

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

Complaint no. :	763 of 2020
Date of filing complaint:	12.03.2020
First date of hearing:	03.03.2020
Date of decision :	19.04.2023

Shipra Gupta

R/o: H.No.19, Bahubali Enclave, Karkar Dooma, New
Delhi.

Complainant

Versus

1. M/s Vatika Sovereign Park Pvt. Ltd.

2. M/s Vatika Limited

Office : Vatika Triangle, 4th floor, Sushant Lok, Ph-
1, block-A, Mehrauli Gurugram Road, Gurugram-
122002

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Vaibhav Sharma

Advocate for the complainant

Sh. Venket Rao & Pankaj Chandola

Advocate for the respondents

ORDER

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

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 complainant, 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 of the project	Sovereign Park, Sector 99, Gurgaon, Haryana.
2.	Project area	10.43125 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	119 of 2012 dated 06.12.2012
5.	Validity of license	05.12.2016
6.	Name of the licensee	M/s Planet Earthstate Pvt. Ltd. & others
7.	RERA registered/not registered	Registered vide no. 281 of 2017 dated 09.10.2017 area admeasuring 91345.535 sqm.
8.	Valid up to	31.03.2021
9.	Date of booking	02.01.2013 (As alleged by the respondent on page no. 01 of reply)
10.	Unit details	801, 8 th floor, building A (Page 25 of complaint)
11.	Unit area admeasuring	2610 sq. ft
12.	Date of execution of BBA	11.08.2014 (Page no. 22 of complaint)



13.	Possession clause	<p>13. Schedule for possession of the said apartment.</p> <p>The developer based on its present plans and estimated and subject to all just exceptions, contemplates to complete construction of this said building/said apartment within a period of 48 months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 14 to 17 & 37 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure -I or as per the demands raised by the developer 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 (Emphasised supplied)</p> <p>(Page 33 of complaint)</p>
14.	Due date of possession	11.08.2018 (Calculated from date of agreement dated 11.08.2014)
15.	Total sale price	Rs.2,28,39,287/- (inclusive BSP, PLC, EDC/IDC, IFMSD) (As per SOA dated 09.12.2014 page 19 of complaint)
16.	Basic sale price	Rs.1,99,24,087/- (Page 19 of complaint)
17.	Amount paid by the complainant	Rs. 38,12,746/- (As per SOA dated 09.12.2014 page 19 of complaint)
18.	Occupation certificate /Completion certificate	Not received



19.	Offer of possession	Not offered
20.	Termination cum refund letter	15.07.2015 (page 86 of complaint)

B. Facts of the complaint:

3. That the complainant believing the representations and claims at the pretext of the respondents through authorized representatives, booked an apartment in the said project on 02.01.2013 details of being such- unit no. 801, tower A, Sector-99, Gurugram, admeasuring super area 2610 sq. ft. and accordingly paid an amount of Rs. 10,00,000/-. The respondents assured the complainant to handover the said unit within 48 months from the date of the booking and also assured that the builder buyer agreement in respect of the booked unit would be executed subsequently. The complainant as per the payment schedule and believing that the respondents are developing project on time, made them payment of Rs. 28,12,746/- from 24.06.2013 to 31.01.2014 towards the sale consideration of the unit.
4. That after 2.5 years of booking, in the year 2015, the respondents sent a copy of buyer agreement for signing. It is submitted that at the time of booking, it assured the complainant that the possession of the unit would be delivered within 48 months from the date of booking and the agreement would be executed subsequent to booking. However, the respondents failed to execute the agreement as promised. The respondents with a fraudulent intention assured her that the time period between the booking of unit till signing to the agreement would include the time period of delivery of possession. However, the as per the clause 13 of the agreement sent by them provided that the possession of the unit would be delivered

within 48 months from the date of execution of agreement. The complainant visited the office of the respondents and raised her concern in respect of arbitrary agreement and their dominant action. It clearly refused to resolve the concern of the complainant and told that the agreement is in a standard format and no changes could be made as per earlier promises. Feeling cheated by the fraudulent and arbitrary act of the respondents, the complainant requested it to refund the entire amount paid by her. Their official assured her that the refund of the amount paid would be processed soon. The respondents being in a dominant position and having malicious intention to cheat and dupe the complainant again raised the demands and reminders. She raised her concern with respect to the not appreciating her queries or providing any credible solution.

