



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

Complaint no. : 1464 of 2021
Date of filing : 02.04.2021
First date of hearing : 26.05.2021
Date of decision : 24.02.2023

Shri Rajesh Kumar

R/o:- flat n 16 H, tower 3, Diamond City South, 58
MG road, Kolkata 700041

Complainant

Versus

M/s Vatika Limited

Regd. office: Vatika Triangle, 4th Floor,
Sushant Lok, Phase-I, Block-A, MG Road,
Gurugram-122009

Respondent

CORAM:

Sh. Vijay Kumar Goyal
Sh. Ashok Sangwan
Sh. Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Pawan Kumar
Sh. Dhruv Dutt

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 to the allottee as per the agreement for sale executed inter-se them.

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, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Town Square 2", Sector 82, Vatika India Next, Gurugram.
2.	Nature of the project	Commercial complex
3.	Project area	1.60 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA registered/ not registered	40 of 2021
6.	RERA Registration valid up to	31.03.2022
7.	Date of booking	27.02.2020 (pg. 12 of complaint)
8.	Allotment letter	02.03.2020 (Pg. 14 of complaint)
9.	Date of execution of builder agreement buyer	Not executed
10.	Unit no.	D-703, 7 th floor (Page no. 14 of complaint)
11.	Area	1425 sq. ft. (Page no. 14 of complaint)
12.	Basic sale consideration	Rs. 45,60,000/- [page 12 of complaint]



13.	Amount paid by the complainant	Rs. 2,00,000/-
14.	Due date of possession	02.03.2023 <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. In view of the above-mentioned reasoning, the date of signing of allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 02.03.2023.
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Letters issued by the complainant to cancel the unit and refund the amount	10.11.2020 & 18.12.2020 (page 21 of complaint)
18.	Notice for termination	03.03.2021 (page 29 of complaint)

B. Facts of the complaint:

3. That after going through the advertisement published by the respondent, the complainant provisionally booked a residential



- unit bearing no. "Town Square", D-703, having admeasuring of super area of 1425 sq.ft. He paid a sum of Rs. 2,00,000/- as a part payment of the unit as per the schedule of payment.
4. That as per the promise of the builder/respondent, it has to provide the occupancy certificate and other documents within 2 months from the date of application i.e., 20.02.2020 as the building was fully constructed at the time of application.
 5. That after application for allotment, the complainant kept waiting for the response that the respondent/builder would handover occupancy certificate to him, but he did not get any response from the builder/respondent.
 6. That the complainant sent letter dated 10.11.2020 to the builder/respondent to cancel the allotment and refund the said amount of Rs. 2,00,000/- with interest. But no response was given by the builder/respondent. Then the complainant again sent a letter for cancellation of the allotment dated 18.12.2020. But still no response was given by the respondent/builder.
 7. That with a mala-fide intention to grab the amount of the complainant the builder/respondent sent a termination of unit notice dated 03.03.2021 knowingly fully well that he has cancelled the unit vide letters dated 10.11.2020 and 18.12.2020. The mal intention of the builder is much clear when he referred to the letter dated 03.03.2021 in the same letter of 03.03.2021, which clarifies that he never intended to honor the delay as promised.
 8. That due to the fault on the part of the builder/respondent, the complainant has to bear loss due to delay in possession and



handing over of occupancy certificate by the builder and due to this reason, he was forced to cancel the booking and asking for the refund. The respondent is bound, and the complainant is entitled to be compensated and interest on the amount from the respondent along with the principal amount paid to it.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):

- a. Direct the respondent to refund the entire sale consideration of Rs. 2,00,000/- with the interest @24% per annum on the amount and along with litigation charges Rs. 1,00,000/- to the complainant.
- b. Direct the respondent to compensate the complainant for harassment mental pain and agony as per the relevant provisions of the Act.

D. Reply by respondent:

10. The respondent made the following submissions in its reply:

- i. That at the outset, respondent humbly submits that each and every averment and contention, as made in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
- ii. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitted 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.



