BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of Decision **15.03.2023**

NAME OF THE BUILDER		**VATIKA LIMITED**			
PROJECT NAME		**Tranquil Heights**			
SR. NO.	**COMPLAINT Nos.**	**Complainant**	***versus***	**Respondents**	**Appearance**
1.	CR/1443/2021	Saurabh Jain	***Versus***	Vatika Limited	C: Alankrit Bhatnagar proxy R: Harshit Batra
2.	CR/5985/2022	Neha Arora	***Versus***	VATIKA LIMITED	C: Uday Bedi R: Venket Rao & Pankaj Chandola
3.	CR/6154/2022	Rahul Chauhan Through Sachin Chauhan	***Versus***	VATIKA LIMITED	C: Harshit Goyal R: Venket Rao & Pankaj Chandola.

CORAM:
Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between the parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely "Tranquil Heights" (Group Housing Colony), Sector 82A, Gurugram (Hr.) being developed by the same respondent-promoter i.e., Vatika Ltd. The terms and conditions of the builder buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest, & litigation expenses.

3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, total sale consideration, amount paid up & relief sought are given in the table below:

Vatika Limited							
Project Name	**Tranquil Heights (Group Housing Colony)**						
Sr. No	**Complaint No./Title/Date of filing**	**Reply status**	**Unit no.**	**Allotment letter**	**Date of execution of builder buyer's agreement** **Due Date**	**Total sale consideration Amount Paid up**	**Relief sought**
1.	CR/1443/2021 Saurabh Jain vs Vatika Limited	Received	801, tower E (Page 13 of complaint)	17.11.2014	21.05.2015 21.05.2019	**TC**-Rs. 1,66,89,520 /- **AP**- Rs. 21,30,500/-	Refund.
2.	CR/5985/2022 Neha Arora & Anr. vs Vatika Limited	Received	1404, building A (page 21 of complaint)	NA	05.05.2015 (taken from the stamp duty) [page no. 41 of complaint] 05.05.2019	**TC**-Rs. 1,13,88,335/- **AP**- Rs. 18,73,650/-(as per SOA dated 07.09.2022) Inadvertently mentioned 23,63,150/- in proceeding of the day dated 15.03.2023	Refund.
3.	CR/6154/2022 Rahul Chauhan Through Sachin Chauhan Vs. Vatika Limited	Received	2203, building D (page 4 of complaint)	NA	20.10.2015 [page no.13 of complaint] 20.10.2019	**TC**-Rs.1,88,62,700 /- **AP**- Rs. 87,77,506/-	Refund.

4. The above-mentioned complaints were filed under section 31 of the Act read with Rule 28 of the rules by the complainants against the promoter M/s Vatika Limited on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act ibid apart from contractual obligations. In some of the complaints, issues other than refund or independent issues have been raised and consequential reliefs have been sought.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant/allottees are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing ***CR/1443/2021***, titled as ***Saurabh Jain versus Vatika Ltd.*** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

7. 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. No.	Heads	Description
1.	Name and location of the project	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	M/s Stanway Developers Pvt. Limited & 3 others.
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	801, tower E (Page no. 13 of complaint)
8.	Unit area admeasuring	2290 sq. ft. (Page no. 13 of complaint)
9.	Date of allotment letter	17.11.2014 (annexure A, page 13 of complaint)
10.	Date of builder buyer agreement	21.05.2015
11.	Due date of possession	21.05.2019
12.	Possession clause	***13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT*** *The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said* ***Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in other 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 oy any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. ***Emphasis supplied***
13.	Basic sale consideration	Rs. 1,45,87,300/- [page 22 of complaint]
14.	Total sale price	Rs. 1,66,89,520/- [as per SOA dated 10.05.2021]
15.	Amount paid by the complainant	Rs. 21,30,500/- [as per SOA dated 10.05.2021]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Email	27.10.2014 w.r.t refund

