

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

Complaint no.	:	3963 of 2021
Date of filing	:	19.10.2021
First date of hearing:		01.12.2021
Date of decision	:	13.01.2023

1. Mrs. Sumita Chadha R/o: 21 Ekta Avenue, Body Guard, Rajpur Road, Dehradun-248001 2. Ms. Diksha Chadha R/o: B-703, Amrapalli Sapphire, Sector 45, Noida. UP	Complainants
Versus	
1. M/s Vatika Seven Elements Pvt. Ltd. Regd. Office at: Flat no. 621-a, 6th floor, Devika Towers, Nehru Place, New Delhi-110019 2. M/s Vatika Limited Regd. Office at: 7 th floor, Vatika Triangle, Mehrauli- Gurgaon Road, Sushant Lok Phase-I, Gurugram, Haryana-122002.	Respondents
CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Ashma Sachdeva proxy counsel	Complainants
S/Sh. Pankaj Chandola & Mayank Grover (Advocate)	Respondent

ORDER

1. The present complaint dated 21.12.2020 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 provision of the Act or the Rules and regulations made there under or to the allottee 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 and location of the project	"Vatika Seven Element" at sector 89A, Gurgaon, Haryana.
2.	Nature of the project	Group housing
3.	Project area	14.30 acres
4.	DTCP license no.	41 of 2013 dated 06.06.2013 valid up to 05.06.2017
5.	Name of licensee	M/s Strong Infrabuild Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 281 of 2017 dated 09.10.2017 area admeasuring 91345.535 sqm. Valid up to 31.03.2021
7.	Unit no.	A-202, first court (Page no. 33 of complaint)
8.	Unit area admeasuring	1970 sq. ft. (Page no. 33 of complaint)
9.	Date of allotment	08.10.2013 (page 33 of complaint)
10.	Date of builder buyer agreement	22.04.2015 (page 39 of complaint)
11.	Possession clause	13. Schedule for possession of the said apartment. <i>The developer based on its present plans and estimated and subject to all just exceptions, contemplates to complete</i>

		<i>construction of this said building/said apartment within a period of 48 month from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 14 to 17 & 37 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this agreement (Emphasised supplied)</i> (page 49 of complaint)
12.	Due date of possession	22.04.2019
13.	Total sale consideration	Rs. 1,54,79,354/- [inclusive BSP, PLC, EDC/IDC, IFMSD]
14.	Amount paid by the complainants	Rs. 47,82,591/- [as per SOA dated 05.01.2015, page 109 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:
- I. That believing the representations and promises made by the respondent, the complainants agreed to purchase an apartment in the project for a total consideration of Rs.1,54,79,354/- and on 29.04.2013, paid booking amount of Rs. 8,00,000/- in favour of respondent no.2. Thereafter, vide allotment letter dated 08.10.2013, they were allotted unit no. A-202 (3BHK+ S) in first court, having a super area of 1970 sp. ft.
 - II. That the complainants duly made all the payments towards the purchase of the unit, as and when demanded by the respondent no.2. However, to the utter dismay of the complainants, it does not came forward to execute

the BBA. Till 31.07.2013, they has already paid an amount of Rs. 20,88,038/- towards the purchase of the subject unit.

- III. That for several months the complainants did not receive any update with respect to the construction of the project and on the execution of the BBA despite their continuous efforts and follow ups. Meanwhile, it kept raising demand letters towards the purchase of the unit; concerned by the same, they approached Mr. Varun Mehra, an official of the respondent no.2, expressing their concern regarding the demands raised by the respondent no.2 prior to the execution of the BBA. The officials of the respondent no.2 reassured and comforted them stating that there is nothing to worry about it, as the respondent no.1 would execute the BBA very soon, believing which they continued to make the payments as and when demanded by the respondent no. 2. However, whenever they requested it for an update with respect to the construction and the execution of the BBA, they were again provided with vague answers.
- IV. That due to the irresponsible and unethical demeanor of the respondent no.2, the complainants went to visit the project site in October 2014 and to their utter shock and disappointment, the construction of the project had not even started. When they approached the respondent, its officials emptyly reassured them yet again that the construction of the project would soon commence, and the possession of the unit would be provided to them by 2018.
- V. That 18 months had passed since the complainants had paid the booking amount and made the subsequent payments. However, the buyer's agreement has yet to be signed and executed. The officials of the respondent no.2 kept reassuring them so that they would not refrain from making requisite payments towards the unit as and when demanded by the respondent no.2. In April 2015, they approached the officials of

respondent no.2 for updates and found that even after 2 years from paying the booking amount and the subsequent installments due on excavation, the construction of the project was at a standstill. They raised the said issues with the officials of the respondent no.2 who reassured them yet again.

