

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

<b>Complaint no.</b>	:	<b>2416 of 2020</b>
<b>Date of filing complaint:</b>		<b>18.08.2020</b>
<b>First date of hearing:</b>		<b>04.03.2021</b>
<b>Date of decision</b>	:	<b>17.02.2023</b>

Mr. Upendra Maheshwari  
Mrs. Suman Maheshwari  
**Both RR/o:** House no. 3b, Sanskriti Apartment,  
Engineers India co-op GHS Plot no. Gh-22 Sector 56,  
Gurugram.

**Complainants**

Versus

M/s Vatika Limited  
**Office :** Flat No. 621, 6th Floor, Devika Towers, 6 Nehru  
Place New Delhi.

**Respondent**

**CORAM:**

Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Complainant in person with Sh. Sanchit Kumar  
S/Sh. Venket Rao & Pankaj Chandola

**Complainants**

**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 complainants, 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	"Vatika India Next" at sector 81,82A,83,84 and 85 Gurgaon, Haryana.
2.	Nature of the project	Residential plotted colony
3.	Project area	393.358 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.	Villa no.	64/240/Simplex/BR (page 22 of complaint)
7.	Plot area admeasuring	1527 sq. ft. (page 22 of complaint)
8.	Date of buyer's agreement/ buyer agreement	27.11.2009 (page 19 of complaint)
9.	Possession clause	<p><b>11.1 Schedule for possession of the said independent dwelling unit</b></p> <p><i>That the company based on its present plans and estimates and subject to all just exceptions, contemplates to complete 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</i></p>

		<i>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>
10.	Due date of possession	27.11.2012
11.	Total sale consideration	Rs. 83,03,175/- (as per clause 1.1 of BBA, page 22 of complaint)
12.	Amount paid by the complainants	Rs. 33,45,150/- (as alleged in the complaint but during proceedings, the amount confirmed is Rs. 33,19,222/- as this amount is not disputed by the respondent.)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the complainants approached the respondent on 17.08.2009, with an application for booking a villa in the residential project "Vatika India Next". They were allotted the villa no. 64/240/Simplex/BR in Bellevue Residences, admeasuring 240 sq.yards vide buyer's agreement dated 27.11.2009 in the abovesaid project for a total sale consideration of Rs. 83,03,175/- and against which they paid an amount of Rs. 33,19,222/-. As per the agreement, the possession of the said villa was to be given by

26.11.2012 i.e., within 36 months from the date of the agreement. Further, as per clause 12.5 of the agreement it was agreed that in case of delay in possession, the respondent would be liable to pay compensation at the rate of Rs. 5/- per sq.ft. of the super area per month for the delay in case of delay.

4. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured villa as per the agreement in near future seems bleak and the same is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent the entire hard earned savings in order to buy this villa and stand at the crossroads with nowhere to go. Further, the inconsistent and lethargic manner in which the respondent conducted its business and lack of commitment in completing the project on time, caused the complainants great financial and emotional loss.
5. That clause 11.1 of the agreement clearly specifies that in the event of delay in handing of the possession, the respondent shall be liable to pay an amount @Rs. 5.00 per sq.ft. month of the super area. In furtherance of the above, as per section 18(1) of the Act, the compensation for delay in delivery and possession as agreed in the agreement, be paid immediately to the complainants. The amount calculated as per the above-mentioned clause till date was to be paid with an interest @1% per month from the date on which the amount became due till the date of actual payment of the same. But nothing happened as such leading to withdrawal from the project and seeking refund of the paid up amount with interest upto rate.

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

6. The complainants have sought following relief(s):
  - i. Direct the respondent to refund the total amount of Rs. 33,19,222/- 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. 10,00,000/- as the cost of the complaint in favour of the complainants.
7. During the proceeding dated 17.02.2023, the respondent through its counsel submitted that the reply has been filed on 04.04.2019 in reference to earlier complaint no. 887/2018 and the above complaint is filed after generating new perform on the directions of the Authority and reliefs being sought is similar in both the above complaint. The counsel for the respondent requests that the above reply already filed be treated for the above complaint as no new facts are to be stated as the unit is still not available and the respondent can offer an alternative ready to move in the project seven elements if the complainant is interested for the same.
8. 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 submissions made by the parties.

**E. Jurisdiction of the authority:**

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

**E.1 Territorial jurisdiction**

10. 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 noted above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

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

**F.1 Direct the respondent to refund the paid amount along with interest.**

25. The complainants have submitted that they booked a unit bearing no.64/240/Simplex/BR admeasuring 1527 sq.ft. for a total sale consideration of Rs. 83,03,175/- and against which they paid an amount of Rs. 33,19,222/- in the respondent’s project namely “Vatika India Next”. On 27.11.2009, a builder buyers’ agreement was executed between the parties. As per clause 11.1 of the said agreement, the due date of handing over of possession was 27.11.2012. During the course of proceedings

dated 17.01.2023, the respondent submitted that he is ready to offer an alternative ready to move in the project seven elements if the complainant is interested for the same to which the complainant submitted very categorical that they are not interest in an alternative unit and is seeking refund of full amount alongwith interest as inspite of having booked the unit in 2009 the unit is still not complete as the project is abandoned.

26. Keeping in view the fact that the allottee/complainants wish 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.

27. The due date of possession as per agreement for sale as mentioned in the table above is 27.11.2012 and there is delay of 7 years 8 months 22 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 and for which he has paid a considerable amount towards the sale consideration and 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.....”*

28. 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/nome 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*

29. 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 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.

30. 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.

31. The authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 33,19,222/- 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 Compensation & litigation cost.**

32. 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.* (supra), 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:**

33. 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. 33,19,222/- 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.

34. Complaint stands disposed of.

35. File be consigned to the registry.

**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.02.2023