



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

Complaint no. :	1791 of 2022
Date of filing complaint:	28.04.2022
First date of hearing:	24.08.2022
Date of decision :	10.01.2023

1. Col. Manoj kumar
2. Mrs. Vijaya

R/o: 55, Gulmohar Enclave, Shamshabad Road, Agra -
282001

Complainants

Versus

M/s Vatika Limited

Office : Unit No. A-002, INXT City Centre, Ground Floor,
Block - A, Sector 83, Vatika India Next Gurgaon,
Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Jatin Sharma

Advocate for the complainants

Sh. Dhruv Dutt Sharma

Advocate for the 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 provision of the Act or the rules and regulations made



thereunder 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Emilia Floors, phase-2, VIN, Sector 83, Gurgaon.
2.	Nature of the project	Residential colony
3.	Project area	182 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	RERA Registered/ not registered	Not registered
6.	Plot no.	38, Emilia, GF, 4 th street, block E (page 24 of complaint)
7.	Plot area admeasuring	781.25 sq. ft. (page 33 of complaint)
8.	Area change	929 sq.ft (page 82 of complaint)
8.	Date of booking	26.09.2009 (page 4 of complaint)
9.	Date of allotment	15.11.2010 (annexure C3, page 24 of complaint)
10.	Date of dwelling unit buyer's agreement buyer agreement	23.03.2011 (page 30 of complaint)
11.	Possession clause	10.1 Schedule for possession of the said independent dwelling unit <i>That the company based on its present plans and estimates and subject to all just exceptions, contemplates to complete</i>



		<p><i>construction of the said Building/said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses (11.1), (11.2), (11.3) and clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in annexure III or as per the demands raised by the company 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. However, it is agreed that in the event of any time overrunning of construction of the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same. (Emphasis supplied)</i></p>
12.	Due date of possession	23.03.2014 (due date is calculated from the date of BBA)
13.	Total sale consideration	Rs. 29,03,428/- [as per SOA dated 07.11.2014 on page 84 of complaint]
	Basic sale price	Rs. 28,56,977/- [as per SOA dated 07.11.2014 on page 84 of complaint]
14.	Amount paid by the complainants	Rs. 10,48,671/- [as per SOA dated 07.11.2014 on page 84 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Notice for termination	14.11.2018 (annexure R3, page 81 of reply)



B. Facts of the complaint:

3. That the complainants booked a unit on 26.09.2009 in the project namely **"Emilia Floors Phase -2 in Vatika India Next"** situated at Sector-83, Gurgaon, Haryana- 122004 for a total sale consideration of Rs. 24,02,544/- and paid 10% as the booking amount i.e., Rs. 2,40,255/-. In pursuant to the booking, the respondent issued an allotment letter dated 03.11.2010 and an email dated 11.11.2010 and whereby a priority number (Emilia/GF/031) along with date of meeting (15.11.2010) for allotment of independent floor was conveyed to the complainants. The respondent also sent two unsigned copies of floor buyer agreement and also conveyed the subsequent payment due after completion of the allotment process.
4. That on 15.11.2010, the complainants visited the office of the respondent for allotment of the unit and consequently a unit type "Emilia" on ground floor at plot no. 38, Block-E, Street 4th at Sector 83, Gurgaon was allotted. Thereafter a letter dated 15.11.2010 was sent by the respondent confirming therein the details of the allotted unit. It is pertinent to note here that the complainants handed over the signed copy of the floor buyer agreement/dwelling unit buyer agreement to the representative of the respondent. However, a counter signed copy of the agreement dated 24.03.2011 was handed over in March 2011.
5. That the dwelling unit buyer agreement dated 24.03.2011 contained elaborative term and conditions such as amenities promised, site plan, floor plan, payment schedule, date of completion/handover etc. Under the said dwelling unit buyer agreement, the respondent promised, assured, represented and committed to the complainants that the residential project would be completed and would be handed over to the buyers within 3 years from the date of signing of the agreement i.e., by



- 24.03.2014** along with possession of the allotted unit. Further, as per clause 10.1 of that agreement, the respondent assured that the time was the essence.
6. That thereafter, the complainants had been regular in making payment of the due installment and have paid Rs. 10,48,671/- till date. It is pertinent to highlight that the respondent sent a letter dated 09.01.2012 and wherein it unilaterally revised the buildup area of unit from 781.24 sq. ft. to 929.02 sq. ft. and also increased the total sale consideration from Rs. 24,02,544/- to Rs. 29,81,994/- thereby revising the agreed payment plan. In the said letter, the respondent even arbitrarily applied the prevailing rates as on the date of issuance of the impugned letter instead of the old rates at which the booking was applied in 2009.
 7. That since the respondent was liable to deliver the possession of the allotted unit by March 2014, the complainants visited the office of the respondent on various occasions and requested for an update on the progress of the project and date of handover of the allotted unit. The management/ authorized representatives of the respondent were not coming clean and were dilly-dallying the matter on one pretext or another. On consistent request by the complainants, the respondent issued an account statement dated 07.11.2014 wherein it is clearly mentioned that they had been regular in due installment and had even paid in surplus.
 8. That on consistent ignorance on the request of complainants w.r.t providing update on the project and its handover, the complainants were constrained to personally visit the project site and on its visit the were shocked to see no progress in the project and even the preliminary earthwork/excavation has not even commenced although the installment

has already been demanded by the respondent & which was send subsequently paid to it.

