

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

Complaint no.	:	1270 of 2020
Date of filing complaint:		19.03.2020
First date of hearing:		28.07.2020
Date of decision	:	12.01.2023

Mr. Raj Kumar Mrs. Meenu Raj Kumar Both RR/o: B-1/2, Welcome Apartments, Dwarka, New Delhi.	Complainants
Versus	
M/s Vatika Limited address: Vatika Triangle, 4 th 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. Raghuvinder Singh (Advocate)	Complainants
Sh. Pankaj Chandola & Mayank Grover (Advocates)	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.	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
6.	Unit no.	Tower K-1603 (page 26 of complaint)
7.	Unit area admeasuring	2265 sq. ft. (super area)
8.	Date of allotment letter	14.05.2015 (page 42 of complaint)
9.	Date of builder buyer agreement	01.10.2015 (page 25 of complaint)
10.	Due date of possession	01.10.2019
11.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>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</i>



		<i>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.</i>
12.	Total sale consideration	Rs. 1,61,24,535/- [page 43 of complaint]
13.	Amount paid by the complainants	Rs. 33,64,907/- [page 43 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaints:

3. The complainants have made the following submissions in the complaint:
- a. The complainants booked a unit bearing no. 1603, 16th floor, K tower in the abovementioned project of the respondent. On 31.03.2015, they paid an amount of Rs. 7,71,966/- against the booking amount of Rs. 7,63,538/-. The total sale consideration was Rs. 1,61,24,535/- which included the BSP, PLC and other charges exclusive of service tax. They paid an amount of Rs. 7,55,110/- on 29.05.2015 against the demand raised of Rs. 7,63,538/- on 29.04.2015 payable within 45 days of booking. Meanwhile they were issued an allotment letter by the respondent on 14.05.2015.



- b. That it is pertinent to mention that the respondent unjustifiably charged penalty on payment due to the tune of Rs. 3,03,510/- on 17.06.2015. The complainants sent a mail dated 22.07.2015 to the customer services department of the respondent requesting them to send the demand letters timely as they were not received at the fitting date.
- c. That a second demand was raised by the respondent on 11.08.2015 of Rs. 15,34,320/-, on which it deceitfully charges interest on overdue amounts twice, one on 14.07.2015 for Rs. 16,297/- and second on 11.09.2015 for Rs. 53,437/- in spite of the fact that they did not receive the demand letter on time as mentioned by them. They paid an amount of Rs. 18,37,831/- on 24.09.2015. It is imperative to mention that no demand was raised after the second demand letter but still the respondent perfidiously was charging interest on overdue amounts for Rs. 15,407/- & 1,812/- respectively. At the request of the complainants and after checking the running balance of the account, it waived off the interest overdue for Rs.1,14,180/-
- d. That the buyer's agreement was signed and executed on the basis of construction linked plan between the parties on 01.10.2015 which laid down the standard terms and conditions binding on both the parties. The complainants were making timely payments to the respondent as and when demanded by it dishonestly obscured the status of the project which is evident from the fact that the complainants wrote an e-mail dated 17.09.2016, to its customer services department seeking an answer to the construction status of the project to which it



replied via e-mail dated 19.09.2016 assuring them that "construction is in full swing. However, is being carried out in phases. The next milestone for your unit would be due on start of excavation and same was tentatively raised in 3-4 months. The above reply of the respondent clearly shows its malafide intention where he is not distinctively answering the complainant's enquiry and is further contacting false assurances to them.

- e. That according to the schedule of payment, the fourth payment should have been done within 12 months of booking or start of excavation whichever is later, but no demand letter was raised after the second demand letter neither the construction work even began on the complainant's tower till date. This shows the deceitful approach that the respondent was applying while keeping their hard-earned money with himself despite no work being done on the construction site.
- f. That as per clause 13 of the buyer's agreement, the respondent was purported to deliver the possession of the said unit within 48 months from signing of the buyer's agreement dated 01.10.2011, the said possession became due on 01.10.2019 but no construction work was done till date on the tower where the complainants booked their said unit. No communication was done by the respondent from the year 2016 till December till December 2019 whereby the complainants were compelled to once again write an email to the respondent's customer service department on 07.12.2019 including to visit the project site as the possession had already become due.



- g. That the complainants visited the project site in the second week of December and to his sheer dubiety construction work wasn't even started on the tower in which their unit was situated. The authorized representative of the respondent then gave them the option of shifting into already constructed properties of the respondent namely "Seven Lamps", for which the respondent was asking 25% higher rates than the prevailing market rates and the facilities which the complainants had availed in "Tranquil heights" were also not at par with the facilities which it was offering in "Seven Lamp". Due to this bedevilment and dubious behaviour of the respondent the complainants were constrained to ask it for the refund of his hard-earned money which they paid on time to the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the amount paid by the complainants to it along with the prescribed rate of interest payable from the date of payment made by the complainants to the respondent.
 - ii. Direct the respondent to compensate the complainants by paying an interest@ 10.70% p.a on the amount already paid i.e., Rs. 33,64,907/- from the time it was paid till date.
 - 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 2015, 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 31.03.2015 and booked a unit bearing no. 1603, type 3 BHK+S (Type-A), 16th floor, building-K, admeasuring super area 2265 sq. ft. for a total sale consideration of Rs. 1,54,04,265/-.
- (c) That on 14.05.2015, an allotment letter was issued to the complainants and the buyer's agreement dated 01.10.2015 was executed between the parties for the unit bearing no. 1603, type 3 BHK+S (Type-A), 16th floor, building-K, admeasuring super area 2265 sq. ft. for a total sale consideration of Rs. 1,54,04,265/- till date.
- (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 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of UP and Ors. (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by the allottees along with interest at the prescribed rate.

G. Findings on the relief sought by the complainants:

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

13. The complainants booked a unit bearing no. 1603, type 3 BHK+S (Type-A), 16th floor, building-K, admeasuring super area 2265 Sq. Ft. in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 01.10.2015. They paid a sum of Rs. 33,64,907/- to the respondent against the total sale consideration of Rs. 1,61,24,535/- 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 01.10.2015, 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 of 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 01.10.2015 and therefore, the due date of possession comes out to be 01.10.2019.
16. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 1603, type 3BHK + S (type A), 16th floor, building K, admeasuring super area 2265 sq.ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,61,24,535/-. 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.
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*, 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 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.
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., **12.01.2023** 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. 33,64,907/- 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*.

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

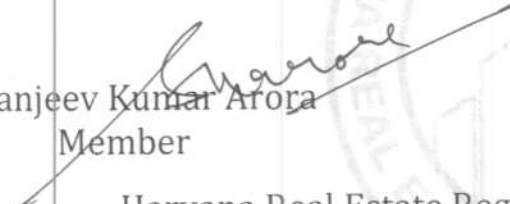


functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the entire amount of Rs. 33,64,907/- 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


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.01.2023

HARERA
GURUGRAM