

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

Complaint no. : 2227 of 2022  
Date of filing : 24.05.2022  
Date of decision : 01.08.2023

1. Dheeraj Vashisht S/o Narendra Pal Sharma  
2. Narendra Pal Sharma  
both R/o: - H.No-99, Mohyal Colony, Gurgaon-122001,  
Haryana.

**Complainants**

Versus

M/s Vatika Limited,  
**Regd. Office:** - Unit No. A-002, INXT City Centre,  
Block A, Sector 83, Vatika India Next,  
Gurugram-122012, Haryana.

**Respondent**

**CORAM:**

Ashok Sangwan  
Sanjeev Kumar Arora

**Member  
Member**

<b>APPEARANCE:</b>	
Sh. K.K.Kohli	Advocate for the complainant
Sh. Venkat Rao and Pankaj Chandola	Advocates 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

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, 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.N.	Particulars	Details
1.	Name of the project	Signature Villa (formerly known as Bellevue Villa) in Vatika India Next." at sector 82, Vatika India Next, Gurgaon, Haryana.
2.	Nature of the project	Residential plotted colony
3.	Registered/not registered	Not registered
4.	Welcome letter	18.06.2008 (page 39 of complaint)
5.	Date of builder buyer agreement	22.09.2009 (Page 61 of complaint)
6.	Villa no.	57,240/Simplex/BR admeasuring 240 sq.ft. (Page 64 of complaint)
	Change villa no.	4/240/simplex/ST, 82 D1-4/Signature 2 villa (page 108 of complaint)
	Finally allotted villa	23, S-4, Signature Villa 2, Vatika India Next, Gurgaon.
7.	Possession clause	<p><b>11.1 Schedule for possession of the said unit</b></p> <p><i>The company based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said unit within a period of three years from the date of execution of this agreement. However, in case the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completion the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clause (12.1),(12.2),(12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of</i></p>

		<i>payments given herein in annexure iii or as per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement. (emphasis supplied)</i>
8.	Due date of possession	22.09.2012
9.	Subsequent allottee	14.07.2020
10.	Tripartite agreement	14.07.2020 (page 116 of complaint)
11.	Total sale consideration	1,61,33,000/-
12.	Total amount paid by the original allottee	1,09,84,911/-
13.	Offer of possession was offer to original allottee.	17.08.2018
14.	Completion certificate	18.09.2019 (annexure C-9)

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That in 2008, the respondent issued an advertisement announcing a residential project called 'Bellevue Residences' having its project office at Sector-83, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of allotments in the said project.
- II. That the original allottee Mr. Pawan Gupta was caught in the web of false promises of the agents of the respondent, the original allottee Mr. Pawan Gupta signed the application form for one villa and opted for construction linked payment plan. He paid an amount of Rs. 5,00,000/- to the respondent which was acknowledged vide the welcome letter dated 18.06.2008.
- III. That the original allottee Mr. Pawan Gupta had already made a payment of Rs10,00,000/- to the respondent against the demands raised which was acknowledged by it. The unit buyer's agreement for villa no. 57/240/Simplex/BR in Bellevue Residences admeasuring 1527 sq. ft. was executed between the Initial allottee and respondent for a total consideration of Rs. 82,12,000/-. Due to some unavoidable reasons, the

respondent re-issued a new plot no.4/ 240/Simplex/ ST-82D1-4/ Signature 2 Villa admeasuring 1577 Sq. Ft. to the original allottee and executed an addendum to the agreement on 07.03.2012 for a total consideration of Rs. 1,05,30,000/-.

- IV. That as per the agreement dated 22.09.2009, the respondent was duty bound to offer the possession of the unit to the original allottee. Having invested a substantial portion of his life savings in the respondent project the original allottee was caught in the web of false promises of the respondent and had no option but to wait for his unit's possession.
- V. That the original allottee had made a payment of Rs. 1,09,84,911/- against the demands raised by the respondent from time to time. The same have been acknowledged by the respondent vide the receipts. The original allottee made various request for the possession of the unit. However, the respondent kept issuing vague and illogical reasons for delaying the possession of the unit having taken 85-90% of the payment from the original allottee.
- VI. That due to some unavoidable reasons, the respondent re-issued a new unit no: 23, S-4, Signature 2 Villa, Vatika India Next Sector 82, Gurugram admeasuring 3740 Sq.ft. to the original allottee and executed an addendum to the agreement in 2018 for a total consideration of Rs. 1,61,33,000/- . The original allottee having paid the total consideration of Rs.1,09,84,911/- to the respondent till 2013. It is not out of place to note that the total consideration paid by the original allottee would far supersede any amount recoverable from him as the project had been delayed for more than 7 years.
- VII. That the original allottee was finally offered the possession of his unit on 17.08.2018. However, it is pertinent to note that the respondent had offer the possession without having received the occupation certificate. As per

the settled principal of law, handing over possession without obtaining an occupation certificate has been held as an invalid offer of possession. The DTCP issued the Respondent the Occupation certificate of the unit, on 18.09.2019.

