 07.01.2016, the complainants further paid a sum of Rs.42,53,291/- towards the commercial unit. Thus, it is apparent from the aforesaid that even before the allotment of a commercial unit, the respondent obtained Rs.44,53,291/- from the complainants.
- II. On 15.02.2016, the respondent issued an allotment letter and allotted said unit in the said project in favour of the complainants. Under the allotment letter various terms and conditions were agreed upon the parties, inter-alia, stated hereinbelow as a ready reference:
 - a. The complainants were allotted priority no.P-287, admeasuring 500 sq. ft. of super area in the said project.
 - b. The complainants were entitled to monthly assured return/commitment charges of Rs.75.83/- per sq. ft. payable till the completion of the said project.

- c. Post completion of the said project, an amount equivalent to Rs.65/- per sq. ft. of super area of the said unit per month was be paid as commitment return from the date of completion of the said project for upto thirty six (36) months or till the said unit is put on lease, whichever is earlier.
- III. Subsequently, in terms of the allotment letter, the complainants duly received assured return/commitment charges till October, 2018. Subsequent to October, 2018, the complainants did not receive any assured return / commitment charge, whatsoever, in terms of the allotment letter.
- IV. Moreover, it is respectfully submitted that the complainants have repeatedly requested the respondent to execute a builder buyer agreement in respect of the said unit. However, till date, neither the builder buyer agreement has been executed nor possession of the said unit has been handed over to the complainants.
- V. Thereafter, to the shock of the complainants, the respondent vide email, dated 09.11.2018, informed the complainants that they have suspended all the return-based sales in the said project. Moreover, the respondent company has stopped making payments towards the assured returns / commitment charges as agreed and promised under the allotment letter issued by the respondent. It was for the very first instance, the complainants realized that the offer of assured return/commitment charges to the complainants was made by the respondent with sole intention to dupe and induce them to invest in the said project their hard-earned money.
- VI. Consequently, the complainants went to the project site to inspect the current status of the construction of the said project. To the shock of the complainants, they found that no construction, whatsoever, has been

carried out on the project site. Immediately thereafter, the complainants contacted the respondent vide email, dated 27.02.2019, seeking explanation for such inordinate delay in the completion of the said project. The complainants further sought outstanding assured return/commitment charges from the respondent as agreed under the allotment letter. The complainants again sent email(s) dated, 05.03.2019 and 27.03.2019, seeking explanation sought vide email, dated 27.02.2019. However, the respondent failed to respond to the aforesaid emails.

- VII. Consequently, as a result of inordinate delay even in commencing the construction of the said project and the lackadaisical approach of the respondent company, the complainants sought cancellation of the allotment letter and refund of the entire amount paid against the said unit. It is submitted that vide email, dated 08.04.2019, the respondent duly accepted the request of the complainants to cancel the allotment and sought original documents of the said Unit, for the purpose of cancellation of the said unit. It is respectfully submitted that on the very same date i.e., 08.04.2019, the complainants duly submitted all the original and required documents with the respondent to initiate cancellation of the said Unit. The respondent duly acknowledged the receipt of the documents from the complainants for cancellation of the said unit. However, it is respectfully submitted that even after receipt of the original documents from the complainants, the respondent did not refund the amount invested by the complainants in the said unit. As a result, the complainants, on 03.06.2019, sought status of the refund of the said unit. In response vide email, dated 04.06.2019, the respondent apprised that the cancellation request of the said unit is in process and the refund amount shall be released soon.
- VIII. On 21.06.2019, the respondent vide email, further confirmed that the disbursement of the refund amount would be completed within ninety

(90) days in three (3) equal installments. However, the respondent has not refunded even a single penny to the complainants against the cancellation of the said unit. Subsequently, the complainants contacted the respondent to seek status of their refund amount towards the cancellation of the said unit. The complainants even met the representatives of the respondent on 13.09.2019, However, on one pretext or another, the respondent kept delaying the disbursement of the refund amount to the complainants.

IX. It is respectfully submitted that till date, no construction, whatsoever, have taken place on the project site. Moreover, the respondent has duly accepted the request of the complainants to cancel the allotment of the said unit. Furthermore, till date, the respondent has not got the said project registered under the Act, 2016, showcasing that the respondent never had the intention to construct the said project.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. Direct the respondent to refund of the entire amount of Rs.44,53,291/- paid by the complainants to the respondent for the said unit.
 - II. Direct the respondent to compensate for final loss.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - a. That the complaint filed by the complainants before the adjudicating officer, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this adjudicating officer as the relief



being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this adjudicating officer.

