

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

Complaint no. : 4551 of 2022
First date of hearing: 20.09.2022
Date of decision : 14.07.2023

Rajiv Krishan S/o Krishan Lal
Sonal Jain S/o Rajiv Krishan
Both RR/o: W.No.9, H.No-343, Malout Teh. Malout,
Distt. Muktsar, Punjab

Complainants

Versus

M/s Vatika Limited
Office: 4th Floor, Vatika Triangle, Sushant Lok-1,
Block-A, Mehrauli- Gurgaon Road, Gurgaon-
122002.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Jaswant Singh Kataria (Advocate)

Sh. Dhruv Dutt Sharma (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 23.06.2022 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 there under or to the allottee 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 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 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 06.09.2017 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Not registered
6.	Welcome letter	16.02.2010 (annexure C4, page 24 of complaint)
7.	Plot no.	17, block E, ground floor, street 13 (Page 34 of complaint)
8.	New plot no.	33/GF/St. 83 E-3/83 E/VIN admeasuring 1271.39 sq.ft. (page 20 of complaint)
9.	Date of execution of plot buyer's agreement	23.03.2011 [Page 32 of complaint]
10.	Possession clause	<p>10.1 Schedule for possession of the said independent dwelling unit</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.</i></p>

11.	Due date of possession	23.03.2014
12.	Total sale consideration	Rs. 41,32,843/- (Page 75 annexure C-8 of complaint)
13.	Paid up amount	Rs. 28,09,171/- (Page 75 annexure C-8 of complaint)
14.	Letter for cancellation	31.07.2021 (annexure C10, page 88 of complaint)
15.	Occupation certificate	Not obtained

B. Facts of the complaint

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

- I. That the respondent in the year 2009 started a group residential project under the project name and style "Vatika India Next" to be constructed and developed on the land situated at Sector 83, Gurugram, Haryana.
- II. That initially the "Primrose Unit" in question was offered for a total sale consideration to the tune of Rs. 41,32,843/- including IFMS, E.D.C., I.D.C. and other government charges as agreement dated 23.03.2011.
- III. That the complainants applied for the allotment of the primrose unit in the above said project on dated 09.12.2009 and paid booking amount to the tune of Rs. 3,66,731/- on dated 23.12.2009 against primrose floor no. plot no. 17, second floor, street 13th, block E, admeasuring built up area 1156.21 Sq. Ft. at in project "Vatika India Next" of the respondent at Sector 83, Gurugram, Haryana.
- IV. That later on, the respondent re-allotted a new primrose floor no. 33/GF/St.83 E-3/83 E/VIN admeasuring about 1271.39 sq. ft. built up area in the same project namely "Vatika India Next" on dated 08.03.2013 along with re-wised payments through an addendum to the floor buyer agreement. The respondent did not stop here and finally, the respondent again re-allotted a new primrose floor no. Sector 83, plot no. 8, St. J-1.4,

level 1 admeasuring about 1325 Sq. Ft. built up area in the same project namely "Vatika India Next" on dated 21.07.2017 along with re-wised payments through an addendum to the builder buyer agreement. The total sale consideration as per addendum to agreement dated 21.07.2022 is Rs. 47,70,343/-.

- V. That the complainants received a welcome letter on dated 16.02.2010 from the respondent confirming the booking amount and the primrose plot no. 17, second floor, street 13th, block E, measuring built up area 1156.21 Sq. Ft. at in project "Vatika India Next" of the respondent at Sector 83, Gurugram, Haryana. The complainants made another payment of Rs. 3,68,732/- on 07.02.2011 to the respondent before registration of the agreement.
- VI. That the floor buyer agreement inter-se the parties qua the unit in question was duly executed on 23.03.2011 after 15 months of date of booking. As per the agreement, the possession of the unit in question was to be handed over to the allottees within a period of 36 months from the date of the execution of agreement.
- VII. That the complainant had paid a sum of Rs. 28,09,171/- which has been duly received and acknowledged by the respondent.
- VIII. That thus, as per the assurances and even as per floor buyer agreement, the possession of the unit in question primrose floor no. Sector 83, plot no. 8, St. J-1.4, Level 1 admeasuring about 1325 sq. ft. built up area in the project namely "Vatika India Next" was to be handed over within a period of 36 months from date of execution of agreement, which comes out to be 23.03.2014, relying upon which the complainant entered into the booking of the unit in question.

