

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

Complaint no. :	7325 of 2022
Date of filing complaint:	12.12.2022
First date of hearing:	18.04.2023
Date of decision :	05.10.2023

Mr. Harish chuphal S/o Johar Singh Chuphal R/0 House no-23, Block-U Hudco Palace, Andrews Ganj, South Delhi 110049.	Complainant
Versus	
M/s Vatika Limited Address: Vatika Triangle, 4 th Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana.	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Gaurav Rawat, Advocate	Complainant
Shri Harshit Batra, Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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 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 23.03.2017
5.	Name of the licensee	M/S Stanway Developers Pvt Ltd. & 2 others
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Date of allotment letter	12.09.2014 (page 23 of complaint)
8.	Unit no.	2502, 25 th floor, building A (page 23 of complaint)
9.	Unit area admeasuring	1635 sq. ft. (super area)
10.	Date of builder buyer agreement	30.07.2015 (page 47 of complaint)
11.	Due date of possession	30.07.2019
12.	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</i></p>

		<i>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</i>
13.	Total sale consideration	Rs. 1,13,71,882/- [as per SOA dated 14.04.2023 page 27 of reply]
14.	Amount paid by the complainant	Rs. 59,20,239/- [as per SOA dated 21.12.2021 page 77 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That the complainant is the buyer of apartment no. 2502, Type 2BHK+S, floor no.25, building A, admeasuring super area of 1635 sq. ft. and PLC preference for a basic sale price + PLC of Rs. 1,08,51,952/- with the inclusion of extra charges of EDC/IDC/IFMS/ escalation charges amount to Rs. 1,13,71,882/.
 - That the said project is a construction linked project and the complainant has made payment of Rs. 59,20,239/- till 26.05.2018 and further no demands were raised by the respondent.

- c. That upon visiting the site complainant found that no construction has been done and also visited the office of respondent to confirm if any payment demands have been raised and was informed that no payment demands had been raised till date.
- d. That the complainant had paid more than 50% of the actual amount of the apartment and was willing to pay the remaining amount. However, the respondent failed to deliver possession of the apartment at the promised time."
- e. That the complainant had purchased the apartment with the intention that after the purchase he will be able to have a stable residence and live with his family in a safe and better environment. It was promised by the respondent at the time of representation for the apartment that the possession of fully constructed apartment would be handed over to the complainant as soon as construction completes i.e. 48 months from the date of construction and 6 months grace period in total 54 months from the date of signing of the builder buyer agreement dated 30.07.2015 and possession of the apartment was due on 30.01.2020 (including grace period).
- f. That the respondent has failed to complete the said project on time, only a skeleton structure has been constructed up to the 10th floor of the project.
- g. That the complainant has been paying the respondent since 31.10.2013 and had paid a total amount of Rs. 32,14,590/- before signing of the buyer's agreement.

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h. That the complainant visited several times the office of respondent for the speedy construction and possession but nothing has been done so far and fake promises had been made. Agonised by such behavior of the respondent and the prolonged delay in the construction and possession of the project, the complainant corresponded with respondent representation, Mr. Sajad, and was informed that the project has been delayed and no fixed time period has been indicated. Furthermore, the complainant requested the representative to refund the paid amount as he does not wish to continue with the project due to the false promises and the complainant was informed by the respondent that paid amount cannot be refunded but it can be shifted to other projects of the respondent but the complainant does not wish to shift his unit but wants his amount to be refunded.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the paid amount i.e. Rs.59,20,239/- along with interest of 24% from 31 October 2013 till the date of refund on the amount paid by the complainant to the respondent.
 - ii. Direct the respondent to pay the compensation of Rs. 5,00,000/- for deficiency in service and mental agony both.
 - iii. Direct the respondent to pay Rs. 1,00,000/- as litigation expenses.

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D. Reply by respondent:

5. The respondent made the following submissions in its reply:

- (a) That at the very outset the present complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
- (b) That the complainant has no locus standi or cause of action to file the present complaint. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions, as shall be evident from the submissions made in the following paragraphs of the present reply.
- (c) That the complainant being interested in the real estate development of the respondent under the name and style of "Tranquil Heights", situated at Sector- 82A, Gurugram Haryana tentatively booked a unit in the project of the respondent, bearing no. 2502, 25th floor, tower A, having an area admeasuring 1635 Sq. ft. The project is duly registered with Haryana RERA with registration no. 359 of 2017 dated 17.11.2017.
- (d) That buyer's agreement was executed on 30.07.2015 between the parties and the total sales consideration of the unit is Rs. 1,13,71,882/- (excluding registration charges and other charges).
- (e) That according to clause 13 of the buyer's agreement, the delivery of possession of the unit was proposed to be within 48 months from the date of execution of the agreement. However, it was specifically mentioned that the same is subject to failure of respondent due to the reasons mentioned in the

clauses 14 to 17 and 37 or due to failure of the allottee(s) to pay in time.

