

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

Complaint no. : 201 of 2022
Date of filing : 31.01.2022
Order Reserve On : 14.07.2023
Order Pronounced On: 29.09.2023

Mr. Santosh Kumar Keshari
R/o: H.no-213, Block A, Sector-26, Noida

Complainant

Versus

M/s Vatika Seven Elements Pvt. Ltd.
Office: Vatika Triangle, 4th Floor, Sushant Lok,
Phase-I, Block A Mehrauli-Gurugram Road,
Gurugram- 122002, Haryana.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Gaurav Rawat (Advocate)
Sh. Venket Rao (Advocate)

**Complainant
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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details



2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Seven Element" at Sector 89A, Gurgaon, Haryana.
2.	Nature of the project	Group Housing Colony
3.	Project area	14.30 acres
4.	DTCP license no.	41 of 2013 dated 06.06.2013 valid upto 05.06.2017
5.	Name of licensee	M/s Strong Infrabuild Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 281 of 2017 dated 09.10.2017 area admeasuring 91345.535 sqm. Valid upto 31.03.2021
7.	Apartment no.	504, Tower B, 5th Floor of Fifth Court Building (page no. 22 of complaint)
8.	Unit area admeasuring	1960 sq. ft. (page no. 22 of complaint)
9.	Date of builder buyer agreement	23.03.2016 (page no. 19 of complaint)
10.	Date of addendum agreement	23.03.2016 (page no. 92 of complaint)
11.	Possession clause	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 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 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.
12.	Due date of possession	23.09.2020 23.03.2020+ 6 months grace period due to covid-19 (calculated as per possession clause)
13.	Notice For termination	15.11.2021 (Page no. 103 of complaint)
14.	Total sale consideration	Rs. 1,48,51,664/- (as per account statement on page no. 97 of complaint)
15.	Amount paid by the complainant	Rs. 93,45,346/- (as per account statement on page no. 97 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions:
4. That the complainant is a simple person, who, believing on such false representation and claims of the respondent, booked an apartment through the authorized representatives of the respondent in the project on 03.04.2013, details of the same being: HSG-023, apartment no. B-504, 5th floor, seven elements, sector-89-A, Gurugram, Haryana, admeasuring super area 1960 sq. ft. and accordingly paid an amount of Rs. 8,00,000/-.
5. That the respondent had raised demand against "HSG-023-CLP-Within 9 months or allotment whichever is later" vide its email dated 06.12.2013

making it evident that the relationship between the parties had existed since 2013.

6. That thereafter a flat buyer agreement was executed between the parties, i.e., the complainant and the respondent on 23.03.2016 along with an addendum dated 23.03.2016. According to clause 1 of the agreement, the basic sale consideration of the unit was Rs. 1,36,10,730/- and the total sale consideration to be Rs. 1,48,51,664.80/-.
7. That the complainant has paid a total of Rs. 93,45,346/-. After investing a huge amount of money in the project of the respondent, the complainant came to realize about the fraudulent commitment of the promoter and seeing no tenable progress at the worksite has caused mental agony to the complainant as the unprofessional work ethics of the respondent has broken the complainants to financial turmoil.
8. That the respondent had to deliver the possession of the unit by 23.09.2020 (inclusive of the six months grace period). However, the development of the project is such that it is anticipated that respondent will fail to oblige by the same. More importantly, it has been 7 (seven) years since the booking of the unit and the same has still not been delivered by the respondent. The respondent has breached the agreement and this delay has made the respondents liable under section 18 of the Real Estate (Regulation and Development) Act, 2016.
9. That even after having deposited substantial amounts against the unit, the respondent builder has not only not developed the project but has in fact, sent a notice of termination dated 15.11.2021 to the complainant. The construction of the unit is nowhere near completion even after the complainant having deposited the payments against the same.

C. Relief sought by the complainant:

10. The complainant has sought following relief(s).

- i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of respective deposit till its actual realization in accordance with the provisions of the Act.**
- ii. Direct the respondent to pay compensation for the mental agony, harassment, financial burden caused to the complainant including the litigation costs.**

D. Reply by the Respondent:

11. That in the year 2013, the complainant herein learned about the commercial project launched by the respondent titled as "Seven Elements" situated at sector 85, Gurugram, Haryana and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the project and was satisfied with every proposal deemed necessary for the development.
12. That after having dire interest in the said project constructed by the respondent the complainant herein booked a unit on 03.04.2013 and paid an amount of Rs 8,00,000/- for further registration.
13. That the respondent vide allotment letter dated 07.10.2013 allotted a unit no. HSG-023, B-504, 5th floor, admeasuring to 1970 sq. ft. for a total sale consideration of Rs. 1,48,51,664 /- in the name of the complainant in the aforesaid project.
14. That the respondent in due compliances of obligations under the RERA Act, 2016 shared a rough draft of the builder buyer agreement so that the same may be approved and later on executed. But the complainant herein kept on delaying the execution.
15. That after much pursuance, on 23.03.2016, a builder buyer agreement (hereinafter referred to as 'Agreement') was executed between the



complainant and respondent for the aforesaid unit for a total sale consideration of Rs. 1,48,51,664.80/-.