- IX. That initially the respondent kept the complainants in dark and regularly informed the complainants that the respondent is doing construction and would hand over the possession very soon through emails.
- X. That the respondent has thus failed to deliver possession of the unit even after a continuing delay of 7 years till date from the due date of possession.
- XI. That the complainants greatly felt hurt, astonished and harassed when they received notice of cancellation of the unit bearing no. HSG-014A, Sector 83, plot no. 8, St. 1.4, level-1 admeasuring 1325 sq. ft. on dated 31.07.2021 from the respondent informing the complainants regarding the discontinuance of the project and promising refund of the entire amount with interest.
- XII. That after receiving the notice of cancellation, the complainants demanded their back the amount which the complainants have paid to the respondent. Initially the respondent promised the complainants to refund the entire amount with interest but latter on postponed the matter taking lame excuses.
- XIII. That it is worthwhile to mention here that the respondent has discontinued the project and has not given possession of the floor in question to the complainants in spite of a lapse of a period of more than 7 year till date, thereby inviting liability under the statutory provisions enumerated under section 18 of the Act.
- XIV. That the complainant herein has been repeatedly and continuously expressing discontent and objecting to the malafide attitude of the respondent towards its allottees. They have been requesting to the company and has made numerous requests and efforts seeking redressal of their grievance.
- XV. That being highly aggrieved and frustrated by the entire circumstances and faced by the miserable attitude of the respondent, which needless to

mention, has rendered the complainant completely shattered and heartbroken, the complainants are left with no other option but to approach the Authority, Gurugram, for issuance of the refund of the amount paid till date to the respondent along with applicable interest till realization and compensation.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent to refund the entire amount paid by the complainant.
 - b. Direct the respondent to pay the litigation costs and compensation.
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 at the outset, the respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.
 - b. That the complaint filed by the complainants before the Authority, besides being misconceived and erroneous, is untenable in the eyes of law. They have misdirected themselves in filing the above captioned complaint before the Authority as the relief being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the Authority.
 - c. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not

- without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- d. That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- e. That apparently, the complaint filed by the complainants 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 the complainants.
- f. That it has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 3 years from the date of execution of the agreement unless there shall be failure due to reasons beyond the control of the developer.
- g. That the respondent has already cancelled the booking of the complainants vide cancellation notice dated 31.07.2021 due to various reasons but not limited to change in the layout plan, initiation of the GAIL Corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. As per clause 11.5 of the agreement, it has been agreed that in the event of failure to handover the possession, the company would be entitled to terminate the agreement and refund the amount. The respondent also offered to refund the amount to the complainants along with 6% interest p.a.



However, it was the complainants who did not come forward to collect the money.

h. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:

- a. Decision of the gas authority of India Ltd. to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and the respondent was forced to reevaluate its construction plans which caused a long delay.
- b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
- c. Re-routing of high-tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.

It is submitted that it was due to the aforesaid reasons which were beyond the control of the respondent; the unit of the complainants became non-deliverable.

7. Copies of all the relevant documents have been files and placed on the 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

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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.

12. 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 and followed in case of *Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 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."

13. 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 complainant.

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

14. The complainants submitted that they booked a unit in the project of the respondent for a total sale consideration of Rs. 41,32,843/- out of which the complainants have made a payment of Rs. 28,09,171/-. The respondent assured the complainant to handover the said unit within 3 years from the date of execution of agreement. The buyers' agreement was executed on 23.03.2011. Therefore, as per possession clause 10.1 of the buyers' agreement the due date is 23.03.2014. It is pertinent to mention here that the respondent has terminated the builder buyer agreement dated 23.03.2011 vide termination letter dated 31.07.2021 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. Moreover, it has been overserved vide termination letter dated 31.07.2021 that the respondent offered refund the amount to the complainant along with 6% interest p.a. but the same was also not collected by him.
15. 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is 23.03.2014 and there is delay of 8 years 3 months 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....."

17. 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

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

18. 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 allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

19. 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.
20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 28,09,171/- within 90 days 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 expenses & compensation

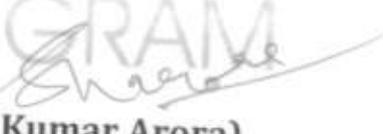
21. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & 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, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the authority

22. 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):
- i. The respondent/promoter is directed to refund the entire amount of Rs. 28,09,171/- 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 and Development Rules, 2017) from the date of each payment till the actual date of realization of the 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.
23. Complaint stands disposed of.
24. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2023