



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

Complaint no. :	3762 of 2019
Date of filing complaint:	27.08.2019
First date of hearing:	13.11.2019
Date of decision :	24.02.2023

Mr. Vikas Aggarwal

R/o: 2201, Sector 21 C, Chandigarh.

**Complainant**

Versus

M/s Vatika Limited

Office: Vatika Triangle 4<sup>th</sup> floor, Sushant lok 1, block  
AMG road, Gurgaon, Haryana-122002.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Sushil Yadav

**Advocate for the complainant**

Ms. Ankur Berry

**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 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	Sovereign Park, Sector 99, Gurugram, Haryana.
2.	Nature of the project	Group Housing Colony
3.	Project area	10.43125 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.210 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 01.07.2024. 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Registered vide no. 285 of 2017 dated 10.10.2017 area admeasuring 37994.878 sqm. Valid upto 09.10.2022
6.	Unit no.	1101, 11 <sup>th</sup> floor, building A (page 13A of complaint)
7.	Unit area admeasuring	3250 sq.ft. (page 13A of complaint)
8.	Date of booking	28.03.2013
9.	Date of buyer's agreement	31.05.2013 (page 12 of complaint)
10.	Subsequent allottee	12.11.2013 (page 29 of complaint)
11.	Due date of possession	31.03.2017.
12.	Total sale consideration	Rs. 2,49,13,000/- [as per SOA dated



		02.09.2019 on page 35of reply]
13.	Amount paid by the complainant	Rs. 98,74,822/- [as pleaded by the counsel for the complainant and agreed upon by the counsel for the respondent during proceeding of the day dated 24.02.2023]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the respondent gave advertisement in various leading newspapers about the forthcoming project named "The sovereign Next", Gurgaon promising various advantages like world class amenities and timely completion of the project etc. Relying on the promise and undertaking given by the respondent as well as the assurance by the broker of the aforementioned project the previous owner Manju Vohra booked a unit in aforesaid project for total sale consideration of Rs. 2,28,88,000/- which includes BSP, car parking, IFMS, club membership, PLC etc. Later on, the complainant with the consent and permission of the respondent got endorsed the said unit in his name. The complainant made payment of Rs. 98,74,822/- to the respondent vide different cheques on various dates, the details of which are as annexed.
4. That as per buyer's agreement dated 31.05.2013, the respondent had allotted a unit bearing no. A<sub>1</sub>/1101 admeasuring 3250 sq.ft. to the complainant. As per para no. 14 of the buyer's agreement, the respondent agreed to deliver the possession of the unit within 4 years 6 months from the date of execution of buyer's agreement.



5. That complainant regularly visited the site but was surprised to saw that construction work was not in progress and no one was present at the site to address his queries. It appears that the respondent played fraud upon the complainant. The only intention of the respondent was to take payments for the flat without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. Despite receiving payment of all the demands raised by it for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent failed to deliver the possession of the allotted flat to him within stipulated period.
6. That it could be seen that the construction of the block in which the complainant unit was booked with a promise by the respondent to deliver by 31.11.2017 was not completed within time for the reasons best known, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
7. That due to this omission on the part of the respondent, the complainant had been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the unit on time. As per clause 19 of the buyer's agreement dated 31.05.2013, it was agreed that in case of any delay, the respondent would pay to the complainant a compensation @Rs.5/- per sq.ft. per month of the built-up area of the flat. However, it is pertinent to mention here that a clause of compensation at a such of nominal rate of @Rs. 5/- per sq.ft. month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit even after a delay from the agreed possession plan. The respondent cannot escape the





liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in a one sided buyers' agreement and offered to pay a sum of @Rs.5/- per sq.ft. for every month of delay. If one calculates the amount in terms of financial charges it comes to approximately @2% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

8. That the complainant has requested the respondent several times either to deliver possession of the unit in question or to refund the amount alongwith interest@18% per annum on the amount deposited but it flatly refused to do so.

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

9. The complainant has sought following relief(s):
- Direct the respondent to refund the total amount to the complainant along with the prescribed rate of interest as per the applicable rules.
  - Direct the respondent to pay a sum of Rs. 5,00,000/- towards the cost of litigation and a sum of Rs. 55,000/- for the harassment and mental agony suffered by the complainant.

