

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

Complaint no.	1012 of 2022
Date of complaint	11.03.2022
First date of hearing	09.08.2022
Date of decision	20.09.2023

Sanil Sanan & Kamna Sanan R/O: 12, 1 <sup>st</sup> Floor, Shakti Vihar, Pitampura, Delhi.	<b>Complainants</b>
Versus	
M/S Vatika Ltd. <b>Registered address at</b> Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase I, Block A, MG Roag, Gurugram-122002.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Kanish Bangia Advocate	Complainants
Mr. Dhruv Dutt Sharma Advocate	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 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 complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Xpressions by Vatika
2.	Nature of the project	Residential plotted colony
3.	Area	133.022 acres
4.	DTCP license no.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
5.	Name of licensee	Shiva Profins Pvt Ltd
6.	RERA Registered/ not registered	RERA registered 217 of 2019
7.	Unit no.	Plot no. HSG-028-Sector-88B, Plot no. 19, St. H-24, Top level (Page no. 28 of complaint)
8.	Unit area admeasuring (super area)	1350 sq. ft. (As per page no. 28 of the complaint)
9.	Date of execution of builder buyer agreement	21.06.2016 (Page no. 26 of complaint)
10.	Possession clause	<b>13. Possession</b> The developer based on its present plans and estimates and subject to all just exceptions

		contemplates completing the construction of the said residential floor within a period of 48 months from the date of execution of BBA unless there shall be delay or there shall be a failure due to reasons mentioned in other clauses herein or due to failure of allottees to pay in time the price of the said residential floor 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 part of the allottees to abide by any terms or conditions of the agreement.
14.	Due date of possession	21.12.2020 <b>(Calculated from the date of buyer's agreement plus 6 month period in lieu of Covid-19)</b>
15.	Total sale consideration	Rs. 81,64,153/- <b>(As per page no. 92 of the Reply)</b>
16.	Amount paid by the complainant	Rs. 31,35,567/- <b>(As per page no. 92 of the Reply)</b>
18.	Occupation certificate	12.06.2023
19.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants were approached by the builder i.e. Vatika Ltd., wherein they extended the rosy picture of their forthcoming venture "Xpressions by Vatika" and actuated the complainants to invest in the Respondent's project.
4. Assured by the promises and inducement of the respondent and based on their candid representations, the complainants booked a flat, bearing no. HSG-029, Plot No.-19, ST. H-24, Top Level, and having a super area of 1350 sq. ft., in the said project. In furtherance of this, an application form dated 12.04.2016 was executed between M/s Vatika Ltd. and the complainants, in lieu of which the complainants advanced an amount of Rs. 2,00,000/- as token money in respect of booking the said flat.
5. On 21.06.2016, a builder-buyer agreement was executed between M/s Vatika Ltd. and the complainants. Further, it was promised to the complainants that the possession of the said flat would be provided within 48 months. The total consideration was agreed at Rs.81,79,513/-
6. Following payments were made by the complainants:

S. no	Date	Mode Of Payment	Amount
1.	19.04.2016	Cheque-082313	Rs.200000/-
2.	19.05.2016	Cheque-082315	Rs.1248000/-
3.	27.06.2017	RTGS/NEFT	Rs.65191/-
4.	24.01.2018	RTGS/NEFT	Rs.1622376/-

7. As per clause 13 of the builder buyer agreement, "the respondent had assured the complainants that the respondent will soon construct the said unit and shall handover the possession of the period of 48 months from the date of signing of the agreement". However, to date, no

possession or allotment letter whatsoever has been handed over to the complainants.

8. As per clause 18 of the Agreement, "it was agreed between the parties that if the respondent fails to handover the possession of the said unit within the stipulated time as agreed in clause 14 of the agreement, then the respondent will pay compensation up to a maximum of Rs.750 sq. ft. of the super area of the unit per month for the period of such delay after the expiry of 60 days from the stipulated date for delivery of the possession". The respondent has neglected to pay the delayed interest to the complainants and has wilfully put them in a jeopardized situation
9. The respondent miserably neglected to hand over the physical possession of the said unit to the complainants to date. The construction of the unit is still ongoing and will take almost another 4-5 years to get completed.
10. A legal notice dated 04.09.2021 demanding a refund of the said unit along with delayed interest was sent to the respondent but to date, the respondent has neither responded to the legal notice nor has handed over the possession to the complainants.

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

11. The complainants have sought the following relief(s):
  - i. Direct the respondent to refund the entire paid amount along with the prescribed rate of interest.

**D. Reply by respondent:**

12. The unit in question was booked by Mr. Sanil Sanan, Mrs. Vanita Sanan, and Mrs. Kamna Sanan. However, the present complaint has been filed

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- by only Mr. Sanil Sanan and Mrs. Kamna Sanan, and as such the same is liable to be dismissed on account of non-joinder of necessary party.
13. No such agreement, as referred to under the provisions of the 2016 Act and 2017 Haryana Rules, has been executed between the respondent and the complainant. Rather, the agreement that has been referred to, to get the adjudication of the complaint, though without jurisdiction, is the flat buyer's agreement, executed much before coming into force of the 2017 Haryana rules.
  14. That the complainant has miserably and wilfully failed to make payments in time by the terms of the flat buyer's agreement. The complainant has frustrated the terms and conditions of the flat buyer's agreement, which were the essence of the arrangement between the parties.
  15. It was 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 completing construction of the said residential floor unit within a period of 48 months from the date of execution of the agreement, unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said residential floor.
  16. As per clause 16 of the BBA, it had been agreed that in case the delay is due to reasons beyond the control of the Developer then the developer shall be automatically entitled to the extension of time for delivery of possession. Further, the developer may also suspend the project for such a period as it may consider expedient.