5. That instead of redressing the grievances of the complainant, the respondents consistently raised demands and sent reminders for execution of buyer's agreement. The complainant several times visited their office and raised her concern again and again. However, every time, the complainant returned empty handed.
6. That the respondents being in a dominant position, sent a termination cum refund letter to the complainant vide letter dated 15.07.2015 and deducted Rs. 31,67,316/- from the total paid up amount i.e., Rs. 38,12,746/-. Thus, the amount to be refunded by the respondents was reduced to merely Rs. 6,45,429/-. The complainant objected their unlawful act by visiting the office and requested them to refund the entire amount paid along with interest.
7. That the respondents represented that they are license holders for the project and had fraudulently showed that they are license holders of license number 119/2012 in advt. of Delhi editions of "Hindustan" (Hindi)

dated 25/09/2014 and "Times of India" dated 28/09/2014. The Vatika Ltd. was not authorized to give any advertisement for the sale of property as it was not the license holder as per Haryana Development and Regulation of Urban Areas Act, 1975 as the said license was issued in favour to Plant Earth Estate Private Limited.

8. The complainant came to know about this from replies of RTI applications made to various officials. Moreover, the Department of Town Country Planning has not issued any sanction to Planet Earth for giving permission to Vatika Limited to sell any property. The Vatika Limited had deliberately concealed this fact from the complainant. Even after passing of 6 years of booking, the respondents neither completed the project nor refunded the money paid by the complainant. They with malafide intention consistently ignored the request of the complainant to refund the amount paid by her.
9. The complainant visited the site of the project and was shocked to saw that there was no progress in the construction work of the project and it is nowhere at the stage of completion. The construction/development work of the project at the site was stalled since very long period.
10. That the complainant did not receive any update from the respondents regarding status of the work nor refund of the amount paid. The complainant believed the respondents and paid the amount of **Rs. 38,12,746.00/-** against the total price of the unit. However, as per the payment schedule (i.e., CLP), the complainant paid more than the development work at the site. The respondents have raised the demands without achieving the particular stage of construction. The complainant has at all times made payment against the demands of the respondents and has preferred to stop further payment due to the fact that they failed to keep promises regarding to the time period of the handing over of

possession as already stated in earlier paras and the project was far from being completed. Moreover, in absence of any specific documentation regarding the project, the complainant cannot keep transferring lakhs and lakhs of amount to the respondents. The present case is a clear exploitation of innocence and beliefs of the complainant and an act of the respondents to retain the complainants hard-earned money in illegal manner.

11. That illegal and unethical conduct of the respondents are evident from the fact that prior to obtaining license from Town & Country Planning Department, Haryana, they collected payments towards the unit in question. At the time of the booking of the unit, the respondents had assured that all the formalities have been done and the development work would commence immediately, and the possession of the unit would be handed over to complainant within 48 months from the date of booking.
12. That the respondents have adopted unfair trade practice in conducting their business and the clearly reflects that aforesaid act on their part are arbitrary, illegal and malafide. Hence, this complaint seeking refund of the paid up amount besides interest as prayed above was filed.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):
 - i. Direct the respondents to refund the entire amount paid by the complainant along with the prescribed rate of interest as per the applicable rules.
 - ii. To direct the respondents to pay the compensation of Rs. 10,00,000/- for causing mental agony, harassment to the complainant.
 - iii. To direct the respondents to pay the compensation of Rs. 1,00,000/- towards legal costs.

D. Reply by respondents:

The respondents by way of written reply dated 07.12.2022, made the following submissions:

14. That after having keen interest in the above said project launched by the respondent i.e., Sovereign Park, the complainant upon her own examination and investigation desired to purchase a flat in the year 2013 and approached them on 02.01.2013 and booked a unit bearing no. 801, admeasuring super area 2610 sq.ft. for a total sale consideration of Rs. 2,28,39,287/-. The buyer's agreement dated 11.08.2014 was executed between the parties for the allotted unit. Additionally, the clause 6 of the agreement specifically articulates that the timely payments are the essence of the agreement.
15. That as per clause 13 of the agreement, the due date for handing over of possession to the complainant was within 48 months from the date of execution of the buyer's agreement. Accordingly, handing over of possession was supposed to be done on or before 11.08.2018. However, the possession of a unit was subject to the consideration of clause 14-17 & 37 of the agreement.
16. It is pertinent to mention herein that the complainant defaulted in the payments as prescribed under the payment schedule enclosed in the agreement and also failed to recognise the demand notices which were sent to her. In order to substantiate this fact, it is relevant to mention herein that the complainant stated and accepted that payment of Rs. 38,12,746/- was made by her and which computes to be less than 17% of the total sale consideration of the unit.



