

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

<b>Complaint no. :</b>	<b>1534 of 2019</b>
<b>Date of filing complaint:</b>	<b>11.04.2019</b>
<b>First date of hearing:</b>	<b>10.09.2019</b>
<b>Date of decision :</b>	<b>29.03.2023</b>

Deepak Kumar Tiwari & Shelja Tiwari  
R/o: B-33/G2, block B, Dilshad Garden, Delhi-110095  
through their authorizes representative Bharat Nagpal.

**Complainants**

Versus

M/s Vatika Limited  
Office : Vatika Triangle, 4<sup>th</sup> floor, Sushant Lok, Ph-1,  
block-A, Mehrauli Gurugram Road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Sreshth Anand

**Advocate for the complainants**

Sh. Harshit Batra

**Advocate for the respondents**

**ORDER**

1. The present complaint has been filed by the complainant/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 provisions of the Act or the rules and regulations made thereunder 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"One Express City" Vatika Express City, Sector 88B, Vatika Express City, Gurugram, Haryana.
2.	Nature of the project	Residential
4.	DTCP license no.	NA
5.	Name of licensee	NA
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	1704, Tower- Sky Park (page 32 of complaint)
8.	Unit area admeasuring	1570 sq.ft.
9.	Date of booking	09.06.2014 (annexure P1, page 22 of complaint)
10.	Date of allotment	19.03.2015 (annexure P5, page 32 of complaint)
11.	Date of builder buyer agreement	Not executed
12.	Due date of possession	19.03.2018
13.	Possession clause	<b>19.03.2018</b> <i>Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> 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 <b>when there</b>



		<p><i>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 for completion of the contract.</i></p> <p>In view of the above-mentioned reasoning, the date of signing of allotment letter, 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 19.03.2018</p>
14.	Total sale price	Rs.1,15,37,145/- (as per SOA dated 18.04.2019, annexure R2, page 29 of reply)
15.	Amount paid by the complainants	Rs. 21,04,987/- (as per SOA dated 18.04.2019, annexure R2, page 29 of reply)
16.	Legal notice w.r.t. cancellation	03.03.2019 (annexure P8, page 35 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That in or around the month of June 2014, the above said booking agent asked the complainants to book a residential apartment in the newly launched project of the above said promoter named as "One Express City" situated at Vatika Express City, Gurgaon, Haryana, India. Afterwards, the above said booking agent fixed a meeting of the complainants with the sales officials of the promoter and the officials of the promoter finally convinced them to place themselves in their trap in such a vicious way so that they could not escape the same.

4. That finally the complainants agreed to book the unit in the above stated proposed project titled as "One Express City" on the assurance of the promoters that the same would be handed over to the complainants at the earliest possible which would never exceed a stipulated time of 12 months.
5. That the above said promoters asked the complainants to fill a form titled as "Expression of Interest" for a residential apartment along with a few other documents and forms. As per the said EOI, they were asked to express his interest in a residential unit of approximately Rs. 1,550/- sq.ft. of super area at the same rate of Rs. 6,547/- per sq.ft. and were asked to pay a sum of Rs. 3,00,000/- as registration charges of the same which were duly paid by the complainants to the promoters from their hard-earned money.
6. That on or before 25.07.2014, the above said promoters again contacted the complainants and asked that the proposed project had been approved by the concerned Authorities and construction work has been started and asked them to pay the second instalment amount to Rs. 7,42,345/-.
7. That in or about the month of September 2014, the above-said promoter again contacted the complainants and falsely asserted that the construction of the apartments was going on war-footing and again asked them to release the third instalment for the same, for which an amount of Rs.10,42,345/- was again paid by them to the promoter. They have till date paid to the promoter sum of Rs 20,84,690/- of which all the three receipts were also issued by the promoter vide its letter dated 17.04.2015.
8. That in or about the month of January, 2019, the complainants came to know from some reliable sources that the promoter has not yet laid even a single brick in the name of the said residential apartments for which the promoter was demanding fourth instalment from them. When the



complainants came to know that he has been cheated and his hard-earned money has been grabbed by the promoter, they immediately contacted the promoter, but the promoter didn't reply satisfactorily. When the complainants insisted for the same, the promoter admitted that they have not yet laid even a single brick in the name of the said project and the same was merely going on in papers in order to extort money from the public.