- iii. The adjudication of the complaint for refund, interest and compensation, as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant.
- iv. That the relief sought by the complainant appear to be on misconceived and erroneous basis. Hence, he is estopped from raising the pleas, as taken in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- v. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to him.
- vi. That it is pertinent to mention here that the complainant is a real estate investor who has made the booking with the respondent only with an intention to make profit in a short span of time. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless grounds. It is further submitted that no buyer's agreement has been executed



between the parties till date. Rather, only an application form was submitted by the complainant.

- vii. That on 27.02.2020, the complainant applied for a commercial space having an approximate super area of 1425 sq. ft. in block/ tower-D of the project "Light House (Town Square)" at the basic rate of Rs. 3200/- per sq. ft. It is submitted that the total sale consideration of the unit booked by the complainant was Rs. 46,96,800/- (including Rs. 1,36,800/- towards IFMS). It is further submitted that the sale consideration amount was exclusive of the STP, gas pipeline, stamp duty charges, VAT and other charges to be paid by the complainant at the applicable stage.
- viii. It is pertinent to mention here that the complainant agreed that 10% of total cost shall be paid at the time of booking and remaining 90% at the time of offer of possession. However, the complainant paid Rs. 2,00,000/- only at the time of booking i.e., less than 10% of the total sale consideration. It is submitted that there is an outstanding amount of Rs. 44,96,800/- payable by him as on 19.08.2021. It is further submitted that as per clause 9 and 12 of the application form and clause 4 of the letter of allotment, the complainant agreed that the respondent shall be entitled to forfeit the earnest money and cancel the allotment if the allottee failed to comply with the terms and conditions of the allotment/application form. Therefore, after forfeiting the earnest money, nothing remains payable to the complainant by the respondent.



- ix. That the respondent called upon the complainant vide letter dated 03.03.2021 to make the payment of the outstanding amount within 7 days failing which his unit would be deemed to be cancelled. However, the complainant did not bother to make the payment and he is now left with no right, title, interest etc. in the said unit.
- x. That it is further submitted that since there is no concluded contract executed between the parties. So, the respondent cannot be made liable as per the provisions of section 18 of the Act of 2016.
11. 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:**
12. 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**
13. 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

14. 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

15. 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 complainant at a later stage.
16. 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 (Civil), 357*** and 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*** 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."

17. 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.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the paid entire amount paid by the complainant.

19. The project detailed above was launched by the respondent as commercial complex and the complainant was allotted the subject unit bearing no. D-703, 7th floor vide allotment letter dated 02.03.2020. No builder buyer's agreement was executed between the parties. The due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as **Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)** and the period for delivery of possession may be

taken as 3 years) therefore, the due date comes out to be 02.03.2023. Keeping in view the slow pace of construction at project site, the complainant wishes to withdraw from the project and seeks refund. In the present case, the complainant booked the aforesaid unit under possession linked payment plan and paid an amount of Rs. 2,00,000/- towards total consideration of amount BSP- Rs. 45,60,000/- constituting 4.39% of basic sale price.

20. The complainant wrote letters on 10.11.2020 & 18.12.2020 to cancel his unit and refund the amount paid by him to the respondent at the time of booking. Thereafter on 03.03.2021, the respondent issued a notice for termination to the complainant due to non-payment. It is observed by the authority that as per section 19(6) & 19(7) of Act of 2016, the allottee is under an obligation to make payments towards consideration of allotted unit as per allotment letter dated 02.03.2020. The complainant- allottee has violated the provision of section 19(6) & (7) of Act of 2016. However, there is nothing on record to show that the amount of the complainant has been refunded to them after deduction as per relevant clause of letter of allotment dated 02.03.2020.
21. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the

forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

22. In view of aforesaid circumstances, the respondent should have refund the amount paid by the complainant after deducting 10% of the sale consideration of the unit being earnest money after receipt of the date of letter issued by the complainant for refund i.e. 18.12.2020. But the complainant paid only an amount of Rs. 2,00,000/- against a total consideration of Rs. 45,60,000/- constituting 4.39%, which is less than 10% of total consideration. Hence, no direction to this effect can be given.

G.II Direct the respondent to pay a sum of Rs.1,00,000/- towards cost of litigation.

23. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate

complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

24. Complaint stands disposed of.
25. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.02.2023



HARERA
GURUGRAM