B. Facts of the complaint:

The complainant submitted as under: -

8. That the complainant in the year 2013 was looking to purchase a property for residential purposes and was approached by the respondent for purchasing a unit in the residential plotted colony being developed by the respondent named "Tranquil Heights" located at sector 82A, Gurugram. The respondent presented a very rosy picture of the project and assured the complainant that the project is going to be one of its kind with world class facilities, luxury and comfort. Based on the representations made by the respondent, the complainant booked a unit in the project by making an advance payment of Rs. 6,00,000/- to the respondent as on 15.11.2013. Thereafter, the respondent allotted a unit bearing no. 801, tower E admeasuring 2290 sq.ft. vide allotment letter dated 17.11.2014. It is pertinent to submit that the said allotment

letter was issued only after collecting a substantial amount of Rs. 21,30,500/- from the complainant towards consideration of the unit.

9. Subsequently, the complainant vide email dated 26.07.2016 expressed his anger and displeasure with respect to a letter dated 17.05.2016 whereby the respondent threatened the complainant to cancel his allotment unit and forfeiture of the earnest money paid by him. He sought copies of the approvals and sanctions received by it with respect to the project and a list of banks that have approved the project or the banks from which he can obtain housing loan to make timely payments but to no avail.

10. The complainant on 11.11.2016 visited the office of the respondent and met with its representative who assured to him that the construction has started at the project site and further showed him few pictures. However, when the complainant visited the project site, the complainant was shocked to find that there has been no construction whatsoever with respect to tower E of the project in which the unit booked. Therefore, the complainant vide email dated 16.11.2016 expressed his displeasure with respect to non-commencement of construction of the project. He requested the respondent to either provide him with a separate unit with same specifications or allot a unit in some other project of the respondent. The respondent vide email dated 25.11.2016 replied to the aforesaid email of the complainant whereby it did not dispute his claim that the construction of tower E has not yet started and further sought cost of the increased area of units in tower A or D at current rate.

11. It is further pertinent to mention here that the complainant had booked the unit in the year 2014 and as per the agreement shared by the

respondent, the possession of the unit was supposed to be offered within a period of 48 months from the date of execution of agreement. Assuming that the complainant would have signed the agreement on 16.06.2015, the possession of the unit should have been granted to the complainant by July 2019. However, till date the construction of tower E has not even stated let along the possession. In the Hon'ble Supreme Court held that a period cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him, along with compensation.

12. That the complainant is a bona fide buyer and has made the booking based on the representations and assurances given by the respondent of providing timely possession of the unit. Despite an inordinate delay of more than 6 years from the promised date of possession, the construction status of the project is still at a nascent stage and the possession of the unit cannot be anticipated to be offered in the near future. therefore, the complainant seeks refund of the amount paid by them along with prescribed rate of interest. Hence, the present complaint.

C. Relief sought by the complainant(s):

13. The complainant(s) has sought following relief(s):

(i) Direct the respondent to reund the entire amount paid by the complainant along with interest at prescribed rate of interest calculated from the date of receipt of the amount till the date the amoun is refunded.

D. Reply by the respondent.

i. That the complaint has been preferred by the complainant before the Authority, under section 31 of the Act, 2016, presenting

scurrilous allegations without any concrete or credible contentions. Hence it is liable to be dismissed as it is filed without any cause of action.

ii. That the contents of the complaint herein, deliberately failed to mention the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains.

iii. That in around 2013, the complainant herein, learned about the project and reportedly approached the answering respondent to know the details of the said project. She further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

iv. That after having keen interest in the above said project launched by the respondent i.e., "Tranquil Heights", the complainant upon her own examination and investigation desired to purchase a flat in the year 2014 and approached the respondent and on 17.11.2014, booked a unit bearing no. 801, 8th floor, tower E admeasuring super area 1351 sq.ft. for a total sale consideration of Rs. 1,66,89,520/-

v. That the builder buyer agreement dated 21.05.2015 was executed between the parties for the unit bearing no. 801, 8th floor, tower E admeasuring super area 2290 sq.ft. for a total sale consideration of Rs. 1,66,89,520/- as mentioned under the clause 1 of the agreement. As per clause 13 of the agreement in the complaint, 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, the handing over of possession was supposed to be delivered on or before 21.05.2019. However, the possession of a unit was subject to the consideration of clause 14-17 & 37 of the agreement. It is to be noted, that the complainant had merely paid an amount of Rs. 21,30,500/- against the total sale consideration of Rs. 1,66,89,520/-.