17. It is appurtenant to note that the complainant has miserably failed in adhering her contractual obligation of making the timely payments. Further, clause 6 of the agreement specifically manifests those timely payments being the essence of the agreement. This fact reflects the reality wherein complainant has blatantly failed to comply with the agreed terms of the agreement.
18. Therefore, the respondents exhausting their right in accordance with clause 6 of the agreement, cancelled the allotment vide termination letter dated 15.07.2015. It is pertinent to bring into the knowledge of the Ld. court that the complainant had already received the refund of the amount paid by the respondents post cancellation of the unit way back in the year 2015. Despite after receiving the refund way back in the year 2015, the complainant has now approached the Authority in the year 2020.
19. It is relevant to mention herein that complainant has no right to seek the refund after five years of issuance of cancellation letter. Further, she had accepted the refunded amount and neither raised any objections in line of the refund amount. Accordingly, the complainant has no right to claim any further refund from the respondents. It is to be noted, that the claim of the complainant is barred by the limitation as the time for filing any dispute or claim against the respondents had already lapsed in the year 2018. Hence, the claim is barred by the law of limitation and thus liable to be rejected on this ground alone.
20. That the respondents were 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 developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due



to the impact of Good and Services 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 respondents had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

21. That in past few years, the construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past, the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activities in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
22. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labour to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage, the construction activities could not resume at full throttle even after the lifting of ban by the Hon'ble Apex court.
23. That even before the normalcy could resume, the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure

circumstances and the said period should not be added while computing the delay.

24. The current covid-19 pandemic resulted in serious challenges to the project with no available labour, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date, the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after 25.03.2020.
25. Despite, after such obstacles in the construction activities and before the normalcy could resume, the entire nation was hit by the world wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure



circumstances and the period should be excluded while computing the delay.

26. That the complainant, had suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Ld. Authority and in the interest of justice.
27. 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 oral as well as written submissions made by the parties.

E. Jurisdiction of the authority:

28. 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

29. 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 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."

24. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter noted above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee alongwith interest at the prescribed rate.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to refund the paid amount along with interest.

25. Some of the admitted facts of the case that a project by the name of Sovereign Park, a group housing colony situated in Sector 99, Gurugram, Haryana was being developed by the respondents on the basis of DTCP license no.119 of 2012 dated 06.12.2012. The complainant coming to know about the same applied for a unit in it vide application dated 02.01.2013. She was allotted a unit detailed above by the respondents for a basic sale consideration of RS. 1,99,24,087/-. It led to execution of buyer's agreement dated 11.08.2014 between the parties setting out the terms and conditions of allotment, the price of the unit, its dimensions, the payment plan, the due date of possession and other details. In pursuant to that document, the complainant started making payment against the allotted unit and paid a total sum of RS. 38,12,746/- as evident from

statement of account dated 09.12.2014. it is the version of complaint that since the schedule of construction and its updates was not being followed by the respondents, she raised her concern in this regard and did not make the remaining payments and sought refund of the paid-up amount. But the version of respondents is otherwise and who took a plea that the complainant was a chronic defaulter from the very inception leading to a number of reminders and ultimately terminating the allotted unit vide letter dated 15.07.2015, deducting Rs. 31,67,316/- and sending the remaining amount to her by way of refund. That was done as per the terms and conditions of buyer's agreement dated 11.08.2014. Moreover, to challenge that at of the respondents, the complainant moved the civil courts at New Delhi by filing suit bearing no. **CS/8022/2016** title as **Shipra Gupta Vs Vatika and Others**. But the claim of the complainant was not accepted, and the suit filed in this regard was dismissed as withdrawn on 09.08.2018. So, this is the second round of litigation and the claim filed seeking refund is barred by limitation as well as maintainability before the Authority in view of the law led down in cases of **Mr. K. Radhakrishna IPS(Retd.) vs. Karnataka Consumer forum and another. & Malaya Kumar Ganguly vs. Dr. Sukumar Mukherjee & Ors. Criminal Appeal Nos. 1191-1194 of 2005** it was held in these cases that when the civil court directed the plaint to be returned with leave to approach the court having appropriate jurisdiction, then the Authority has neither jurisdiction to entrain the complaint, nor it is a civil court.

