

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

**Complaint no.** : 2391 of 2021  
**Date of filing complaint:** 14.06.2021  
**First date of hearing** : 06.07.2021  
**Date of Decision** : 12.09.2023

1. Lakshit Mittal
2. Geetika Mittal

**Both RR/o:** Flat #2602, Tower B,  
Executive Towers, Business Bay,  
Sheikh Zayed Rd. Dubai,  
United Arab Emirates.

**Also at:** F-3, Manish Metro Plaza, Dwarka,  
Sector 12, KM Chowk, New Delhi.

**Complainants**

**Versus**

1. M/s Vatika Sovereign Park Pvt. Ltd.  
**Office:** Flat No. 224A, 2<sup>nd</sup> floor Devika Towers 6,  
Nehru Place, New Delhi-110019
2. M/s Vatika Limited  
**Office:** Ground Floor, Block A, Sector 83,  
Vatika India Next Gurugram-122012

**Respondents**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**

**Member**

**APPEARANCE:**

None

On behalf of the complainants

Shri Harshit Batra

Advocate for the respondents

**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 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 thereunder 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, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Sovereign Park, Sector 99, Gurgaon, Haryana.
2.	Nature of the project	Group housing colony
3.	DTCP license no.	<ul style="list-style-type: none"> <li>• 119 of 2012 dated 06.12.2012 Valid till 05.12.2016 Licensed area- 10.03 acres Licensee- Planet Earth Estates Pvt. Ltd.</li> <li>• 65 of 2013 dated 20.07.2013 Valid till 19.07.2017 Licensed area- 0.40 acres Licensee- Planet Earth Estates Pvt. Ltd</li> </ul>
4.	HRERA registration or not	Registered vide no. 285 of 2017 Valid till 09.10.2022
5.	Date of allotment letter	23.01.2014 (Page 18 of complaint)



6.	Unit allotted vide allotment letter dated 23.01.2014	302, tower- Sky Park-3, Sector 88B measuring 2200 sq.ft. in the project "The Urban Expressions" (Page 18 of complaint)
7.	Unit changed vide allotment letter dated 17.02.2015	301, tower- Sky Park-3, Sector 88B measuring 2155 sq.ft. in the project "One Express City"- Vatika Express City (Page 20 of complaint)
8.	Final allotted unit no. vide allotment letter dated 23.11.2015	301, 3 <sup>rd</sup> floor, tower F, Sector 99, admeasuring 2650 sq. ft. in the project Sovereign Park (Page 32 of complaint)
9.	Date of execution of buyer's agreement	11.12.2015* [Page 33 of complaint]  *Rectified vide present order
10.	Possession clause*  [*Rectified vide present order]	<b>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b>  <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 Clauses 14 to 17 &amp; 37 or due to failure of Allottees(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)</i>



		<i>to abide by any of the terms or conditions of this Agreement.</i> [Page 40 of complaint]
11.	Due date of possession	11.12.2019
12.	Addendum to the agreement dated 11.12.2015 executed on	11.12.2015 [Page 50 of complaint]
13.	Total sale price as per SOA dated 29.01.2016	Rs. 2,09,88,000/- (Page 55 of complaint)
14.	Amount paid by the complainants as per SOA dated 29.01.2016	Rs. 46,68,566/- (Page 55 of complaint)
15.	Occupation certificate /Completion certificate	Not received
16.	Offer of possession	Not offered
17.	Legal notice by the complainants allottee	22.02.2021 [Page 57 of complaint]

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
- That the present complaint is filed by the complainant no.1 and complainant no.2 who had jointly booked a unit on 15.05.2013 in Vatika Express City, Sector 88B, Gurgaon. The complainants bought unit no. 302, an area of 2200 sq. ft., Sky Park-3 in the project 'The Urban Expressions'. The tentative cost of the flat was Rs. 1,78,59,732/-.