**D. Reply by respondent:**

10. That the complainant has not come before the Authority with clean hands. The complaint has been filed just to harass the respondent and to gain unjust enrichment. The truth of the matter is that the complaint arises from the slump in the prices and depreciation of market value of property across the country. The actual reason for filing of the complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottees malicious intention to scrap away his



liability within the buyer's agreement. The complainant failed to make payment of instalment on due time and intending to shy away from his liability filed the complaint so that the remaining amount of Rs. 1,08,92,547/- more than 50% of the total agreed consideration was not paid payable by the complainant. It is pertinent to mention here that for the fair adjudication of grievance as alleged by him, detailed deliberation by leading the evidence and cross examination is required. Thus, only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

11. It is submitted that the complainant who stepped into the shoes of the original allottee was well aware of the status of the project at the time of booking and was in knowledge of the fact that the booking of the project was being made by him through broker at a very initial stage, thus the understanding of the possibility of change in timelines due to changed circumstances at the hand of government authorities was already in the knowledge of the complainant. Further if there was an iota of truth qua the belief and reliance upon the assurance and promise of broker of the project, the complainant would have in terms of section 31 of RERA Act, 2016 made the broker/agent a party to the present complaint. The complaint thus not having a speck of truth and genuineness sought to be dismissed and heavy cost be imposed upon him for wasting the precious time of the Authority.
12. The complaint has been filed on the basis of incorrect understanding of the object and reasons of enactment of the Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the real estate sector in fulfilling the needs and demands for housing and infrastructure in the country and the absence of a regulatory body to



provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while section 11 to section 18 of the Act, 2016 describes and prescribes the function and duties of the promoter/ developer, section 19 provides the rights and duties of allottees Hence, the Act, 2016 was never intended to be biased legislation preferring the allottees , rather the intent was to ensure that both the allottees and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

13. The complainant in the manner of his portrayal of facts and circumstances creates a facade and attempts to hide the actual truth of the matter. It is humbly submitted that the complainant is a regular defaulter and has violated the provision of section 19 (6) of the Act, 2016. Apparently, the complainant on numerous occasions delayed making the payment as per the agreed payment plan. Further the respondent was approached by the complainant for waving-off the delay interest and the respondent did at the time of first fault of regular payment of instalment waived-off an amount of Rs. 21 ,379/-. Even though the respondent in the interest of justice and to show good faith condoned the delay in payment of instalment yet the complainant, gawking at it as an opportunity to get undue benefit, has delayed making due payments.
14. The complainant had failed to bring to light the actual facts and circumstance which have led to filing of the complaint. He has failed to intimate that it is not that the respondent has violated any terms of the



buyer's agreement and rather the truth of the matter is that clause 11 of the buyer's agreement, explicitly made time as a matter of essence for payment of sums due by the allottee.

15. That the complainant has got no locus standi or cause of action to file the complaint. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement dated 31.05.2013, as shall be evident from the submission made in the following paras of the reply.
16. That the primary submission of the complainant is that he wants refund on account of delay is shattered by the fact that he has been aware of the delay in the completion of the project since the respondent has kept him up to date with all information regarding the project. It is important to submit that the respondent was facing umpteen roadblocks in construction and development work in project comprised in township 'The Sovereign Next' owing to the following reasons.
  - a. Initiation of the GAIL corridor which passes through the project, resulting in realignment of the entire layout.
  - b. Labour strikes and shortage of construction workers and even the contractor hired for the construction works was not performing as per the scope of the project work and the respondent had to send constant reminders to the contractor regarding slow pace of work and workforce deployed, which was resulting in timelines alterations.
  - c. No construction order/stop construction orders passed by the government authorities in the month of December to February each year owing to the raised pollution levels leading to deferred construction progress.
  - d. Non-removal or shifting of the defunct high-tension lines passing through the lands resulting in inevitable change in the layout plans.