- VI. That after approximately 2 years, the BBA dated 22.04.2015 and addendum dated 23.04.2015 was executed between the parties. Prior to the execution of the BBA, they have already paid an amount of Rs. 47,66,106/- to the respondent no.2 which in furtherance to the addendum transferred all its project account balance in respect of the said project in favour of the respondent no.1 vide a project transfer arrangement entered into between the respondent no.1 and the respondent no.2. By virtue of which the respondent no.1 has acquired rights *inter alia* to receive all the payments from the complainants, demands raised from them, issued letter/receipts etc.
- VII. That several clauses of the BBA were not acceptable to the complainants, however, the respondents refused to amend the same and threatened to forfeit approx. Rs. 20,00,000/- out of the total amount paid by the them if they refused to sign and agree with the terms of the BBA. Thus, they were made to sign on the dotted lines. The respondents assured them that the BBA is a mere formality and that there was nothing to be worried about.
- VIII. That the respondent no.1 is a group company of the respondent no.2 as per para-C of the addendum to the BBA. The respondent no. 2 connivingly, to evade their liability towards the complainant, incorporated the respondent no. 1 as a shell company. Further, as per the terms of said agreement, the possession of the unit was to be handed over to the complainants within 48 months from the date of execution of the BBA, i.e., by and before April 2019. However, the respondent no.1 maliciously

tricked them with the aforementioned term by earlier promising that '*the possession of the unit would be provided by 2018, i.e. within 60 months from the date of payment of the booking amount.*'. They helplessly waited for the respondent no.2 and their officials updates about the construction. After December 2014, no monetary demand was raised by the respondent no.2, proving that the construction of the project was at a standstill. The agitated complainant no.1 vide email dated 29.11.2016 informed respondent no.1 of their wish to cancel their booking in the project due to the delay in the construction of the project & non-communication and thus, the amount paid by them should be refunded.

- IX. That the respondent no.1 vide email dated 15.12.2016, apologized for the delay and the inconvenience caused further explaining that construction was in progress and since the construction activity was carried out in phases, few sections of the project could be at advanced stage in comparison to others. Subsequently, the complainants contacted the officials of the respondent no.1 for the cancellation of their booking and refund who stated that on cancellation of the booking, it would forfeit approx. Rs. 20,00,000/- out of the total amount paid by them till date and tried to reassure them with hollow promises of speedy construction and possession as per the buyer's agreement.
- X. That in 2018 the complainants requested updates from respondent no.1 vide email dated 21.08.2018 as the last demand was raised in December 2014 post which no milestone was communicated to them. Since, there was no response from the respondent no.1, on 04.10.2018, they sent a similar email to the respondent no.1 additionally demanding that the total amount paid by them i.e., Rs. 47,66,106/- be refunded to them along with interest as the project was at a standstill and they has lost faith in the

respondent no.1. They sent various emails regarding same to the respondent no.1 but their request falls on the deaf ears.

XI. That in December 2018, the officials of the respondent no.1 proposed to the complainants that since the construction of the project was nowhere near completion and they would not be provided the possession by April 2019, they should shift their booking to another project being developed by the it as they have already paid Rs. 47,66,106/- and that approx. Rs. 20,00,000/- would be forfeited out of the amount if the same was cancelled. Helplessly they agreed to shift their booking at first but upon viewing the dire condition of the other projects offered by it, they refused and requested for cancellation of their booking for which they were made to speak with someone at a superior post. Further, Mr. Rohit Chawla, proprietor of investor first financial planners, informed they were informed that it had not gotten the requisite sanctions and approvals for court I, in which they had purchased their unit, and that was the reason for the delay. They immediately contacted the officials of the respondents to seek clarification. However, they intentionally refrained from providing any clarification. They requested for withdrawal from the project. However, they requests were blatantly ignored. Over time the respondent no.1 did not respond to any of the complainants' communications and miserably failed to provide the possession of the unit to the complainants by April 2019.

XII. That it has been more than 8 years since the complainants have paid the booking amount, and till date not only has the possession of the unit was ever offered, the entire court I of the project is still at a standstill. Further, as per the authority, the registration certificate of the project that was valid from 09.10.2017 till 31.03.2021, stands expired. The respondents maliciously lured the complainants to purchase a unit in the project by

making false representations. The respondents never had the intention to hand over the possession on the promised date of possession and made false promises and assurances to dupe them of their hard-earned money. Not only is there a gross delay in providing the possession of the unit to the complainants, but the respondents also misled them by stating that the respondents had obtained all the requisite sanctions and approvals.