- VIII. That the original allottee was reissued an allotment letter for the villa no. 23, S-4 Setor-82, 360 Duplex admeasuring 3740 Sq. Ft on 19.03.2020. Thereafter, the original allottee sold the unit to the complainant Mr. Dheeraj Vashisth and Narender Pal Sharma on 14.07.2020. The same has been acknowledged by the respondent. Since the complainants sought to get the villa financed, he approached HDFC Ltd for acquiring the villa, while discussing the tripartite terms, the bank imposed a condition that before disbursement of loan, purchase of stamp duty papers is must. Subsequently, after agreeing to the terms issued by the HDFC Ltd. The Complainants enter into a tripartite agreement with the HDFC ltd. On 14.07.2020 there were no dues pending on the side of complainant.
- IX. That the representative of HDFC as well as complainants spoke with registry team of Vatika regarding stamp duty and other charges. Team They informed that Rs.8,41,700/- is stamp duty and Rs.50003/- is registration fee of Tehsil which was also confirmed by representative of HDFC. Accordingly, the complainants purchased stamp duty papers worth Rs.8,41,700/- and paid Rs.50,003/- registration charges vide online dated 15.07.2020
- X. That the complainants visited the office of the respondent and completed the formalities and handed over the requisite documents to the respondent along with the stamp paper and registration charges. It is not out of place to mention that the complainants were further made to pay an amount of Rs. 3,60,000/- to the respondent on account of the transfer charges.



- XI. That having completed the formalities from their end the complainants kept regularly pursued by visiting their office as well as contacting them from time to time. However, the complainants' requests fell on deaf ears. The respondent issued a welcome letter in favour of the complainants on the 25.08.2020. Since HDFC Ltd was pressing hard for registration of conveyance deed, the complainants visited the offices of the respondent several times seeking the registration of the property. Every time the complainants requested the registration of the property, they were told that there is some problem in registration of Vatika properties in registrar office. But never disclosed what was the actual reason.
- XII. That the complainants sent an email on 13.10.2020 about the commencement of the Manesar Municipal Corporation due to which the stamp duty may increase to which the complainants received an email from the respondent stating that due to an upgradation in the systems of the Sub-Registrar of Manesar the registration process would require additional legal documentation and would therefore require more time, which was being communicated by the legal team. The complainants informed the respondent that he had visited the Tehsil Manesar and the DC office Gurugram, where he has been told that there is no ban on the registration. Subsequently, the respondent issued the same cyclostyled response to the complainants stating that due to an upgradation in the systems of the sub-registrar of Manesar the registration process would require additional legal documentation and would therefore require more time. The complainants issued yet another email requesting the status of the registry. However, this request too fell on deaf ears and the respondent issued yet another cyclostyled response to the complainants. This time however, the respondent issues an additional request to pay an amount of Rs. 8,41,700/- towards stamp duty, Rs. 50,003/- towards registration charges and Rs.

29,500/- towards the administrative charges without checking their previous statement that the complainants have already paid stamp duty, registration charges and administration charges at the time of sanction of loan from HDFC Bank, as required for the loan purpose.

- XIII. That the respondent informs the complainants that since the project now is covered under the Municipal corporation Manesar, they would have to charge the stamp duty at 7% instead of 5% and demanded the complainants paid an additional amount of Rs. 11,78,300/-. The respondent had failed to notice that the complainants had paid an amount of Rs. an amount of Rs. 8,41,700/- towards stamp duty, Rs. 50,003/- towards registration charges and Rs. 29,500/- was paid on 13.10.2020.
- XIV. That the complainants wrote an email to the respondent denying to pay the additional stamp duty charges as the complainants had completed all the requisite formalities from their end by 15.07.2020. The respondent issued an email to the complainants informing them that due to an increase in circle rate, they were now liable to pay an additional stamp duty of Rs. 13,09,500/-. The complainants filed an application under the Right To Information Act 2005 at the office of the Tehsildar Manesar to enquire about the root cause behind the delay in the registration.
- XV. That the complainant no.2 were issued a response from the Information officer from the Tehsil of Manesar vide letter dated 30.09.2021 informed the complainants that the Vatika registry was closed for a very short period of 21.03.2020 till 03.05.2020 amounting to a total of 31 working days due to the Covid 19 pandemic. The letter further stated that the registry was further closed from 22.07.2020 to 06.09.2020 amounting to a total of 33 working days due to software upgradation. It is not out of place to mention that the respondent from the period of 15.07.2020 till the period of 29.12.2020 had a total of 90 workings to get the complainants conveyance

