BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**2371 of 2022**
Date of filing complaint:	**27.05.2022**
First date of hearing:	**20.09.2022**
Date of decision :	**13.01.2023**

Ms. Arwinder kaur Ms. Surinder Kaur **Both RR/o:** 83, Narang Colony, Janakpuri, Delhi-110058	**Complainants**
Versus	
M/s Vatika Limited **address:** Vatika Triangle, 4th Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Sh. Rajan Gupta (Advocate)	Complainants
Sh. Pankaj Chandola & Mayank Grover (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:

	Heads	Information
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 Ganesh Buildtech Pvt. Ltd. & others, C/o Vatika Ltd
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.	1703, 17th floor, building A, (page 21 of complaint)
8.	Unit area admeasuring	1635 sq. ft. (super area)
9.	Date of allotment letter	16.09.2014
10.	Date of builder buyer agreement	**30.07.2015** (page 18 of complaint)
11.	Due date of possession	30.07.2019
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.	Total sale consideration	Rs. 1,12,36,946/- [as per SOA dated 11.01.2023]
14.	Amount paid by the complainants	Rs. 31,74,671/- [as per SOA dated 11.01.2023]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

***Note:** The amount paid by the complainants is corrected in this order i.e., Rs. 31,74,671 as per SOA dated 11.01.2023 annexed in the reply submitted by the respondent during the course of hearing, which is wrongly mentioned as Rs. 31,63,515/- in the proceeding of the day dated 13.01.2023.

B. Facts of the complaint:

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

   a. That complainants booked a residential apartment in above mentioned project and were allotted one residential unit bearing no. 1703, 17th floor, building A, super area admeasuring 1635 sq. ft. in "Tranquil Heights" Sector-82A, Gurugram. The total sale price of the said property was Rs. 1,07,17,016/-. They had paid the first payment of Rs. 6,00,000/- as booking amount

and till today had paid an amount of Rs. 31,63,515/-. Despite the fact that the complainants had made first payment in Nov. 2013 and further payment of Rs. 31,63,515/- till March 2015, the respondent had entered into builder buyer agreement with the complainants only on 30.07.2015 i.e., after expiry of more than eight months from the date of first payment made to the respondent. This clearly shows that the intention of the respondent from the very beginning was to cheat them as the above act was nothing but to illegally gain additional time for handing over possession by delaying the signing of the builder buyer agreement.

b. The respondent's cheating did not stop here and without giving any intimation and clarification increased the super area of the said unit from 1550 sq. ft. to 1635 sq.ft. It has never been explained that which portion of the said unit was affected due to increase in area. The increase in area was unilaterally/forcibly imposed upon the complainants resultantly increase in the sale consideration.

c. That as per clause 13 of builder buyer agreement the respondent assured the complainants that the physical possession of the said plot would be handed over within 48 months from the date of execution of this agreement i.e., by 30.07.2019.

d. That complainants had already made a payment of Rs. 31,63,515/- from Nov. 2013 to March 2015 but surprisingly there was no work at site as promised with the complainants. It is pertinent to mention here that at the time of booking in Nov. 2013 it was assured to them that construction work would be

completed within 3 years from the date of booking i.e. by Jan 2017 but said unit was not even ready as per the time schedule given in builder buyer agreement.

e. That complainants through emails dated 24.11.2015 asked the respondent to provide copies of license/approvals required from different departments as complainants visited the site and came to know that the project was abandoned from last two years and licenses of respondent given in the above project has been revoked by the government. They again vide its email dated 03.12.2015 asked it to provide relevant documents and also informed that nationalised bank like HDFC Bank refused to give loan on the above project. They also vide email dated 16.02.2016 informed it that loan amount has been sanctioned by ICICI bank, but ICICI bank has also clarified that project "Vatika Tranquil Heights" has not been approved by the bank for funding. It always preferred not to give proper information and always mislead the complainants, having no other option they send a legal notice dated 13.01.2018 to it to refund the money paid by them along with interest but it again kept on lingering on the matter on one pretext or other. However, till today the respondent had not returned the hard-earned money of the complainants and is continuously harassing the them.

f. That present project has 30 floors but till today only slab of 12th floor has been constructed and this shows that respondent's intention from the very beginning was to cheat the innocent investors, as even the licences issued by the DTCP has got cancelled.

g. That complainant having gone through immense mental agony, stress and harassment have been constantly raising the issue of huge delay with respondent, but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay has come forth from respondent's end.

h. That since the respondent gave false information about the project and failed to fulfil its promise to deliver the project in time, the complainants are no more interested in the project and wants refund of their money invested in the above project along with interest @ 24 % per annum from the date of payment till realization. It is also liable to compensate them for the cheating and harassment.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Respondent be directed to refund the money paid by the complainants along with interest @ 24 % per annum from the date of payment till realization.

ii. Respondent be further directed to pay compensation and litigation expenses of Rs. 2,00,000/- to the complainants.

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 merits and the same should be dismissed with cost.

(b) That in around 2014, the complainants herein, learned about project and repeatedly approached the answering 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 in the year 2013 and approached it and booked a unit bearing no. 1703, block A admeasuring super area 1635 sq. ft for a total sale consideration of Rs. 1,07,17,016/-.

(c) The buyer's agreement dated 30.07.2015 was executed between the parties for the unit bearing no. 1703, block A, 17th floor admeasuring super area 1635 Sq. Ft for a total sale consideration of Rs. 1,07,17,016/- as mentioned under the clause 1 of the agreement.

(d) It is pertinent to bring into the knowledge of this authority that as per the agreement so signed and acknowledged by the respondent herein 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, 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, 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 the project could not be delivered due to various reasons beyond the control of the respondent as stated above and are not repeated herein for the sake of brevity and convenience.

(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 complaint under reply is liable to be dismissed and 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.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors." SCC Online SC 1044*** decided on 11.11.2021 wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of*

adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the 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 relief sought by the complainants:

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

13. The complainants booked a unit bearing no. 1703, block A admeasuring 1635 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 30.07.2015. They paid a sum of Rs. 31,74,671/- to the respondent against the total sale consideration of Rs. 1,12,36,946/- 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)***

14. Clause 13 of the buyer's agreement dated 30.07.2015 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***

15. **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 30.07.2015, therefore, the due date of possession comes out to be 30.07.2019.

16. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 1703, block A admeasuring 1635 sq. ft. of the project known as Tranquil Heights,

Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,12,36,946/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and thus the respondent 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.

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 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."*

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 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 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 the unit with interest at such rate as may be prescribed.

19. **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."*

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., **13.01.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

22. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 31,74,671/- 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

23. 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:

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

i. The respondent/promoter are directed to refund the entire amount of Rs. 31,74,671/- 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.

25. Complaint stands disposed of.

26. File be consigned to the registry.

Sanjeev Kumar Arora
Member

Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2023