26. The Authority has considered the rival contentions advanced on behalf of the parties. Firstly, it is contended on behalf of the respondents that the complaint filed before the Authority is not maintainable in view of earlier litigation between the parties w.r.t. same cause of action. But the plea advanced in this regard is devoid of merit. No doubt the earlier case was filed by the complainant seeking recovery of the paid-up amount from the respondents before civil courts at New Delhi but the plaint was returned by the court vide its order dated 09.08.2018 by observing that the suit filed was beyond territorial jurisdiction and ordered return of the plaint. After that the complainant filed this complaint before the Authority on 12.02.2020. Even otherwise after the Act of 2016 came into operation, section 79 of that Act barred the jurisdiction of civil court to entertain the matter. Though, the civil court at Delhi returned the plaint for lack of jurisdiction but the Authority is not barred to entertain the complaint leaving side its merits.
27. Secondly, the complainant paid only a sum of Rs. 38,12,746/- against basic sale consideration of Rs. 1,99,24,087/- of the allotted unit and that to up to 31.01.2014. The subject unit was booked by her on 02.01.2013 by paying Rs. 5,00,000/- under the construction payment plan and she paid the abovementioned amount to the builder up to 31.01.2014. Though, she adhered to the schedule of payment up to sometime but committed default leading to issuance of termination cum refund letter on 15.07.2015 and vide which the respondent deducted Rs. 31,67,316/- out of the paid-up amount and sent a cheque bearing no. 000009 dated 09.07.2015 in favour

of complainant towards full and final settlement of her claim. Though she challenged that act of the respondents before the civil courts at New Delhi by way of a suit but the plaint was returned by the orders dated 09.08.2018 due to lack of jurisdiction and leading to filing of the present complaint. The plea raised on behalf of respondents is that the complainant kept mum for a period of about 5 years to challenge their act of cancellation of unit and thus the complaint is barred by limitation. Though, it is pleaded on behalf of complainant that illegal deduction from the paid-up amount were made but termination of the unit was made way back on 15.07.2015 as per terms and conditions of buyer's agreement dated 11.08.2014. Aggrieved by that act of the respondents, the complainant challenged the same by way of civil suit but without any success as evident from order dated 09.08.2018 passed by the court. No doubt, the complainant was litigating in the court of wrong jurisdiction but took more than 1.3 years to approach the Authority seeking the desired relief but without disclosing the factum of filing of earlier suit for the same cause of action. Thus, the complaint filed seeking refund of the paid-up amount and challenging the act of respondents issued vide letter dated 15.07.2015 is clearly barred by limitation. No doubt, the Act of 2016 does not prescribe any period of limitation but under the General clauses Act 1887, the period of three years would be there a reasonable time to challenge the validity of order dated 15.07.2015 and which admittedly expired on 15.07.2018. No doubt, the complainant was proceeding bonafide before the civil court at New Delhi for redressal of her grievances and withdrew the claim to seek

appropriate remedy but failed to disclose the same while filing the complaint before the Authority. So, benefit of the period during which was litigating before the civil courts at New Delhi cannot be given to her. Though the Id. counsel while filing written submissions referred to the ratio of law laid down in case of *Consolidates Engg. Enterprises and Ors. Vs Principal Secy. Irrigation Deptt. And Ors. MANU/SC/7460/2008* but in view of the discussion above, no benefit of the same can be given to her and the complaint is held to be filed beyond reasonable delay and the same is not maintainable. Hence, the same is hereby ordered to be dismissed.

28. Complaint stands disposed of.
29. File be consigned to the Registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.04.2023

HARERA
GURUGRAM