

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

**Complaint no.** : 2290 of 2022  
**Date of filing** : 19.05.2022  
**Date of decision** : 15.03.2023

1. Gagandeep Singh, S/o Late Arjan Singh,  
2. Bhupinder Kaur, W/o Gagandeep Singh,  
both R/o: - F-2/8A, 1<sup>st</sup> Floor, Krishna Nagar,  
Near Haryana Handloom Showroom,  
Delhi-110051.

**Complainants**

Versus

M/s Vatika Limited,  
**Regd. Office:** - Unit No. A-002, INXT City Centre,  
Block A, Sector 83, Vatika India Next,  
Gurugram-122012, Haryana.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

<b>APPEARANCE:</b>	
Sh. Uday Bedi and Jaitegan Singh Khurana	Advocates for the complainant
Sh. Venkat Rao and Pankaj Chandola	Advocates for the 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*.

**A. Unit and project related details**

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

S.N.	Particulars	Details
1.	Name of the project	Signature Villa (formerly known as Bellevue Villa) in Vatika India Next.
2.	Booking date	05.02.2010
3.	Allotment date	09.02.2010 (page 26 of complaint)
4.	Date of builder buyer agreement	25.05.2010 (page 33 of complaint)
5.	Plot no.	75/240/Simplex/BR admeasuring 1527 sq.ft. (page 36 of complaint)
6.	Addendum agreement dated	25.05.2012 (page 80 of complaint) <i>(For acknowledging change of allotted unit as the project was renamed from Bellevue Villa to Signature Villa)</i>
7.	New plot no.	15/ST, 82 D1-9/ Simplex/ 82D1 (page 80 of complaint)
8.	Possession clause	<b>11.1 Schedule for possession of the said unit</b> <i>The company based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said unit within a period of three years from the date of execution of this agreement. However, in case the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completion the construction, unless there</i>

		<i>shall be delay or there shall be failure due to reasons mentioned in clause (12.1),(12.2),(12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in annexure iii or as per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement. (emphasis supplied)</i>
9.	Due date of possession	25.05.2013 (Calculated from date of agreement dated 25.05.2010)
10.	Total sale consideration	Rs. 88,90,499/- (BSP) Rs. 96,82,499/- (TSC)
11.	Paid up amount	Rs. 21,54,865
12.	Notice of termination	08.12.2021 (annexure A9, page 98 of complaint)
13.	Completion certificate	Not obtained
14.	Offer of possession	Not offered
15.	Letter by respondent showing their inability to complete the project and offering 6% interest.	08.12.2021 (page no. 98 of complaint)

## B. Facts of the complaint

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

- I. That the respondent was developing dwelling units on separate plots in the project named "Bellevue Residencies" in residential township named "Vatika India Next" at Sector 82, 83, Gurugram. The complainants coming to know about the same, booked a plot bearing no. 75/240/Simplex/BR, having carpet area 1527 sq.ft. in it. Thereafter, a buyer's agreement dated 25.05.2010 was executed between the parties for a total sale consideration of Rs.1,05,71,550/- and they have paid a sum of Rs.26,99,145 in all.

- II. That on 20.01.2012, the complainants received a letter from the respondent that the project name had been changed from 'Bellevue Villa' to 'Signature 2 Villas'. Thereafter, on 08.02.2012, the respondent issued another letter to the complainants asking them to execute further documents for completing the process of re-allotment in the said villa. Being left with no option, and to protect the money that had already been paid by them, they signed the required documents and acted as per the wishes of the respondent. Further, vide addendum agreement dated 25.05.2012 their allotment was changed to Villa bearing no. 15/ST. 82D1-9/240/Simplex/82D1, having carpet area 1527 sq. ft. The addendum agreement also stipulated that there shall be no other change in terms and conditions which was earlier agreed between them vide buyer's agreement dated 25.05.2010. Therefore, the possession timeline was not changed, and the respondent was still duty bound to deliver possession by 25.05.2013.
- III. That there had been no construction done at project site. So, the complainants decided to change their payment plan from home loan plan to construction linked plan. Accordingly, a letter dated 23.07.2012 was issued to them by the respondent confirming the change of payment plan. Therefore, the total consideration amount of the Villa changed from Rs.1,05,71,550/- to the revised amount of Rs.96,82,499/-. Despite receiving more than 20% of the sale consideration no construction work has begun at the project site till date and no corresponding demands have been raised by it from them.
- IV. That the respondent vide letter dated 08.12.2021 acknowledged their inability to develop the project and also offered refund of the principal amount along with 6% interest.



