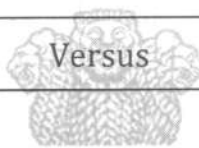


**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. :	986 of 2022
Date of filing complaint:	30.03.2022
First date of hearing:	23.08.2022
Date of decision :	15.03.2023

Vaarun Munjal & Isha Madhan <b>Bot RR/o:</b> 1104, Lake City Tower, Cluster-D, J2T, Dubai UAE.	<b>Complainants</b>
 Versus	
M/s Vatika Limited <b>address:</b> A-002, INXT City Centre, Ground Floor, Block -A, Sector -83, Vatika India Next Gurugram, Haryana - 122012.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Rajender Nath Dixit	Complainants
S/Sh. Venket Rao & Pankaj Chandola	Respondent

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

the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S.no	Heads	Information
1.	Project name and location	“Vatika Town Square” at sector 82, Vatika India Next, Gurgaon, Haryana.
2.	Project area	1.60 acres
3.	Nature of the project	Commercial complex
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	40 of 2021 dated 10.08.2021 valid upto 31.03.2022
6.	Unit no.	D-511, 5 <sup>th</sup> floor (Page 16 of complaint)
7.	Unit area admeasuring	524 sq.ft.
8.	Date of application form	21.10.2014 (page 16 of complaint)
9.	Date of builder buyer agreement	15.05.2015 (Page 26 of complaint)
10.	Due date of possession	15.05.2019 [Due date of possession calculated from the date of BBA]

11.	Total sale consideration	Rs. 47,07,616/- as per SOA dated 22.11.2017 (page 56 of complaint)
12.	Amount paid by the complainants	Rs. 19,34,612/- as per SOA dated 22.11.2017 (page 56 of complaint)
13.	Occupation certificate	Not obtained
14.	Intimation of possession	15.02.2019 (page 58 of complaint) <i>Invalid as OC has not been received till now.</i>

**B. Facts of the complaint:**

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

- a. That the complainants booked a unit no. D-511, level-5, Town Square, on 21.10.2014 by making a payment of Rs. 4,83,653/-. Thereafter, an allotment letter dated was issued in favour of complainants and allotted a unit bearing no. D-511, level-5, town Square, Sector 82-A for a total sale consideration of Rs. 47,07,616/- against which the complainants paid an amount of Rs. 19,34,612/-. On 15.05.2015, a buyer's agreement was executed between the parties and the due date of handing over of possession was 15.05.2019.
- b. That the respondent issued a possession letter on 15.02.2019 and raised demand of final payment. The possession letter was invalid as the respondent has not received the occupation certificate till now.
- c. That despite lapse of long time, no valid offer of possession has been made and the allottee now wishes to withdraw from the project and is seeking refund of the amount deposited with interest.

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



4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainants.


**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:
- (a) That the complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. She has to failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. She is raising false, misleading and baseless allegations against the it with intent to make unlawful gains.
  - (b) It is submitted that the complainants have not approached the Authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merit and the same be dismissed with cost.
  - (c) At the outset, around October 2014, the complainants learned about the commercial project launched by the respondent titled as "**Vatika Town Square 2**" situated at Sector 82, Gurugram and visited its office to know the details of the said project.
  - (d) That after having dire interest in the commercial project constructed by the respondent, the complainants booked a unit vide application form dated 21.10.2014. the complainants were aware of each and every term of the aforesaid application





and only after being fully satisfied agreed to sign without any protest any demur.

- (e) That on 21.10.2014; the respondent issued an allotment letter to the complainants and thereby allotted a unit bearing no. D-511, level 5 admeasuring to 524 Sq. ft. for a basic sale consideration of Rs. 46,63,600/- in the aforesaid project. On 15.05.2015, a builder buyer agreement was executed between the parties for the said unit. As per the agreement so signed and acknowledged the respondent herein provided and estimated time period 48 months for completing the construction of the project and the same was subject to various hindrances in midway of construction of the project which are purely beyond the control of the respondent.
- (f) That the complainants in the complaint under reply have evidently mentioned that the buyer's agreement was signed and executed on 15.05.2015 and as per the same it was bound to handover the possession of the unit subject to any delay beyond its control.
- (g) That the complainants were well aware of every term of the said agreement and agreed to sign over the same after being satisfied with each and every term at free will and without any protest or demur. As per the agreement the complainants were aware that the possession of the said unit was subject to timely payment of instalment and the same was essence of the contract.
- (h) Despite, being aware of the payments schedule and the fact that timely payment is essence for completion of the project. 



they have failed to make the requisite payment of the instalment as and when demanded by it in accordance with the payment schedule. The complainants in the matter have merely paid an amount of Rs. 19,34,612/- against the total sale consideration of Rs. 47,07,616/- and still a substantial amount of money is due and payable on account of the complaint since the year 2014.