- ii. The complainants received the allotment letter dated 23.01.2014 for the unit no. 302, an area of 2200 sq. ft., Sky Park-3. On 25.06.2014, the complainants received a letter for change of name of the project from 'The Urban Expressions' to 'One Express City'. Thereafter, on 17.02.2015, the complainants received another allotment letter for the project name "One Express City"-Vatika Express City.
- iii. That the complainants in terms of the agreement paid Rs.46,68,565/- between 15.05.2013 to 04.04.2014. There was never a default in payment. The further payments were not paid as no demand notice was served. That in absence of any communication and knowledge about the status of construction, the complainant no.1 visited India in November 2015 and met an executive namely Mr. Ankit Nagpal of Vatika Sovereign Park (P) Ltd., and Mr. Bhavya was also present in that meeting. When the complainants enquired about the delivery of possession of unit, Mr. Nagpal expressed the inability to deliver the unit in Sector 88B, as there was failure to start construction due to technical reasons their payments.
- iv. That Mr. Nagpal, insisted to accept an alternative flat in Sector 99 to avoid forfeiture of the existing amounts already paid towards Sector 88B flat. He mentioned that the sum of Rs. 46,68,565/- paid for Sector 88B flat will be adjusted without any compensation or interest for about 2 years for the money which was retained illegally by the respondent.
- v. That, complainants felt trapped, and to save his hard earned money of about half a crore agreed to the arrangement and



accordingly on 23.11.2015, entered into a new agreement to accept a flat in Vatika Sovereign Park in Sector 99 and an allotment letter was issued in the project namely "Sovereign Park" on 23.11.2015. The flat registered was unit 301 Tower 'F' measuring 2650 sq. ft. Tentative cost was Rs. 2,10,38,600 and the sum of Rs. 46,68,565/- paid by complainants for sector 88B flat was adjusted against it. He further paid TDS during 2016, i.e., total Rs. 47,10,278/- has been paid by the complainants. Later to build up confidence of complainants, the complainant no.1 was informed that the project is being registered under HRERA. However, it is not known whether 70% of the complainant's contribution of the money as required under the Act has been deposited in special a/c or not.

- vi. That after May 2016, the complainants neither received any demand notice, nor could contact anyone who could satisfy them about the status of the project, hence the complainant no.1 personally came to India and visited the construction site in December 2017. The details of entry in the security register area available with them, the complainants observed that, there was no work in progress at the site of tower 'F'.
- vii. That the complainants realized that they have been trapped from the year 2019 onwards made various efforts to know about the status but could not contact any office. They have sent various emails but received no response against the same. The complainant no.1 further tried to contact on all available telephone numbers but failed to contact thereon. The complainants realised that they have been duped, and



complainant no. 1 requested his brother who stays in Delhi to visit the site personally. When his brother personally visited the site in January 2021, he found no trace of construction of Tower 'F'. Hence now file the present complaint.

- viii. That it may be worth clarifying that the complainants were "Non-resident Indian" and for the last many years they are staying outside India. They had a dream in 2013 to resettle in India after retirement but due to the illegal acts of the respondents their dreams have been shattered and they are back in square one. The act and conduct of the respondent always remain negligent even after payment of substantial amount by bonafide consumer, they could not get any response about the progress of construction or the tentative date of delivery of possession of flat.
- ix. That aggrieved by the act of the respondents, the complainant no.1 issued legal notice on 22.02.2021 through speed post against the respondents and the said notice was delivered to all concern on 24.02.2021 but the builders have not responded to the legal notice.
- x. That the complainants have come before this authority to raise and express their grievances and concerns, as they have invested their hard earned money in booking a unit in the project of the respondents. That impressed by the highly alluring and attractive promises made by the respondent in their project, the complainants opted for the unit in their project. That at the time of booking, the respondent assured the complainants of timely delivery of the unit and fulfilment of all promises made in the sales brochure. That despite the respondent suggesting that the





project will be completed within a time bound manner in 48 months and making the complainants fulfil their payment considerations amongst other things, the actual possession of the unit is nowhere in sight. The respondents not only mislead the complainants on this pretext but also fraudulently and deceitfully made the complainants deposit the money periodically for the said unit.

- xi. That due to inordinate delay there is harassment, mental and physical agony caused to the complainants and his family apart from the fact that complainants could not be able to utilize the amount for long, there are other financial goals which the complainants could be able to fulfil due to the act and conduct/negligence of the respondent.
- xii. That the complainants being aggrieved by the offending misconduct, fraudulent activities of the respondent, have filed the present complaint before this authority, Gurugram. It is submitted in the last seven years the respondent has not even started the construction of the flat in the allotted tower and should be addressed by this authority inter-alia by allowing all the relief as claimed by the complainants.

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

4. The complainants have sought following relief(s):
  - i. Direct the respondent to refund the amount of Rs. 46,69,565/- along with the interest.