9. That when the complainants asked the promoter to return his whole amount, the promoter assured them to return the same within a stipulated time. The promoter failed to return the said amount within stipulated time-period, although, it was the duty of the same to return the amount within the said period. They asked and requested the promoter several times to return the said deposited amount with interest@18%p.a., but the promoter always avoided the same on one pretext or the other.
10. That the complainants relying on false credentials and genuineness, waited patiently for the aforesaid payment. However, to the shock and surprise, the promoter has not obliged the legitimate payment of the complainant till date and time.
11. That the complainants through their counsel issued a legal notice to the promoter and seek refund of their entire hard earned deposited money of Rs. 20,84,690/- along with interest @18% p.a. from the date of last payment i.e., 23.09.2014 till the date of actual realization. However, inspite of due service of the said legal notice the respondent did not bother to refund any amount or issue reply against said notice.

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

12. The complainants have sought following relief(s):



- i. Direct the respondent to refund the total amount of Rs. 20,84,690/- to the complainants along with the prescribed rate of interest as per the applicable rules.
- ii. Compensation.

**D. Reply by respondent:**

13. That the complaint filed by the complainants before the Authority besides being misconceived and erroneous, is untenable in the eyes of law. They have misdirected in filing the above captioned complaint before the Authority as the reliefs being claimed by them cannot be said to even fall within the realm of jurisdiction of the Authority.
14. That the respondent raised the demands as per the terms and payment plan opted by the complainants and they were aware about all the terms and conditions of the same which was duly signed by them by their own free will and consent at the time of booking.
15. That the complainants failed to fulfil their obligations towards the payment. They have made the payment of only Rs. 20,84,690/- till September 2014 out of total sale consideration of Rs 10,11,48,625/- i.e. 20%. The complainants since from the time of booking have sole intention to harass the respondent and to demand for extra money in future.
16. That the respondent was always in contact with the complainants and were informing them about the updates of the project from time to time vide emails and telephonically. They were updated about the status of the project at regular intervals.
17. That the primary reason of delay was communicated to the complainants several times during their visit to office of the respondent and telephonically as well and even offered the re-allotment in another project of the respondent, but they never reverted on the same. They are making



such unreasonable claims at such a belated stage knowing fully well that there is slump in a real estate sector and the property booked by the complainants would not fetch the desired profit as expected by them. Such claims made by them are mere counterblasts for their own breaches and defaults which is not attributable to the respondent. Further, the respondent has not adopted any unfair trade practice or even otherwise. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition, and without prejudice to the aforesaid submissions, that in any event, the complaint, as filed, is not maintainable in the present form, before this Hon'ble Authority.

18. 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:**

19. 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**

20. 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**

21. 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)(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.*

22. 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.
23. 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 calls*



*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."*

24. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

**F. Findings on the relief sought by the complainant:**

- F.1 Direct the respondent to refund the paid amount of Rs. 21,04,987/- along with interest.**

25. In the present complaint, the complainant booked a unit on 09.06.2014 in the above said project for a total sale consideration of Rs. 1,15,37,145/-. On 19.03.2015, the respondent issued an allotment letter and allotted a unit no. 1704. The complainants paid an amount of Rs.21,04,987/- 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. So, the due date for completion of project and offer of possession is being taken as 3 years from the date of allotment as 19.03.2018 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.

26. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and 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.
27. 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 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....."*
28. 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. 2021-2022, RCR(c), 357* and 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 that :



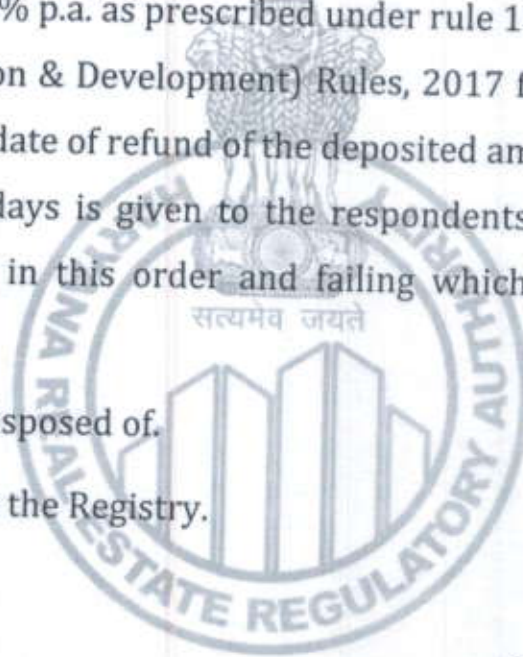


*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right 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."*

29. 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 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.
30. The authority hereby directs the promoter to return to the complainant the amount received i.e., Rs. 21,04,987/- 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 refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid.*

**G. Directions of the Authority:**

31. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent/promoter is directed to refund the entire amount of Rs. 21,04,987/- 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.
  - A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
32. Complaint stands disposed of.
33. File be consigned to the Registry.



  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.03.2023

**HARERA**  
**GURUGRAM**