deed issued/registered and the builder has caused deliberate delay in registration of conveyance deed as per the letter issued by the registrar dated 30.09.2021.

- XVI. That the respondent issued a mail to the complainants informing them that the stamp duty payable on the unit would now amount to Rs. 15,71,300/-. However due to the failure of the Respondent to get the Complainants Conveyance deed executed the Complainants have been constrained to pay an additional amount of Rs. 7,29,600.00 extra due to the wilful negligence of the Respondent. It is apposite to mention that the respondent is in violation of section 17 of the Act 2016.
- XVII. That the respondent exorbitantly charged an additional amount of Rs. 15,71,300/-- on account of stamp duty vide their demand letter dated 18.01.2022. However, it is pertinent to note that the stamp duty charges as per the rates that were prevailing in the year 2020 was at the rate of 5% for the land outside of the Municipal Corporation of Manesar from which the amount comes out to be Rs. 7,29,600/- which has to be borne by the respondent as they have failed to get the conveyance deed issued/registered within the stipulated time as mentioned in section 17 of the Act 2016.
- XVIII. That the respondent had delayed the registration of the complainant's unit owing to their own wilful negligence. The respondent is guilty of charging the complainants an excess amount on stamp duty of Rs.7,29,600/-.

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

4. The complainants have sought following relief(s).
  - a. Direct the respondent not to charge increased stamp duty from the complainants as the delay caused was on the side of the respondent.



- b. Direct the respondent to pay the increased stamp duty and not to charge anything extra from the complainants.
  - c. Direct the respondent to execute the conveyance deed.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- a. That the complaint, filed by the complainants, is bundle of lies and hence liable to be dismissed as it is filed without any cause of action.
  - b. That the complainants, failed to provide the correct facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous misleading and baseless allegations against the respondent with intent to make unlawful gains.
  - c. That the complainants have not approached the Authority with clean hands and have suppressed relevant facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.
  - d. That in around January 2008, Mr. Pawan Gupta learned about the residential project titled as "Bellevue Residency" proposed by the respondent at Sector 83, Gurgaon, Haryana and repeatedly approached the respondent to know the details of the said project. The original allottee further inquired about the specifications and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
  - e. That after having keen interest in the project the original allottee booked a villa in the said project and paid an amount of Rs. 5,00,000/- for further

registration. Further, the respondent vides welcome letter dated 18.06.2008, allotted a villa in favour of the original allottee.

- f. That on 22.09.2009, a builder buyer agreement was executed between the original allottee and the respondent for the villa bearing no. 57/240/Simplex/Br in the project for a total sale consideration of Rs. 1,60,96,997/- in the aforesaid project. Thereafter, the respondent vide addendum dated 07.03.2012, re-allotted the villa allotted to the original buyer to villa bearing no. 4/240/Simplex/ST-82D1-4 admeasuring to 1577 sq.ft. in the project titled as "Signature 2 Villas. In around the year 2018, the respondent vide addendum re-allotted the aforesaid villa allotted to the original allottee from villa bearing no. 4/240/Simplex/ST-82D1-4 to villa no 23 S-4 in the same project developed by the respondent.
- g. That the respondent offered possession of the villa to the original allottee and called upon to take the possession of the villa post clearing the amount so due and payable. It is to note, that since starting the respondent had made every best possible effort to complete the project in question within the proposed timelines. Despite, after offering possession the original allottee instead of taking possession of the villa in question had rather sold the said villa to Mr. Dheeraj Vashisth and Narender Pal Sharma in around the year 2020, upon own free will and consent. At the time stepping into the shoes of the original allottee the complainants were well aware of the exact status of the project and agreed to purchase the villa upon their own judgment and investigation.
- h. That the complainants have applied for a loan facility and only upon the instruction and following the pre-requisite condition of the bank the complainant have purchased the stamp papers upon their own judgment and investigation.

