

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

<b>Complaint no.</b> :	<b>2046 of 2021</b>
<b>Date of filing complaint:</b>	<b>16.04.2021</b>
<b>First date of hearing:</b>	<b>26.05.2021</b>
<b>Date of decision</b> :	<b>10.01.2023</b>

Sanjay Asri Sandhya Asri <b>Both RR/o:</b> K 10/48, 1 <sup>st</sup> floor, DLF Phase II, Gurgaon, Haryana-122001	<b>Complainants</b>
Versus	
M/s Vatika Limited <b>address:</b> Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person with Ms. Shikha proxy counsel	Complainants
Sh. Ck Sharma & Dhruv Dutt Sharma (Advocate)	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 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:

	<b>Heads</b>	<b>Information</b>
1.	Project name and location	"Tranquil Heights Ph.-I" at Sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of the licensee	M/s Stanway Developers Private Limited and 3 others
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 for area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	1004, 10 <sup>th</sup> floor, building D (page 23 of complaint)
8.	Unit area admeasuring	2650 sq. ft. (super area)
9.	Date of expression of interest	16.06.2014
10.	Date of builder buyer agreement	<b>10.08.2015</b> (page 20 of complaint)
11.	Due date of possession	10.08.2019
12.	Possession clause	<b>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b>  <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said</i>

		<i>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 &amp; 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 off this agreement. <b>Emphasis supplied</b></i>
13.	Total sale consideration	Rs. 1,91,17,100/- [as per SOA dated 27.09.2019 page 54 of complaint]
14.	Amount paid by the complainants	Rs. 89,81,864/- [as per SOA dated 27.09.2019 page 54 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
- a. The complainants booked a unit for a basic sale price + PLC of Rs. 1,82,74,400/- with the inclusion of extra charges of EDC/IDC/IFMS/escalation charges amount to Rs. 1,91,17,100/-. Thereafter, they had requested the respondent for the execution of an agreement for sale and which, was ignored by it. The respondent instead exploited them by taking almost 30% of the total sale price from them within almost a year of booking, without execution of an agreement for sale. The acts of non-

execution of an agreement for sale and taking exorbitant amount against the unit without such agreement stands to be a grave violation of section 13 of the Act.

- b. It was then on 10.08.2015 that an agreement for sale was executed between the parties. The complainants had maintained their genuineness even after the execution of the agreement and had paid all and any demand as were made by it time and again. As a matter of fact the complainants had paid more than the dues incumbent upon them as is evident from the statement of accounts dated 27.09.2019 and has paid a total amount of Rs.89,81,864/-.
- c. That the respondent has failed to stand up to the duties and obligated casted upon it by the Act, the rules and regulations thereunder and the agreement. The respondent had the duty to complete the construction of the unit within 48 months and thus making the due date of possession to be 10.08.2019. It was obligated to convey to the complainants about the development status of the unit as under clause 7 of the agreement. It has to be noted that the obligation of delivery of the unit arose before the advent of the pandemic and it should not be allowed to hide its wrongdoings behind the same.
- d. That without prejudice to the contents of the complaint, it should be noted that the registration certificate for the project expired on 30.04.2021. As the state of construction is not as such which could be completed within the said date and may amount to violation of the same. This highly affects the faith of the complainants in the project.

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

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation in accordance with the provisions of the Act.
  - ii. Direct the respondent to pay the compensation of Rs. 5,00,000/- for causing mental agony, harassment to the complainants and for violation of the obligations conferred by the Act, as per section 18(3).
  - iii. Direct the respondent to pay Rs. 1,25,000/- as litigation costs.

**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:
- (a) That the complainants have not approached the authority with clean hands and have suppressed/concealed the relevant facts with the intent to mislead this authority through the representation of the one-sided facts. It is submitted that the complaint under reply is devoid of merit and the same should be dismissed with cost.
  - (b) That in around 2014, the complainants learnt about project and repeatedly approached the respondent to know the details of the said project. They further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project. After having keen interest in the above said project launched by it i.e., "**Tranquil Heights**", the complainants upon

its own examination and investigation desired to purchase a unit and approached it on 16.06.2014 and booked a unit bearing no. 1004, admeasuring super area 2650 sq. ft for a total sale consideration of Rs. 1,82,74,400/-. Other charges i.e., IFMS, EDC/IDC, STP, gas pipeline, stamp duty etc. were to be paid additionally by them.

- (c) The buyer's agreement dated 10.08.2015 was executed between the parties for the unit bearing no. 1004, admeasuring super area 2650 Sq. Ft for a total sale consideration of Rs. 1,82,74,400/- as mentioned under the clause 1 of the agreement. Other charges i.e., IFMS, EDC/IDC, STP, gas pipeline, stamp duty etc. were to be paid additionally by them.
- (d) 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 and 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.

- (e) 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.
- (f) The complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed. Hence, the complainants may be directed by this authority to approach it as and when the application for proposal for de-registration of the project **"Tranquil Heights"** filed by it comes to finality by this authority. Hence, this complaint deserves to be dismissed.
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."*

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

**G.1 Direct the respondent to refund the paid entire amount paid by the complainants.**

12. The complainants booked a unit bearing no. 1004, 10<sup>th</sup> floor, building D admeasuring 2650 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 10.08.2015. They paid a sum of Rs. 89,81,864/- to the respondent against the total sale consideration of Rs. 1,91,17,100/- 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)*

13. Clause 13 of the buyer's agreement dated 10.08.2015 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 or any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. **Emphasis supplied***

14. **Entitlement of the complainants 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 10.05.2015 and therefore, the due date of possession comes out to be 10.05.2019.
15. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 1004, 10<sup>th</sup> floor, building D admeasuring 2650 sq. ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,91,17,100/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and it has filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site. Thus, the complainants are 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 from them and the project being abandoned.

16. 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*, 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."*

17. 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 they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

**18. 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]*

*(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."*

19. 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.

20. 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., **10.01.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 89,81,864/- with interest at the rate of 10.60% (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*.

### **G.II Litigation expenses & compensation**

22. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.


### **H. Directions of the Authority:**

23. 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 refund the entire amount of Rs. 89,81,864/- paid by the complainants along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual date of refund of the 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 the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
VI-3  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 10.01.2023**