9. Consequently, the complainants sent a letter dated 31.12.2014 for confronting the respondent for the illegal conduct and malpractices such as no-progress on the project site, unilateral revision of payment schedule, non-adherence of completion time/possession of dwelling unit etc. Since no response was received from the respondent on the said communication, the complainants again sent a similar letter dated 20.06.2016 and follow up on 21.09.2016 but to no avail.
10. That the complainants were constrained and left with no option but to seek full refund of the amount along with prescribed rate of interest including but not limited to all the payments made in lieu of the said unit, as per the terms and conditions of the dwelling unit buyer agreement executed by the respondent.

C. Relief sought by the complainants:

11. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the total amount of Rs. 10,48,671/- to the complainants along with the prescribed rate of interest as per the applicable rules.
 - ii. Direct the respondent to pay a sum of Rs. 50,000/- towards the cost of litigation and a sum of Rs. 1,00,000/- for the harassment and mental agony suffered by the complainants.

D. Reply by respondent:

12. That at the outset, the respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless



specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.

13. That the complaint filed by the complainants before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this authority as the relief being claimed by them besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this authority.
14. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
15. That it has been categorically agreed between the parties that subject to the allottees having complied with all the terms and conditions of the dwelling unit buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 3 years from the date of execution of the agreement. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in Annexure III to the said buyer's agreement, the date of handing over of the possession shall be extended accordingly.
16. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:



- a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and it was forced to reevaluate its construction plans which caused a long delay.
 - b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the project. The matter has been further embroiled in sundry litigations between HUDA and landowners.
 - c. Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.
17. That the respondent had already terminated the said buyer agreement dated 24.03.2011 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan due to initiation of the GAIL Corridor, non-removal or shifting of the defunct High-Tension lines and non-acquisition of sector roads by HUDA. It is submitted that as per clause 11.5 of the said agreement, it has been agreed that in the event of failure to handover the possession, the company shall be entitled to terminate the agreement and refund the amount. It is pertinent to mention here that the respondent also offered to refund the amount to the complainants along with 6% interest p.a. However, it was they who did not come forward to collect the money.



18. 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:

19. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

20. 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

21. 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.

22. 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.
23. 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."



24. 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 U.P. and Ors. (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee alongwith interest at the prescribed rate.

F. Findings on the relief sought by the complainants:

F.1 Direct the respondent to refund the paid amount of Rs. 10,48,671/- along with interest.

25. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 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)

26. Clause 10.1 of the buyer's agreement dated 23.03.2011 provides for the handing over of possession and is reproduced below for the reference:



*"The Company 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 three years 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 (11.1),(11.2),(11.3) and clause (38) 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 -III 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.**"*

27. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 3 years from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 23.03.2011. Therefore, the due date of possession comes out to be 23.03.2014.
28. In the present complaint, the complainants booked a unit on 26.09.2009 in the above said project for a total sale consideration of Rs. 24,02,544/-. On 03.11.2010, the respondent issued an allotment letter and allotted a unit no. priority no. Emilia/GF/031, along with the allotment letter the respondent also sent two unsigned copy of dwelling unit buyer agreement. Thereafter, on 15.11.2010, the complainants visited the office of it for allotment of their unit and consequently a unit type "Emilia" on GF at plot no. 38, block E, street 4th at sector 83, Gurgaon was allotted. After that a dwelling buyer's agreement was executed between the parties on 23.03.2011. As per clause 10.1 of the said agreement, the unit was to be handed over within 3 years from the signing of the agreement i.e., by 24.03.2014.

29. As per statement of account dated 07.11.2014 (page 84), the total sale consideration of the said unit is Rs. 29,03,428/- and the complainants have paid an amount of Rs. 10,48,671/-. It is pertinent to mention here that the respondent has terminated the said buyer's agreement, vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-acquisition of sector roads by HUDA. Moreover, it has been observed that vide termination letter dated 14.11.2018, the respondent offered the refund of the amount to the complainants along with 6% interest p.a. but the same was not collected by them. The relevant portion of the letter dated 14.11.2018 is reproduced below:

"5. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Company, it is unable to execute and carry out all the necessary work for the completion of your unit in the above said Project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's 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 corner of the project, forceful unauthorised 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. Therefore, in the backdrop of the uncertainties involved as detailed herein above and keeping in mind your interests, the Company offered in various discussions to you an alternate unit in the same Project, however, you did not accept this alternate option despite our subsequent numerous discussions with you. Thus, the Company is constrained and left with no choice but to terminate the Agreement.

6. We take this opportunity to state that as per terms of the Agreement, the Company is required to pay interest @6% pa on the refund amount. As such, in furtherance of our obligations under the Agreement and in order to make up for o inability to deliver in view of the extraordinary circumstances attending upon this unfortunate event, as a bonafide measure we are hereby willing to return the principal amount paid by



you from your own resources) in respect of the booking along with an interest of 6% per annum calculated thereon till 14.11.2018.

You are requested to kindly get the above refund cheque collected from our office at Vatika Triangle, 5th Floor, Sushant Lok Phase 1, Gurugram, Haryana after 30 days with prior appointment of receipt of this letter"

30. Upon perusal of the above-mentioned paragraphs, the authority observes that the subject unit has already been cancelled and the said buyer agreement has been terminated on 14.11.2018, narrating the detailed reasons for cancellation of the unit and termination of builder buyer agreement on account of inability of the promoter to make available the said unit. The promoter has failed to develop the unit and cancelled it on account of his own fault/omissions.

31. 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."

32. 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 allottees, as they wish 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.

33. **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."

34. 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.
35. 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%.

36. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 10,48,671/- 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*.

F. II Direct the respondent to pay a sum of Rs. 50,000/- towards the cost of litigation.

37. The complainants in the aforesaid relief are seeking relief w.r.t 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.* (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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 complaint in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority:

38. 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 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. 10,48,671/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

39. Complaint stands disposed of.

40. File be consigned to the Registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 10.01.2023