- (i) That the complainants in the complaint have merely paid a partial amount against the total sale consideration and have failed to adhere to the payment schedule which was well known to the complainants. It is not out of place to mention that the project in question tend to get affected due to non-payment of the instalment by various allottee including the complainants.
- (j) That the said agreement for the said unit in question was signed by the complainants on 15.05.2015, and as per the agreement so signed and acknowledged the complainants were aware of the facts that it was obligated to handover the possession of the said unit by 15.05.2019.
- (k) That inspite after not receiving the instalment as and when due in respect to the unit in question the respondent had completed the construction of the project. it had already offered the possession of the unit and had granted final opportunity to the complainants to come ahead and take the possession of the said unit post clearing the amount due and payable on account of the complainants.



- (l) That the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the DTCP, Haryana and any subsequent amendment in the unit plans as may be made from time to time by the company & approved by the DTCP, Haryana from time to time. Subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted/ group housing/ commercial/ institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high-tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
- (m) Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company, it was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the company's project. to further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the projects, forceful unauthorised occupation of certain parcels by some



farmers coupled with other regular obstructions and impediments beyond the control of the company has resulted in the company being unable to deliver.

- (n) That, apart from the above, the progress of the construction of the project was also affected due to various other underseen circumstances such as re-routing of high-tension lines passing through the lands resulting in inevitable change in the layout plans.
- (o) That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the buyer's agreement. It is pertinent to apprise to the Authority that the development work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of GST Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretched its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST, 2017.
- (p) That even after not receiving the entire sale consideration and facing various hindrances in mind-way of the construction of the project, the respondent herein had managed to complete the construction of the said unit within the proposed timelines and had offered the possession on 15.02.2019.
- (q) That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made





against the respondent. The complainants have not approached the Authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the Authority that she is guilty of placing untrue facts and are attempting to hide the true colour of her intention.

- (r) That the complainants, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainantd are sustainable before the Authority and in the interest of justice.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties. The written submissions made by both the parties along with documents have also been perused by the authority.

**E. Jurisdiction of the authority:**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram

District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

## **E. II Subject matter jurisdiction**

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

### **Section 11(4)(a)**

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

### **Section 34-Functions of the Authority:**

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in

***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.***” ***SCC Online SC 1044*** decided on 11.11.2021 wherein it has been laid down as under:

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

12. 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 objections raised by the respondent:**

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

*N*

13. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 15.05.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 15.05.2019. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent-builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

14. 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."*

15. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.05.2019 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.

**F.I Direct the respondent to refund the entire amount paid by the complainants.**

16. The complainants booked a unit, bearing no D-511, 5<sup>th</sup> floor, and having a super area of 524 sq. ft., in the said project. On 15.05.2015, a builder buyer agreement was executed between the parties wherein it was concurred that the said unit would be bought for a



sale consideration of Rs. 47,07,616/-. Further, it was promised to the complainant's that the possession of the said flat would be provided within 48 months and same was also consolidated in the said builder buyer's agreement. The complainants paid the rest of the consideration i.e., Rs. 19,34,612/- through different transactions.

17. The respondent stated in reply that the complainants being the habitual defaulter in terms of payment has failed to adhere to the payment plan and violated the terms and conditions of agreement. It is to be noted that the complainants merely paid an amount of Rs. 19,34,612/- towards the total agreed sale consideration and still a substantial amount of money is due and payable.
18. Keeping in view the fact that the allottee/complainants 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.
19. The due date of possession as per agreement for sale as mentioned in the table above is 15.05.2019 and there is delay of 2 year 10 months 15 days on the date of filing of the complaint.
20. 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....."*

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and ORS. 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."*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for



sale under section 11(4)(a). 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.

23. The authority hereby directs the promoter to return to the complainants the amount received i.e. Rs.19,34,612/- 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*.

**H. Directions of the Authority:**

24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to return the amount received i.e., Rs. 19,34,612/- to the complainants 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





ii. 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.

25. Complaint stands disposed of.

26. File be consigned to the registry.

Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 15.03.2023**



HARERA  
GURUGRAM