XIII. That the complainants are suffering from grave mental agony and financial hardship due to the illegal, unethical and unprofessional acts of the respondents. It is because of the deficient services and unfair trade practices that they were being cheated of their hard-earned money invested in the unit, for which they have paid a huge amount.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent no.1 to refund the entire amount of Rs. 47,66,106/- along with interest as per RERA rate of interest per annum from the date of first payment till realization.
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 respondents

6. The respondents have contested the complaint on the following grounds.
 - a. That the complainants herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter and are raising false, frivolous, misleading and baseless allegations against the respondents with intent to make unlawful gains.
 - b. That the complainants have not duly authorised the Affidavit attached with the complaint, which in itself, becomes a sole ground for the



Authority to dismiss the complaint as per the relevant provisions of law along with cost. At the outset, the complainants herein, learned about the project launched by the respondent titled as 'Seven Elements' (*hereinafter referred to as the said 'Group housing colony'*) situated at Sector 89-A, Gurgaon and approached the respondent no.2 repeatedly to know the details of the said project after inquiring about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

- c. That on 27.04.2013, the complainants, after meeting the officials of the respondent no. 2 and shows their willingness to book a unit vide application dated 29.04.2013 and paid booking amount of Rs. 8,00,000/- in the favour of respondent no.2 for further registration.
- d. That, from the beginning, the respondents were committed to complete the project and has always tried their level best to adhere with the terms as provided in the agreement and complete the project as per the milestone.
- e. That the respondent in furtherance of booking made by the complainants, vide allotment letter dated 08.10.2013, called upon the complainant to take the allotted unit no. A-202 on 2nd floor in first court building (*herein referred to as 'Unit'*), having a super area of 1960 sq. ft.
- f. That on 22.04.2015, a builder buyer agreement (*herein referred to as 'Agreement'*) was executed between the complainants and respondent no.2 on 23.04.2015. Further, an addendum to the builder buyer agreement was executed between the respondent no.1, respondent no.2 and complainants wherein the respondent no. 2 (confirming party) has transferred all its commercial rights and liabilities in favour of the developer wherein the developer has acquired all the rights *inter alia* to receive all payments from the allottees, raise demands from the

allottees, issue letter/receipts etc. to the allottees in respect of the said group housing colony.

- g. That vide clause A, of the addendum to BBA, the respondent has obtained license no.41 Of 2013 dated 06.06.2013 from the Director General, Town and Country Planning, Govt. of Haryana, Chandigarh (DTCP) for development of group housing colony on the said land.
- h. It is submitted that the complainant was aware of the terms and conditions under the aforesaid agreement and post being satisfied with every clause of the agreement and also with the payment plan and total sale consideration agreed to sign upon the same with free with and without any protest or demur. The complainant being the habitual defaulter in terms of payment has failed to adhere to the payment plan and violated the terms and conditions embodied under clause 7 of agreement. They were very well aware of the payments schedule and also knew that timely payment is essence for completion of the project. But, despite being aware of the payment schedule, the respondent herein had to issue payment reminders calling upon them to abide the terms so agreed. It is further submitted that the payment of Rs. 20,88,038/- and the part payment as a part of taxes was completed by the complainants after several communications and requests made to them through frequent reminders vide email dated 06.12.2013, 10.01.2014, 08.01.2014.
- i. That despite after promising to make the requisite payment on time and as and when demanded by the complainant herein has failed to make the payment on the requisite due date. It is to note, that as per the agreement the respondent was not under obligation issue payment reminders yet it has served payment reminder calling upon the complainant to make the required pay.

- j. It is submitted that the complaint is filed by the complainants on baseless and absurd grounds. It is clearly mentioned under clause 16 of the agreement that in case of any unforeseen circumstances face by it in the mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- k. That due to various unforeseen eventualities which are listed below in details, the construction has been majorly impacted:
- a) *Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the Respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.*
 - b) *The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.*
 - c) *The GMDA vide its letter dated 08.09.2020 had handed over of possession of said properties for construction and development of NH 352 W to the NHAI. This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.*
 - d) *Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road levels, however due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.*
 - e) *Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans*
- l. That due to the impact of the Goods and Services Act, 2017 which came into force after the effect of demonetization in the last quarter of 2016, which left long lasting effect on various real estate and development



sector even in 2019. It is a matter of fact that the respondent has to undergo huge obstacle due to adverse effect of demonetization and implementation of GST.

