

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

Complaint no. :	6941 of 2022
Date of filing complaint:	28.10.2022
First date of hearing:	28.02.2023
Date of decision :	28.04.2023

Ajay Singh R/o: 901, tower 9, Ansals, Sushant Estate, Sector 52, Gurugram.	Complainant
Versus	
M/s Vatika Limited address: Vatika Triangle, 4 th floor, Sushant Lok, Phase-I, block A, Mehrauli-Gurgaon Road-122002	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rajendar Singh Tahlan (Advocate)	Complainant
S/Sh. Venket Rao, Pankaj Chandola, Mayank Grover (Advocates)	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 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:

	Heads	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at Sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of the licensee	M/s Stanway Developers Pvt. Limited & 3 others
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 for area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	3704, tower A
8.	Unit area admeasuring	1580 sq. ft. (super area)
9.	Date of builder buyer agreement	03.11.2016 (page 18 of complaint)
10.	Due date of possession	03.11.2020
11.	Possession clause	<p>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 &</i></p>

		<i>37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. Emphasis supplied</i>
12.	Total sale consideration	Rs.1,13,42,812/-.
13.	Amount paid by the complainant	Rs. 27,87,721/-.
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. That, after going through the advertisement published by respondent in the newspapers and as per the brochure/prospectus provided by it, the complainants booked a flat no.3704, 2-BHK+S having super area of **1635 Sq. ft.** in the respondent's project "**Tranquil Heights**" situated on 37th floor, tower no. A, having priority no. HSG-020-A3704-Phase-1, Sector-82A, Gurugram vide their application dated 09.11.2013. The said project was to be developed by the respondent on the land measuring 11.218 acres situated in the revenue estate of Village Sikohpur, District Gurugram for which, respondent has obtained License No.22 dated 24.03.2011 from the Director General, Town and Country Planning, Govt. of Haryana, Chandigarh.

- b. That, as per the demand of respondent, our client paid an amount of Rs.27,87,721/- from time to time and respondent executed the buyer's agreement dated **03.11.2016** that too after lot of follow-ups by the complainants and after payment of Rs.19,69,000/- to the respondent by them.
- c. That the complainants had been depositing the periodic instalments regularly as per the demand of respondent last being paid on 08.11.2016 for Rs.40,000/- despite the fact that there was no progress on the project development front. The buyer agreement was clearly one sided in favour of the respondent and despite having raised repeated objections by the complainants to several clauses of the buyer's agreement, the respondent failed to improve upon the objectionable clauses of the buyer's agreement and he complainants were forced to sign the buyer's agreement. Before signing the buyer's agreement, they even requested the respondent through personal meetings in its office and even writing through e-mails for cancellation of the said flat and to refund the deposited amount but the respondent refused to refund the same, as a result of which the complainants were forced to sign the buyer's agreement due to having already paid a significant amount of Rs.19.69 Lacs to the respondent.
- d. That, after signing the buyer's agreement, the complainants had been visiting respondent's office to know the status of development of the said project, but the complainants were not informed by the respondent about the correct and actual status of the project. The Complainants having lost patience and also

having lost faith in the respondent, had been requesting the respondents several times from 2017 till date in writing as well as through several personal visits to respondent's office for refund of their deposited amounts along-with interest but respondent failed to refund the same. It is also pertinent to mention here that the said project is reported to have been dropped and the validity of License has also expired.

- e. That, when nothing fruitful came out, the complainants through his counsel served a legal notice bearing ref. no. MISC/RST/LN dated 26.07.2022 through speed post upon respondent, vide which the respondent was called upon to refund the amount of Rs.27,87,721/- immediately without fail along with 24% rate of interest from the date of deposit of amounts by the complainants. The legal notice deemed to be served upon respondent, as neither any amount has been refunded by it nor any reply thereof.
- f. That the respondent miserably failed to develop the project and has abandoned the project and even there is no sign of construction and no construction has been carried out by respondent from several years and there is no chance that the respondents may complete the project in nearby future. The complainants have had abided by all the terms and conditions of the buyer's agreement and have already paid Rs.27,87,721/- out of total sale consideration against the unit. However, the respondent in all aspects has breached the conditions of the buyer's agreement and there incapability to complete the project is crystal clear as the project has been delayed almost

more than **three years** and the project is still very far from its completion.

- g. That the respondent has committed grave deficiency in services by not handing over the possession of the unit to the complainants as was promised at the time of sale of the said Unit, which amounts to unfair trade practice which is immoral and illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of the said unit. It has also acted fraudulently and arbitrarily by inducing them to buy the unit on the basis of its false and frivolous promises and representations.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of respective deposits till its actual realisation in accordance with the provisions of the Act.
5. Though, the respondent put in appearance through its counsel Sh. Venket Rao but failed to file any written reply despite giving a number of opportunities and imposing costs. So, in such a situation the authority was left with no alternative but to struck off the defence of the respondent for not filing the reply.
6. 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 submissions oral as well as written (filed by the complainant) made by the parties.

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, 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

9. 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.

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.*** 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."

G. Findings on the relief sought by the complainants:

G.1 Direct the respondent to refund the paid entire amount paid by the complainants.

12. The complainants booked a unit bearing no. 3704, admeasuring 1580 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 03.11.2016. They paid a sum of Rs. 27,87,721/- to the respondent against the total sale consideration of Rs. 1,13,42,812/- but due to misrepresentations w.r.t. the project, they did not pay the remaining amount and are seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

13. Clause 13 of the buyer's agreement dated 03.11.2016 provides for schedule for possession of unit in question and is reproduced below for the reference:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

*The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said **Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. **Emphasis supplied***

14. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 03.11.2016 and therefore, the due date of possession comes out to be 03.11.2020.
15. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 3704, admeasuring 1580 sq. ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,13,42,812/-. The respondent during the proceeding has admitted that the project could not be delivered due to various reasons, and it has filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site. Thus, the complainants are right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned.
16. 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***, 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."

17. 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 they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
18. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the

respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 27,87,721/- 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 refund of

the amount within the timelines provided in rule 16 of the rules
ibid.

H. Directions of the Authority:

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

- i. The respondent/promoter is directed to refund the entire amount of Rs. 27,87,721/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual date of refund 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 the registry.



Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.04.2023