V. That the respondent has therefore utterly failed to comply with the said agreement and is in gross derogation of the same. Therefore, they are left with no option but to approach this authority seeking refund of the paid-up amount along with prescribed rate of interest as per Act of 2016 and HRERA Rules 2017.

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

4. The complainants have sought following relief(s).
  - a. Refund of the entire amount of Rs.26,99,145/- paid to the respondent along with prescribed rate of interest.
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.
  - i. That in around February, 2010, the complainants desired to book a unit in project of the respondent named "Bellevue Villa" at Sector 82 and 83, Gurgaon and applied for same vide application form dated 05.02.2010. Thereafter, vide welcome letter dated 09.02.2010 a Villa bearing no. 75/240/Simplex/BR was allotted to them for a total sale consideration of Rs.1,05,71,550/-. Thereafter a buyer's agreement dated 23.04.2010 was executed between the parties.
  - ii. That on 20.01.2012, the respondent upon considering certain unforeseen circumstances beyond the control and interest of the allottees, issued re-allotment letter in their favour in Signature 2 villa. Further on, 23.07.2012, an addendum agreement was executed between the parties for new villa bearing no. 15/ST.82D1-9/240/Simplex/BR in the project



Signature 2 Villas and they were well aware of the re-allotment and accepted the same after being fully satisfied.

iii. That the complainants were well aware that the possession of the unit was subject to timely payment of the amount due. However, they failed to pay the installments as and when demanded by the respondent in compliance of the payment schedule.

iv. That the delay in completing the project is due to the reasons beyond its control. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:

a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the Respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the Respondent were adversely affected and the Respondent was forced to reevaluate its construction plans which caused a long delay.

b. Delay caused by the government in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between govt. and landowners.

c. The above has resulted in delays in construction of the project, for reasons that essentially are beyond the control of respondent.

iv. That as per clause 12.5 of the agreement, it has been agreed that if the respondent is not in a position to deliver or handover the possession of the

project, then its liability shall be limited to refund the amount paid by them along with simple interest of 6% p.a. Therefore, as per terms it cancelled allotment of the complainants vide letter dated 08.12.2021.

v. All other averments made in the complaint are denied in toto.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

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

**E. II Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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.*



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.***” 2021-2022(1)RCR(C), 357:

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

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

**F. Findings on the objections raised by the respondent:**

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

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13. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as, delay caused in acquisition of land, decision of GAIL to lay down pipeline within the project 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 25.05.2010. As per terms and conditions of the said agreement the due date of handing over of possession comes out to be 25.05.2013. As per clause 12.5 of the agreement, it has been agreed that if the respondent is not in a position to deliver or handover the possession of the project, then its liability shall be limited to refund the amount paid by them along with simple interest of 6% p.a. However, it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainants.**

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

14. The complainants have submitted that they booked a unit in the respondent's project namely "Bellevue Villa" at Sector 82 and 83, Gurgaon. A buyer's agreement was executed between the parties on 25.05.2010 and allotted a Villa bearing no. 75/240/Simplex/BR. Further, vide addendum agreement dated 25.05.2012 their allotment was changed to Villa bearing no. 15/ST. 82D1-9/240/Simplex/82D1. The complainants have paid an amount of Rs. 21,54,865/- against the total sale consideration of Rs.96,82,499/-. The due date of possession is calculated as per clause 11.1 of the agreement i.e., 3 years from the date of execution of buyer's agreement. Therefore, the due date comes out to be 25.05.2013.



15. Keeping in view the fact that the complainant/allottees 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.

16. The due date of possession as per agreement for sale as mentioned in the table above is 25.05.2013. The respondent was unable to deliver the project, therefore it cancelled the allotment vide letter 08.12.2021. 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit 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....."*

17. 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*

18. 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 allottees 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 wishes 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.
19. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid along with interest. However, section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark*

*lending rates which the State Bank of India may fix from time to time for lending to the general public."*

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
22. The authority hereby directs the promoter to return to the complainants the amount received by it i.e., Rs.21,54,865/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F. Directions of the authority**

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:
- i. The respondent/promoter is directed to refund the entire amount of Rs. 21,54,865/- paid by the complainants 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.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2023

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**HARERA**  
**GURUGRAM**