- ii. Direct the respondent to pay 18% of interest on the amount deposited for the undue delay of delivery of the possession of the unit to the bonafide complainants.
- iii. Direct the respondent to pay Rs. 5,00,000 on account of mental agony, harassment and litigation charges to the bonafide complainants.
- iv. Pass any other order or grant any other relief which this Hon'ble Authority may deem fit and proper and in view of the facts and circumstances of the complaint.

**D. Reply by respondents:**

5. The respondents by way of written reply dated 10.05.2023, made the following submissions:
  - i. 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. 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. It is matter of record and rather a conceded position that no such agreement as referred under the provisions of the Act, 2016 and rules 2017 has been executed between the respondent and the complainants. Rather, the agreement that has been referred to, for purpose of getting the adjudication of the complaint though without jurisdiction, is

the builder buyer agreement executed much prior to coming into force of the Act, 2016 and the Haryana rules, 2017. Further, the adjudication of complaint for refund, interest and compensation as provided under sections 12, 14, 18 and 19 of the Act, if any, has to be in reference to the Agreement for Sale executed in terms of the Act and the Haryana Rules, 2017 and no other agreement.

- ii. That the complainants have miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainants have frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainants now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainants have also misdirected in claiming refund on account of alleged delayed offer for possession.
- iii. 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 apartment 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 apartment.

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- iv. That in the agreement, the respondent had inter alia represented that the performance by the Company of its obligations under the Agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- v. That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of BBA. That the development of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of GST which came into force after the effect of demonetisation in the last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent no.1 had to undergo huge obstacle due to effect of demonetisation and implementation of GST.
- vi. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to



05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- vii. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage, the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
- viii. That even before the normalcy could resume, the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.
- ix. That the current Covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications the Ministry of Home Affairs, GOI further extended ✓



the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- x. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble Court, the construction activity could not resume at full throttle due to such acute shortage. Despite, after such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.

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- xi. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. The period during from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State.
- xii. That section 18 and 19 of the Act read with rule 15 of the rules provides for the right of the allottee to demand refund along with interest and compensation only on failure of the promoter to offer possession in accordance with the agreement for sale duly completed by the date specified therein. Therefore, the respondent abide by the terms and conditions of the agreement and the construction of the said project shall complete tentatively within 10-12 months and development work is going in full swing. Therefore, the present complaint is liable to be dismissed on this ground alone.
- xiii. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainants have not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Ld. Authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainants.





- xiv. That the project "Sovereign Park" (Phase 1) has been registered with the Authority vide registration no. 285 of 2017. That due to various reasons and not limited to the delay on part of the allottees, NGT notifications, Covid 19 pandemic, etc. the project has been majorly impacted. However, the respondent endeavours to handover the unit in 10-12 months.
- xv. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is submitted that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is further submitted that that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant to note that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is also relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is pertinent to mention here that the irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer / builder in proceeding towards timely completion of the project.
- xvi. That initially builder buyer agreement dated 11.12.2015 was executed between the complainants and respondent no. 2





wherein the respondent no. 2 namely Vatika Ltd. was in the process of setting up/ constructing a residential group housing colony by the name of 'Sovereign Park'. However, the respondent no. 2 has transferred all its project account balance in respect of the said group housing colony in favor of M/s Vatika Sovereign Park Pvt. Ltd. i.e. respondent no. 1 herein vide a Project Account Transition Agreement entered into between the respondents by virtue of which respondent no. 1 stepped into the shoes of the respondent no. 2 i.e. Vatika Ltd. It is pertinent to mention here that an addendum to builder buyer agreement was executed on 11.12.2015 itself between the complainants and both the respondents wherein the complainants after fully satisfying themselves agreed and undertook to pay the total sale consideration and other charges to respondent no. 1. It is submitted that after the execution of the addendum agreement, the respondent no. 2 has no obligation or liability towards the complainants and the liability/ obligation, if any, is of respondent no. 1.

xvii. That the respondent no. 2 is a completely distinct and separate legal entity from respondent no. 1 and accordingly, the respondent no. 2 cannot be made liable for development / construction / allotment of any unit to the complainants especially when all the rights have been transferred in favor of respondent no. 1. It is further submitted that the respondent no. 2 plays no direct role and have no interest and shall be deleted from the array of parties as no effective order can be passed against the respondent no. 2. It is submitted that it is a trite law



that only a person who has direct interest in the subject matter can be impleaded as a party. That the respondent no. 2 is an unnecessary party and seeks an appropriate order in terms of Order 1 Rule 10(2) CPC as the continuation of respondent no. 2 in the array of parties will only result in the wastage of the precious time of all the concerned including that of the Authority.