- e. Many allottees/buyers in the project had defaulted in timely payment of instalments due to which it became difficult for the respondent to adhere to the timelines for delivery.
- f. Non-acquisition of land by HUDA for 62- & 75-meters sector roads to enable accessibility to the various corners of the project.
- g. That the respondent had been issued the license for the development and completion of residential group housing complex in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 in terms of form LC-IV-A. The respondent was duly granted license number 113 of 2009, which was timely renewed as per the HUDA Rules 1976. The said HUDA Act, 1975 and the rules of 1976 prescribed a duty upon the HUDA and the DTCP to provide external development work & Infrastructure development work.
- h. It is submitted that upon the issuance of licence by DTCP, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government Authority. The incompleteness of such development works resulted in minor alteration in timelines of the project. However, the respondent yet managed to complete the project and obtain the occupation certificate qua the building of the complainant. It is pertinent to mention that in the matter titled, Credai-NCR versus Department of Town and Country Planning, Government of Haryana and Anr. before the competition Commission of India-case no. 40 of 2017 it has been opined and well conveyed by the hon'ble Commission that there is a dependency of a project vis-a vis the concerned department's responsibilities and failure of Government departments in providing the necessary development work. Subsequently, impact the project timelines. Thus, the altered timelines were never intended and the respondent lacked any control in the subsequent deference of the project. Since, the various hurdles faced by the respondent was beyond the control of the respondent, there was no intentional delay in completion of the project. it is further submitted that, it was never the intention of the respondent to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled. It is extremely important to bring to the notice of the Authority that since the development had stopped due to external, unseen and avoidable reasons.



17. That the complainant is attempting to seek an advantage of the slowdown in the real estate sector and steep falling of the prices of property in the real estate market. It is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize it to refund the amount. Thus, the complaint is without any basis and no cause of action has arisen till date favour of the complainant and against the respondent. Hence, the complaint deserves to be dismissed.
18. That it is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of his intention. Before assignment of the rights qua the agreement, the complainant was well aware of the terms and conditions as imposed upon the parties under the buyer agreement and only after thorough reading, he signed and executed agreement. Further, the hurdles faced by it in execution of the development activities were informed to the complainant and nothing was hidden by it. It is pertinent to mention here that the complainant has been a regular defaulter in making timely payments/instalments against the purchase of the flat in question. Hence, the complainant cannot be allowed to take benefit on account of its own acts.
19. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead the Authority, for the reasons stated above. It is further submitted that none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Authority.



That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

20. 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 those undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

21. 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**

22. 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 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. Finding on the objection raised by the respondent.**

**F.I Objection w.r.t. force majeure.**

25. 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, shortage of labour, various orders passed by various Authorities 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 31.05.2013 and as per terms and conditions of the said agreement, the due date of handing over of possession comes out to be 31.03.2017. The events such as various orders by Authorities 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 wrongs.

**G. Findings on the relief sought by the complainant:**

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

26. The complainant has submitted that he booked a unit in the project namely "Sovereign Park" on 28.03.2013. A buyer's agreement was executed between the original allottee and the respondent on 31.05.2013. A unit bearing no. A/1101 admeasuring 3250 sq.ft. was allotted to the original allottee for a total sale consideration of Rs. 2,49,13,000/- which includes BSP, car parking, IFMS, club membership, PLC etc. On 12.11.2013 a unit was endorsed in the favour of complainant (subsequent allottee). In its reply, the respondent submitted that the actual reason for filing of the complaint stems from the changed financial valuation of the real estate sector, in the past few years. Further, it submitted that the complainant who stepped into the shoes of the original allottee was well aware of the status of the project at the time of booking.
27. It is pertinent to mention here that as per statement of account dated 02.09.2019, the total sale consideration of the unit is Rs. 2,49,13,000/- against which complainant paid Rs. 98,74,822/-.

28. 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.
29. The due date of possession as per agreement for sale as mentioned in the table above is 31.03.2017 and there is delay of 2 years 4 months 27 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.....”

30. 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."*

31. 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 he 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.
32. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.





33. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 98,74,822/- with interest at the rate of 10.70% (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. II Litigation & Compensation.**

34. The complainant in the aforesaid relief is 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.*, 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

#### **G. Directions of the Authority:**

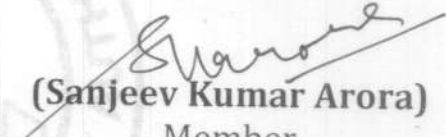
35. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:



- i. The respondent/promoter is directed to refund the entire amount of Rs. 98,74,822/- paid by the complainant along with prescribed rate of interest @ 10.70% 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.

36. Complaint stands disposed of.

37. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.02.2023

HARERA  
GURUGRAM