- b. 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.
- c. That it is a matter of record and rather a conceded position that no agreement much less as referred to under the provisions of 2016 Act and 2017 Haryana rules, has been executed between respondent and the complainants.
- d. That it is pertinent to mention here that the complainants are real estate investors who have made the booking with the respondent only with an intention to make profit in a short span of time. However, it appears that their calculations 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. It is further submitted that no buyer's agreement has been executed between the parties till date. Rather only an application form was submitted by the complainants. Further, an acknowledgment of receipt was issued in favour of the complainants wherein assured monthly return was committed by the respondent to them. It is also submitted that the respondent duly paid the assured return till October, 2018. However, due to the evolving policies, regulations and legal framework governing real estate investments, the respondent informed the allottees that as per the guidelines of newly promulgated Ordinance i.e. "Banning of Unregulated Deposit Scheme Ordinance 2018" and further "Banning of Unregulated Deposit Scheme Act 2019" the respondent suspended all

return based sales and stopped making payments towards the assured returns. In these circumstances, the present complaint is not maintainable before this court.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1)RCR(C), 357 and followed 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*** 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to

entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund of the entire amount of Rs. 44,53,291/- paid by the complainants to the respondent for the said unit.

14. On 17.12.2015, the complainants booked a commercial unit of 500 sq. ft. in the above-mentioned project of respondent and paid RS. 44,53,291/- in all up to 07.01.2016. The respondent acknowledged the payment of the amount and that allotted the above mentioned unit on 15.02.2016. It was agreed by the respondent who assured the complainant that it would be liable to pay Rs. 75.83 per sq. ft. per month totaling to Rs. 37,915/- per month till the completion of the said project and thereafter on the completion of the said project, it would pay Rs. 65/- per sq. ft. per month being Rs. 32,500/- per month to the complainants up to three years or until the said unit put on lease, whichever is earlier as assured returns. Though, the respondent paid the agreed amount up to October 2018, but did not obey the terms and conditions of the allotment letter. A number of reminders w.e.f. 27.02.2019, 05.03.2019 & 27.03.2019 (annexure F) were issued by the complainants but with no positive results. So, due to that attitude of the respondent, the complainants vide letter dated 08.04.2019 wrote for cancellation of the allotted unit and seeking refund. Their request in this regard was accepted on the same day and the process for cancellation of allotted unit was initiated leading to giving an undertaking by the complainants. It is a fact, that in pursuant to that settlement, the complainants agreed to receive in all a sum of Rs. 85,81,022/- from the respondent by way of 4 monthly installments. But despite issuance of reminders through emails dated 04.06.2019, 21.06.2019, 17.09.2019, 18.09.2019, nothing materialized, and which led to filing of the complaint on 10.12.2019 seeking refund of the paid up amount.

The response filled by the respondent is evasive besides taking a plea that assured returns were banned by the BUDS, Act 2019.

15. No BBA was executed between the parties w.r.t the allotted unit. A perusal of booking application dated 17.11.2015 and allotment letter dated 15.12.2016 respectively leads the authority nowhere to ascertain the terms and conditions of booking, the due date of possession and completion of the project etc., So, from the date of allotment i.e., 15.02.2016, a reasonable period of three years is already to be Taken for completion of the project and offer of possession of the allotted unit. Thus, calculated at this, the due date for offer of possession comes to **15.02.2019**. But the respondent was admittedly paying assured returns against the allotted unit upto October 2018. Though there was an undertaking executed on behalf of complainants on 08.04.2019 for settlement for a sum of Rs. 85,81,022/- but that was not honored by the respondent. So, keeping in view all these facts, the complainants withdrew from the project after the due date and are entitled to seek refund of the paid-up amount less the amount already received by them by way of assured returns. Both the parties agreed that the refund shall be allowed and interest on the refund amount shall be payable only after the last date of payment of assured return till actual payment.
16. 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"

17. 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.
18. 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.
19. The authority hereby directs the promoter to refund the paid-up amount less the amount already received by the complainants by way of assured returns.

E. II. Direct the respondent to compensate for final loss.


20. The complainants are also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating

officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

21. 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/promoter is directed to refund the paid-up amount of Rs. 44,53,291/- less the amount already received by the complainants by way of assured returns.
 - 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.
22. Complaint stands disposed of.
23. File be consigned to registry.

V.1 - 3
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022