

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

Complaint no.	:	1444 of 2023
Date of filing complaint:		03.04.2023
Date of decision:		15.12.2023

1. Umesh Aggarwal 2. Bhavna Goyal <b>Both are R/O:</b> Flat no. 306, OIA Residence, Motor City, Dubai, UAE	<b>Complainants</b>
Versus	
Vatika Limited <b>Regd. office:</b> Unit no. A002, INXT City Centre, Ground Floor, Block-A, Sector-83, Gurugram, Haryana- 122012	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Akhil Aggarwal (Advocate)	Complainants
Sh. Pankaj Chandola (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities

and functions under the provision of the Act or the rules and regulations made there under or to the 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Vatika Town Square", Sector 82A, Gurugram
2.	Nature of project	Commercial Project
3.	<b>DTPC License no.</b>	110 of 2010 dated 29.12.2010
	Validity upto	28.12.2016 <i>License expired</i>
	Name of licensee	Sh. Tej Pal
	Licensed area	2.96 Acre
4.	RERA Registered/ Not Registered	Registered 366 of 2017 dated 22.11.2017 valid upto 31.12.2018 <b>Lapsed project</b>
5.	Allotment letter	30.12.2014 (Page 40 of complaint)
6.	Unit no.	D-910 on 9 <sup>th</sup> floor [page no. 40 of complaint]

7.	Unit measuring	754 Sq. Ft. (page no. 40 of complaint)
8	Date of execution of builder buyer's agreement	08.01.2015 (Page no. 43 of complaint)
9.	Possession clause	<b>10. Possession</b> <i>..the developer contemplates to complete construction of the said commercial unit within 48 months of the execution of the agreement.</i>
10.	Due date of possession	<b>08.01.2019</b> (Calculated from the date of execution of agreement)
11.	Total basic sale consideration	Rs. 68,61,400/- (Page no. 36 of reply)
12.	Total amount paid by the complainant	Rs. 28,46,328/- (Page no. 7 of complaint)
13.	Occupation certificate dated	05.01.2021 (As per page 92 of complaint)
14.	Intimation for offer of possession	08.06.2018 (Page no. 34 of reply)
15.	Notice for Termination	18.06.2019 (Page 91 of complaint and the same has been stated in complaint at page 16)

**B. Facts of the complaint:**

3. That the respondent informed the complainants that all the shops in the retail shopping complex i.e. Block A, B and C of the Vatika Town Square are already sold out and the commercial spaces in the project were being sold for which the construction was in full swing and was likely to be completed by 2015 end.
4. That the Respondent made the them pay the huge amount of Rs.3,50,000/- as booking amount and earnest money at the time of booking. That under the threat of forfeiting the booking amount, the respondent made several demands from them without even issuing the allotment letter. Various payments made by them to the respondent in furtherance of the same are tabulated herein below:

S.No.	Payment Amount	Payment Date
1.	Rs.3,50,000/-	02.09.2014
2.	Rs.3,36,140/-	18.09.2014
3.	Rs.10,00,000/-	03.11.2014
4.	Rs.10,00,000/-	05.11.2014
5.	Rs.1,60,188/-	06.11.2014
	<b>TOTAL</b>	<b>Rs. 28,46,328/-</b>

5. That the respondent finally and much belatedly issued the allotment letter to the complainants on 30.12.2014 towards allotment of Unit No.D-910 located on 9<sup>th</sup> Floor of the Building Block No. D admeasuring 754 square feet super area at the basic sale price of Rs.9,100/- per square feet

and therefore the total sale consideration amounted to Rs.68,61,400/-. It is of utmost importance to note here that the respondent illegally and with malafide intension took more than 40% of the total sale consideration from them before issuing the allotment letter much less signing and executing the builder buyer agreement.