- (f) That there was an unforeseeable and unexpected development of Gas Authority of India (GAIL) pipelines through the project land of the respondent and the township of respondent was planned prior to the notification of GAIL and thereafter the said notification the respondent also submitted a detailed representation to GAIL and HUDA. That GAIL wrote a letter to the Department of Town and Country Planning (DTCP) for re-routing of gas pipelines of GAIL in Gurugram concerned sectors. In reply to the letter of GAIL, DTCP wrote that the revised routing should be through the green belt. Thereafter, writ petitions were filed in the High Court of Punjab and Haryana relating to revised routing of GAIL pipeline in Gurugram, which was denied by the Hon'ble High Court in its joint order in ***CWP16532/2009(O&M) titled as Shivam Infratech V, Union of India and CWP18173/2009 titled as Vatika Ltd V. Union of India***, as a result of which GAIL completed its work as per the original schedule. GAIL also reduced the rights of users from 30m to 20m which led to respondent losing a number of plots including the said project land.
- (g) That subsequent to the booking and signing of the agreement, the respondent faced difficulties in construction and development of the said project due to presence of sector roads in main entrance of the project which has not been constructed till date and there was a de-notification of sector road, after which the government introduced the land acquisition policies

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such as Transfer of Development Rights (TDR). That under the TDR policy which came on 03.06.2014, farmers have to surrender their land fully under acquisition policy, obtain TDR certificate and sell it to the developers. Subsequently, the respondent tried to purchase the land but could not do so. That at present, two sector roads (24 mtr.) are falling in the project land and due to the reason of non-acquisition of the same, the respondent has lost road connectivity and supply of construction materials etc. to the project land.

- (h) That there is no intentional delay on part of the respondent in adhering to the terms and conditions of the agreement. Due to force majeure conditions and events outside the power of the respondent, are the cause of the present delay. It is pertinent to mention here that the Hon'ble Real Estate Regulatory Authority, Gurugram had granted the Registration Certificate to the project of the respondent bearing no. 359 of 2017 dated 17.11.2017 which was valid for a period of 41 months i.e., 30.04.2021.
- (i) That delay in the delivery of possession of the unit has also been affected by the land dispute filed by one of the land owner of the said project land.
- (j) That complainant is not entitled for any relief as delay caused is beyond the control of respondent, non-existence of cause of action and claim being barred by limitation. Thus, the complaint is bound to be dismissed.

6. All other averments made in the complaint were denied in toto.
7. 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 these undisputed documents and submission made by the parties.

- E. Jurisdiction of the authority:**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 allottee 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 complainant 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 complainant:

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

12. The complainant booked an apartment no. 2502, 2BHK+S, floor no.25, building A, admeasuring super area of 1635 sq. ft in the respondent's project mentioned above. This led to the execution of buyers' agreement on 30.07.2015. The complainant paid a sum of Rs. 59,20,239/- to the respondent against the total sale consideration of Rs. 1,13,71,882/-. However due to misrepresentations w.r.t. the project, complainant did not pay the remaining amount and is now seeking a refund of the paid-up amount along with 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 30.07.2015 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 of this agreement. **Emphasis supplied***

14. **Entitlement of the complainant 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 30.07.2015 and therefore, the due date of possession comes out to be 30.07.2019.
15. It is not disputed that the complainant is an allottee of the respondent having been allotted an apartment no. 2502, 2BHK+S on the 25th floor of building A admeasuring super area of 1635 sq. ft in the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,13,71,882/-. The respondent has admitted in their reply that the project could not be delivered due to various reasons. As of now, there has been no progress on the project site. Thus, the complainant is right in withdrawing from the project and seeking a refund of the paid-up amount along with 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 sub-section (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., **05.10.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 59,20,239/- with interest at the rate of 10.75% (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*.

G.II Litigation expenses & compensation

22. The complainant is 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:

23. 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. 59,20,239/- paid by the complainant along with prescribed rate of interest @ 10.75% 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants and even if any transfer is initiated with respect to subject unit the receivable shall be first utilized for clearing dues of allottee-complainant.
24. Complaint stands disposed of.
25. File be consigned to the registry.


Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram
Dated:05.10.2023