- m. That in the recent years, various construction activities in the real estate sector was stayed due to constant ban levied by various courts/tribunals/authorities/to curb pollution in Delhi-NCR region. It is pertinent to mention, that recent years the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019, bearing no. EPCA-R/2019/L-49 banned the construction activities in NCR during night hours from 26.10.2019 to 30.10.2019. Subsequently, the EPCA vide notification bearing no. R/2019/L-53, dated 01.11.2019, converted the same into a complete ban on 01.11.2019 to 05.11.2019.
- n. It is imperative to note, the complainants have failed to make the requisite payment for the respective unit in the said project. It is a matter of fact, the complainants were aware of the exact status of the failed to provide timely payment to the respondent even after serving several payment reminders for the respective unit. It had inter alia represented that the performance by the developer of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the DTCP, Haryana, Chandigarh and any subsequent amendment/modifications in the unit plans as may be made from time to time by the developer & approved by the DTCP, Haryana, Chandigarh from time to time.
- o. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company, it was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have repeatedly



marred and adversely impacted the progress of its projects. To further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorized occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the company have resulted in the company being unable to deliver.

- p. That it is pertinent to note, the respondent bear a huge financial loss due to the outbreak of covid-19 and imposition of NGT ban prior to nation wide lockdown, and many other due to which the office of respondent was shut down for a substantial period of time. Hence, the respondent is putting every possible effort to carry out the proper documentation along with the completion of the project as soon as possible.
- q. It is further imperative to mention herein that section 18 read with section 19 of Act, 2016 and rule 15 read with rule 16 of Rules, provide for the right of the allottee to demand refund along with interest and compensation only on failure of the promoter to offer possession in accordance with the agreement to sale duly completed by the date specified therein. Therefore, the complaint is liable to be dismissed on this ground alone.
- r. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainants have not approached the authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of their intention.

- s. The complainants herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds, and has mislead this authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before the authority and in the interest of justice.
7. 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, 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 and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 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 objections raised by the complainant.

F.I Objection w.r.t. Affidavit.

13. The respondent-promoter raised an objection that the instant complaint is liable to be dismissed as they have not duly authorised the Affidavit attached with the complaint. It is observed by the Authority that the respondent has not gone through the complaint and is raising objection that is devoid of merit as upon perusal of documents on record it is evident that the Affidavits filed along with the complaint at page no. 11 & 12, are duly signed by complainant no. 1 & 2 respectively.

F.II Objection w.r.t. force majeure.

14. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as, demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram 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 22.04.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 22.04.2019. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were

not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

15. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that.

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself.

16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 22.04.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself

and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

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

17. The complainants submitted that they booked a unit in the respondent's project namely "Vatika Seven Element". Subsequently, an allotment letter dated 08.10.2013 was issued in favour of the complainants wherein allotting unit bearing no. A-202, first court to them for a total sale consideration of Rs. 1,54,79,354/- against which they paid an amount of Rs. 47,82,591/-. Thereafter, on 22.04.2015 a builder buyers' agreement was executed between the parties, followed by an addendum to the BBA dated 23.04.2015. That prior to the execution of the BBA, the complainants have already made payment of Rs. 47,66,106/- in favour of the respondent no.2 and the respondent no.2 in furtherance to the addendum transferred all its project account balance in respect of the said project in favour of the respondent no.1 vide a project transfer arrangement entered into between the respondent no.1 and the respondent no.2; by virtue of same it further acquired rights inter alia to receive all the payments from the complainants, raised demands from them, issued letters/receipts etc. in the respect of the said project. Therefore, as per addendum dated 23.04.2015 vide which respondent no. 1 acquired rights inter alia to receive all the payments from the complainants, raised demands from them, issued letters/receipts etc, the liability to return the said amount lays on it i.e., respondent no. 01.

18. Keeping in view the fact that the allottee/complainant 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.
19. The due date of possession as per agreement for sale as mentioned in the table above is 20.04.2019 and there is delay of 2 years 5 months 29 days on the date of filing of the complaint. 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 allottee 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.....”

20. 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)***, 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

21. 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). 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.
22. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 47,82,591/- 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 realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.


F. Directions of the authority

24. 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 no. 1 is directed to refund the entire amount of Rs. 47,82,591/- paid by the complainants along with prescribed rate of interest @ 10.60% p.a. 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.
- 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 registry.


(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2023