vi. It is pertinent to bring into the knowledge of this authority that as per the agreement so signed and acknowledged by, the respondent provided and estimated time period of 48 months for completing of the construction for the project i.e., **"Tranquil Heights"**, and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project and which were unavoidable and purely beyond the control of it. Further, it is pertinent to mention that the project could not be completed and developed on time due to various hindrance such as government notifications from time to time force majeure conditions, breakdown of Covid-19 pandemic, laying of GAIL pipe line, acquisition of sector road land parcels in the township and other such reasons stated above and which miserably affected the construction and development of the above said project as per the proposed plans and layout plans, which were unavoidable and beyond the control of it.

vii. That the respondent after failure to complete the project as per the proposed plan and layout plan due to the aforesaid reasons elaborately, filed a proposal bearing "In Re: Regd. No. 359 of 2017

dated 17.11.2017, for the De-Registration of the **Project "Tranquil Heights"**, and settlement with existing allottees before the registry of this authority on 30.09.2022. The intention of the respondent is *bonafide* and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project as it could not be delivered due to various reasons beyond the control of the respondent as stated above. Hence, the complaint under reply is liable may kindly be tagged along with proposal for de-registration of the project "Tranquil Heights" filed by the respondent and the same be kept pending the re-registration proposal comes to finality.

viii. All other averments made in the complaint were denied in toto.

14. 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 complainant.

E. Jurisdiction of the authority

15. 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

16. 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, the authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

17. 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.*

18. 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 and followed in M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the*

refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matters detailed above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by an allottee.

F. Findings on the relief sought by the complainant(s).

Relief sought by the complainant: The complainant(s) has sought following relief(s):

i. Direct the respondent to reund the entire amount paid by the complainant along with interest at prescribed rate of interest calculated from the date of receipt of the amount till the date the amoun is refunded.

20. The complainant booked a unit bearing no. 801, tower E admeasuring 2290 sq. ft in the above-mentioned project of respondent. He paid the respondent a sum of Rs. 21,30,500/- against the total sale consideration of Rs. 1,66,89,520/-, but due to misrepresentations w.r.t. the project they did not pay the remaining amount and are seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed..... (Emphasis supplied)

21. Clause 13 of the buyer's agreement dated 21.05.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

*The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said **Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in other 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 oy any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. **Emphasis supplied***

22. **Entitlement of the complainant for refund**: The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 21.05.2015

and therefore, the due date of possession comes out to be 21.05.2019.

23. It is not disputed that the complainant is allottee of the respondent having been allotted a unit no. 801, tower E admeasuring 2290 sq. ft. of the project known as Tranquil Heights, phase I, sector 82A, Gurugram for a total sale consideration of Rs. 1,66,89,520/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and has filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site and the same has been abandoned. Moreover, a proposal for settlement with the exiting allottees of the project has been filed before the Authority on 30.09.2022. So, the complainant is right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of construction despite demands being raised and the project being abandoned as per its own version. Thus, the case squarely falls under sub clause b of section 18(1) of the Act, 2016 providing as under:

> ***Section 18: - Return of amount and compensation***
> *18(1) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

24. 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 (supra)***, observed as under:

> *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.

25. 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) of the Act. 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 she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

26. **Admissibility of refund along with prescribed rate of interest:** 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]
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

27. 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.

28. 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%.

29. The authority hereby directs the promoter to return the amount received by him 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 rules ibid.

H. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent-builder is directed to refund the paid-up amount received from each of the allottee deposited by them against their

allotted units along with interest at the prescribed rate of 10.70% per annum from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017.

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

31. These directions shall *mutatis mutandis* apply to the cases mentioned in para 3 of this order.
32. The complaint stand disposed of.
33. Files be consigned to registry.

Ashok Sangwan
Member
15.03.2023

Haryana Real Estate Regulatory Authority