- i. That upon the requests of the original allottee, the respondent vide welcome letter dated 25.08.2020, further transferred all the rights and interest of the original allottee in respect to the villa in question in the name of the complainants.
- j. That in March 2020, the entire nation was hit by the wide spread of the covid-19 pandemic and the registration of the various documents including the conveyance deed at the registrar office was at halt by the competent authority. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24,2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25,2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- k. That even at the time of the covid-19 outbreak the respondent herein had tried every best possible effort to execute the conveyance deed in favour of the complainant but the same could not be executed due to the reasons beyond the control of the respondent. Despite, after above stated obstruction, the nation was yet again hit by the second wave of covid-19 pandemic and again all the activities in the real estate sector were forced to stop. The wide spread of covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. Therefore, it is safely concluded that the said delay in the seamless execution of the conveyance deed was due to genuine force majeure circumstances and the respondent could not be held liable for such delay.
- l. That before the normalcy could return and the real estate market could recover from the covid slowdown the competent authority imposed an additional two percent duty on transfer of immovable properties located within the municipal corporations' limits across the state of Haryana. The two per cent duty was imposed in addition to the already applicable charges in such transfers, which eventually added to the cost of transaction.
- m. That vide email dated 13.10.2020, the respondent intimated the complainants regarding the new implementations and up gradation in the software at the Tehsil office. However, the respondent even intimated that upon the formation of Manesar Municipal Corporation the stamp duty charges might increase.
- n. That the aforesaid increase in the charges for the registration of the conveyance deed was purely beyond the control of the respondent and it could not be held liable for the same. As, the respondent had already offered the possession and was ready to execute the conveyance deed for which the complainants have failed to provide adequate stamp papers.

- o. That on 08.12.2020, the respondent vide email duly intimated the complainants that the registration team had visited the officer of the tehsildar and the process of registration of the said villa had not resumed till that date and further intimated the complainants that any revision in the charges of the stamp duty are on the decision of the Authority which is not subject to any prior notice.
- p. Despite, after offering possession and requesting the complainants to come ahead and get the conveyance deed executed post clearing the dues the complainants have failed to show up. Several communications were made by the respondents intimating the exact status of registration of the conveyance deed. The respondent vide email dated 18.01.2022, duly intimated the complainants about the transfer charges which the complainants were bound to pay to the registrar to further enable the respondent to execute the conveyance deed of the villa in question.
- q. That since inception the complainants was aware of the facts that all the statutory charges as may be required for the registration shall solely be borne by the complainants and any such variation in such prices are beyond the control of the respondent.
- r. That any variation under the statutory charges as may be levied by the competent authority or govt authority are purely beyond the control of the respondent and are at the discretion of the said authority which had to be solely borne by the complainants. However, at later stage the complainants may not be allowed to back out from the charges which eventually had to be paid by the complainants.
- s. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainant had not approached the Authority with clean hands hence the complaint deserves to be dismissed with heavy costs. It is brought to the



knowledge of the Authority that the complainants are guilty of placing untrue facts and are tempting to hide the true color of intention of the complainant.

- t. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority. The complaint is an utter abuse of the process of law. Hence, deserves to be dismissed.
- iv. All other averments made in the complaint are denied in toto.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11.....**

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** "2021-2022(1)RCR(C), 357:

*"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, is extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.I Direct the respondent not to charge increased stamp duty from the complainants as the delay caused was on the side of the respondent.**

**F.II Direct the respondent to pay the increased stamp duty and not to charge the anything extra from the complainants.**

**F.III Direct the respondent to execute the conveyance deed.**

13. The authority if of considered view that where act provides obligation under section 17(1) of act on promoter to execute conveyance/sale deed in favour of allottee; it also lays down obligation on allottee to participate on execution of conveyance deed under section 19(11) of act. As far as registration charges/stamp duty are concerned, it is a well settled principle and undisputed fact of the complaint that the same shall be borne by the allottee. However, the complainant-allottee has approached the Authority seeking that the burden of increased stamp duty/registration shall be borne by the promoter. It is further a well settled principle of law that one should not take advantage of his own wrong but it is pertinent to mention herein that the relief sought is not covered under purview of section 18 of Act and is a clear case of compensation.
14. 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.*, 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 is transferred for hearing before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the Authority**

15. 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 function entrusted to the Authority under section 34(f) of the Act of 2016.

- i. The respondent shall execute the conveyance deed within the 3 months from the final offer of possession along with OC upon payment of requisite stamp duty as per norms of the state government.
- 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.

16. Complaint stands disposed of.

17. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Ashok Sangwan)

Member

Dated: 01.08.2023