17. Due to several force majeure conditions, the project got delayed, the same are as follows;
- (i) Introduction of a new National Highway 352 W.
  - (ii) The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region.
  - (iii) Implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing a shortage of labor supply.
  - (iv) Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
  - (v) Disruptions caused by unusually heavy rains in Gurgaon.
  - (vi) Financial crunch in the real estate sector.
  - (vii) Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
  - (viii) Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
  - (ix) The Government of India imposed a lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic.
18. The complainants have failed to make payments in time in accordance with the terms and conditions as well as the payment plan. It is submitted that out of the sale consideration of Rs. 81,64,153/-, the amount actually paid by the complainants is Rs. 31,35,567.54/- i.e.

around 38% of the total consideration of the unit. The complainants after defaulting in complying with the terms and conditions of the buyer's agreement, now want to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainants.

**E. Jurisdiction of the authority:**

19. The plea of the respondents regarding lack of jurisdiction of Authority is 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**

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 the entire Gurugram District for all purposes 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

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

**F. Findings on the objections raised by the respondents:**

**F.I. Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed before coming into force of the Act.**

20. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties before the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
21. The authority is of the view that the provisions of the Act are quasi-retroactive to some extent in operation and would apply to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be

read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P. 2737 of 2017)** decided on 06.12.2017 and which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

22. Also, in appeal no. 173 of 2019 titled **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in the order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion.

*Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

23. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of the above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

#### **F.II Objections regarding force Majeure**

24. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC to stop construction, notification of the Municipal corporations Gurugram, etc. The plea of the respondent regarding various orders of the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by SC banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a

delay in the completion. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The due date for the possession of the subject unit being allotted to the complainant is 21.06.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to the outbreak of the Covid-19 pandemic. So, in such case, the due date for handing over of possession comes out to **21.12.2020.**

**F.III Objection regarding non-joinder of necessary parties.**

25. The respondent contended that the unit in question was booked by three allottees, namely Mr. Sanil Sanan, Mrs. Vanita Sanan, and Mrs. Kamna Sanan, but the complaint was filed only by Mr. Sanil Sanan and Mrs. Kamna Sanan, and hence the said complaint should be dismissed on the ground of non-joinder of necessary parties. The said issue was raised on the proceeding dated 10.11.2020 too. Though thereafter, the complainants submitted additional documents to the Authority on 20.07.2023 vide which they informed that one of the co-allottees Mrs. Vanita Sanan (Mother of Mr. Sanil Sanan & Mrs. Pooja Sanan), demised on 14.04.2021 as per the death certificate. Further, it is noted that the share of Mrs. Vanita Sanan devolves to her two children, namely Mr. Sanil Sanan & Mrs. Pooja Sanan. The complainants have submitted a duly executed NOC dated 06.03.2023 signed by Mrs. Pooja Sanan, whereby she states that she relinquishes her claim against the unit in

question. Thus, in view of the above, the Authority finds that the complaint has been duly filed.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount deposited by the complainant along with interest at the prescribed rate.**

26. The complainants were allotted plot no. HSG-028-Sector-88B, plot no. 19, St. H-24, top level in the project "Xpressions", Sector 88B, Gurugram, Haryana by the respondent/builder for a total consideration of Rs. 81,64,153/-. The possession of the unit was to be offered within 48 months from the date of the execution of the buyer's agreement. Hence, the due date of possession comes out to be 21.12.2020 (Including a 6-month period in lieu of Covid 19). The occupation certificate was obtained only on 12.06.2023. It has come on record that against the total sale consideration of Rs. 81,64,153/-, the complainants have paid a sum of Rs. 31,35,567/- to the respondent. However, the complainants contended that the unit was not offered to them despite this. Hence, in case allottees wish to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by 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 the case of *M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)* wherein it was observed as under: -

*"The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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".*

27. 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 allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondents/promoter in respect of the unit with interest at such rate as may be prescribed.
28. It is contended on behalf of the respondent that after completing the project, it obtained the occupation certificate from the competent authority on 12.06.2023. But the complainants had already surrendered the unit by filling the present complaint on 11.03.2022, therefore the complainants cannot be forced to continue with the project. There has been an inordinate delay in the project which cannot be condoned. Thus in such a situation, the complainants cannot be

compelled to take possession of the unit and they are well within their right to seek a refund of the paid-up amount.

29. Keeping in view the fact that the allottees/complainants wish to withdraw from the project and are demanding a return of the amount received by the promoter in respect of the unit with interest on the 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.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to a refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 8.75% p.a. (the State Bank of India's highest marginal cost of lending rate (MCLR) applicable as of 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 Haryana Rules 2017 *ibid*.

**H. Directions of the Authority:**


31. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with 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/promoters are directed to refund the amount i.e., Rs.31,35,567 /- received by them from the complainant/allottee along with interest at the rate of 10.75% 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 refund of the amount.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.

32. Complaint stands disposed of.

33. File be consigned to the registry.

  
Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 20.09.2023

**HARERA**  
**GURUGRAM**