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 oral as well as written submissions 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 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 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."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter noted above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee alongwith interest at the prescribed rate.

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

**F.1 Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

13. The respondent contended that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the builder buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties.
14. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will 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)** 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."*

15. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in 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."*

16. 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, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**F.II Objection regarding deletion of name of respondent no.2 being an unnecessary party.**

17. The respondents contended that the name of the respondent no 2 be deleted from the array of the parties being an unnecessary party in light of Project Account Transition Agreement entered into between the respondents by virtue of which respondent no. 1 stepped into the shoes of the respondent no. 2 i.e. Vatika Ltd.
18. The authority observes that the subject unit was allotted to the complainants vide allotment letter dated 23.11.2015 which was issued by the respondent no.1. However, the builder buyer agreement was executed by the respondent no. 2 and the complainants. Now, the respondents have taken plea that the respondent no.2 be discharged of its obligation as enumerated in the builder buyer agreement dated 11.12.2015 in light of some inter se agreement 'Project Account Transition Agreement'. The authority is of the view that both the licenses bearing nos. 119 of 2012 dated 06.12.2012 and 65 of 2013





dated 20.07.2013 are issued in the name of Planet Earth Estates Pvt. Ltd. by the concerned authority. However, the respondents have not placed on record BIP permission by which they are constructing and developing the said project. Also, merely by executing the Project Account Transition Agreement inter se both the respondents, the respondent no.2 cannot escape from its responsibility and obligations to the allottees of the project and is covered under the definition of promoter within the meaning of 2(zk)(i) and (v).

19. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under:

*"2. Definitions. — In this Act, unless the context otherwise requires*

*(zk) "promoter" means, —*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) xxx*

*(iii) xxx*

*(iv) xxx*

*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"*

20. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respondent no.1. In view of the same, the contention/objection of respondents to delete the name of respondent no.2 from the array of the parties stands rejected.



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

**G.1 Direct the respondent to refund the paid amount along with interest at prescribed rate.**

21. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same 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)*

22. Clause 13 of the builder buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**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 Clauses 14 to 17 & 37 or due to failure of Allottees(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*

23. The complainants were allotted a unit bearing no. 302, tower- Sky Park-3, Sector 88B measuring 2200 sq. ft. in the project "The Urban Expressions" vide allotment letter dated 23.01.2014. Thereafter, the respondent unilaterally changed the unit of the complainants vide allotment letter dated 17.02.2015 and new unit was allotted to the complainants bearing no. 301, tower- Sky Park-3, Sector 88B measuring 2155 sq. ft. in the project "One Express City"- Vatika Express City. Finally, the respondent allotted the unit bearing no. 301, 3rd floor, tower F, Sector 99, admeasuring 2650 sq. ft. in the project Sovereign Park vide allotment letter dated 23.11.2015. In respect to the said unit BBA was executed between the parties on 11.12.2015. As per clause 13 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution of the agreement. In view of clause 13 of the BBA, the due date of possession comes out to be 11.12.2019.
24. The authority observes that the occupation certificate/completion certificate of the project where the subject unit is situated has still not been obtained by the respondent-promoter and has failed to offer possession of the subject unit till date to the complainants. 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....."*

25. 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. 2021-2022(1) RCR (c), 357** 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 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."*

26. 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 respondents promoters are liable to the complainants-allottees, as the complainants-allottees wishes to



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

27. This is without prejudice to any other remedy available to the complainants 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.

28. **Admissibility of refund along with prescribed rate of interest:**

The 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."*

29. 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.

30. 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., 12.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

31. The authority hereby directs the respondents-promoters to return the amount received by them i.e., Rs. 46,68,566/- 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*.

#### **H. Directions of the Authority**

32. 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:
- i. The respondent/promoter is directed to refund the entire amount of Rs. 46,68,566/- paid by the complainants 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 date of refund of the deposited amount.
  - ii. A period of 90 days is given to the respondents 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 the 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 allottees-complainants.

33. Complaint stands disposed of.
34. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Ashok Sangwan)

Member

Dated: 12.09.2023



**HARERA**  
**GURUGRAM**