16. Thereafter, an addendum was executed between the complainant and the respondent for the aforesaid unit on 23.03.2016. It is imperative to mention herein that the complainant was well aware of the terms and conditions of the addendum and has agreed to sign upon the same upon own judgement and investigation without any protest.
17. That since starting the respondent herein was committed to complete the project and has invested each and every amount so received from the complainant towards the construction of the same. However, the construction was slightly delayed due to the reasons beyond the control of the respondent.
18. That the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation, on July, 01st 2017 which stretches its adverse effect in various industrial, construction, business area. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
19. 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.

20. That 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.
21. 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.
22. 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.

23. 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. That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State.
24. That even this Hon'ble Authority upon considering the outbreak of world wide Covid-19 pandemic and taking a liberal approach has already provided a grace period of 6 (Six) months to various builder in the real estate sector in handing over the possession. That in interest of justice the respondent herein may also be granted such grace period for the unintentional delay in handing over the possession to the complainant for the reason as mentioned hereinabove and not repeated herein for the sake of brevity.
25. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

E. Jurisdiction of the authority

26. 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

27. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

28. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

29. 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.
30. 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 cases of **Newtech Promoters and Developers**

Private Limited Vs State of U.P. and Ors.” 2021-2022(1) RCR(C), 357 & M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 and wherein it was held 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.”

31. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F.I Objection regarding force majeure conditions:

32. 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 GST, orders of the High Court and Supreme Court, demonetisation, govt. schemes and Covid -19. It has been contended that due to Covid-19 pandemic all the activities in the real estate sector were forced to stop. The wide spread of Covid-19, firstly night

curfew was also imposed followed by weekend curfew and then complete curfew. That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. In the instant complaint, the due date of handing over of possession comes out to be 23.09.2020 and grace period of 6 months on account of force majeure has already been granted in this regard and thus no period over and above grace period of 6 months can be given to the respondent-builders.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of respective deposit till its actual realization in accordance with the provisions of the Act.

33. In the present complaint, the complainant intend to withdraw from the project and is 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)

34. Clause 13 of the 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 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 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.."

35. The complainant had booked the unit in the project of the respondent namely Seven Element situated at sector 89A for a total sale consideration of Rs. 1,48,51,664/-. The buyer's agreement was executed between the parties on 23.03.2016. As per possession clause 13 of the buyer's agreement, the possession of the unit was to be handed over by within 48 months from the date of agreement. The due date for handing over of possession comes out to be 23.09.2020 including grace period of 6 months on account of Covid-19.

36. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the

apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

37. 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.”

38. 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 the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
39. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for

adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

40. **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."

41. 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.
42. 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., 29.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
43. The authority hereby directs the promoter to return the amount received by them i.e., Rs. 93,45,346/- 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 Direct the respondent to pay compensation for the mental agony, harassment, financial burden caused to the complainant including the litigation costs.

44. The complainant in the aforesaid relief is seeking relief w.r.t 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

45. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to refund the entire amount of Rs. 93,45,346/- paid by the complainant along with prescribed rate of interest @ 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 realization of the amount.



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

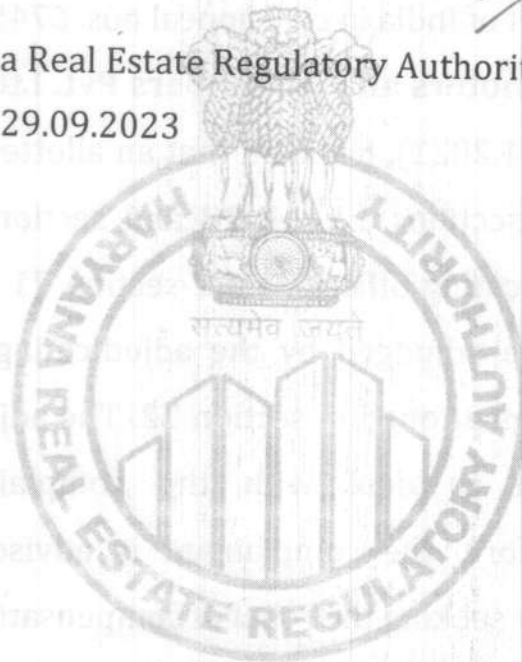
46. Complaint stands disposed of.

47. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.09.2023



HARERA
GURUGRAM