6. That the BBA was finally signed and executed between the parties on 08.01.2015. That some of the one-sided and discriminatory clauses of the BBA, inter alia, have been enlisted herein below which prima facie establish the ill-motives, malafide intentions and fraudulent and illegal practices being adopted by the respondent.
7. That as per clause 10 of the agreement, the time for complete construction was stipulated to be 48 months i.e. by 07.01.2019. However, the respondent has monumentally failed to complete the construction of the said project even as stipulated in clause 10 of the BBA.
8. They were shocked and surprised to receive the letter dated 16.11.2017 from the respondent and the same was titled as "*Intimation of possession*". That vide the said offer of possession, the respondent, while claiming the construction of the project to be complete, offered possession of the above mentioned Unit to them and further raised a demand, as the balance payment, of Rs.46,74,196/- which was in itself illegal. Additionally, vide the said offer of possession; the respondent enforced certain ultra vires conditions on them like imposition of signing of maintenance agreement with the maintenance agency appointed by the respondent, indemnity-cum-undertaking to be mandatorily signed and obligation to make enhanced payments.

9. That it is pertinent to note here that the above-mentioned offer of possession is wholly and prima facie illegal since on the said date the respondent had not even applied for the occupancy certificate, let alone having obtained the same.
10. That on receiving the offer of possession, they vide email dated 21.11.2017 and 28.11.2017 raised serious doubt on the offer of possession dated 16.11.2017 since the project was still under construction and far from completion and requested for photos and the details of the person to contact. However, exploiting and abusing its dominant position respondent never replied to any of the above two emails issued by them which clearly points towards the malafide and fraudulent intentions of the respondent. That the malafide intentions of respondent and blatant disregard of all laws and authorities is apparent from the fact respondent even resorted to threatening them vide letter dated 18.06.2018 titled as "Final Opportunity for Possession" while falsely claiming the project to be ready for possession.
11. That it is worthwhile to mention here that respondent even without obtaining the occupation certificate kept on threatening them of terminating the agreement and infact issued a notice for termination dated 18.06.2019. That the occupation certificate was obtained by the respondent only 05.01.2021 i.e. much later after the respondent had illegally issued the notice for termination dated 18.06.2019 to them in an attempt to usurp their hard-earned money. That they became aware of the same only at the time of issuance of legal notice dated 26.12.2022 as mentioned below. It was due to this fact that the occupation certificate was an in-principal approval and subject to respondent obtaining

approval of 2/3<sup>rd</sup> allottees of the project. However, let alone taking approval of them with respect to change in the layout plan of the entire project, respondent with fraudulent intentions hid the factum of occupation certificate from them so that by way of threats respondent could usurp the complete sale consideration from them and after which they would be forced to dance to respondent's tunes.

12. That the above-mentioned occupation certificate clearly establishes that offer of possession given by the respondent was wholly illegal and the respondent could not have done the same without obtaining the occupancy certificate. It is, therefore, most humbly requested that a strict action be taken against the respondent on this very issue. That having known that the respondent had not obtained either the occupancy certificate or the completion certificate while offering possession and later that the respondent had constructed the project in violation of the sanctioned plan without taking approval of them and the respondent failing to demarcate the unit of the respondent till date, they sent a legal notice dated 26.12.2022 through its counsel to the respondent and sought refund of Rs.28,46,328/- paid by them to the respondent along with the interest of 18% while withdrawing from the project. The respondent has not replied to the said legal notice even till date.

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

13. The complainants have sought following relief(s):
- a) Direct the respondent to withdraw the complainants from the project,
  - b) Direct the respondent to refund the entire amount of

rs.28,46,328/- paid by the complainants to the respondent,

- c) Direct the respondent to pay an interest of 18% per annum from the date of receipt of the payment from the complainants till the date of refund,
- d) Direct the respondent to pay Rs.2,00,000/- towards legal costs incurred by the Complainant, and

**D. Reply by respondent:**

The respondent by way of written reply made the following submissions:

- 14. That the complainants have not approached the Ld. Authority with clean hands and has suppressed/concealed the relevant facts with the intent to mislead this Ld. Authority through the representation of the one-sided facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- 15. The complainants after enquiring and gaining all information about the project, on its own will, vide application form dated 03.09.2014, decided to invest in the project and booked a unit, admeasuring 754 sq. ft, and further paid an amount of Rs. 3,50,000/-, for further registration. Thereafter, the respondent vide allotment letter dated 30.12.2014, allotted a unit bearing no. D-910, 9<sup>th</sup> Floor, admeasuring 754 sq. ft. and paid booking amount of Rs. 3,50,000/-, for further registration.
- 16. That on 08.01.2015, a builder buyer agreement, was executed between the parties with respect to the allotted unit, for total sale consideration of Rs. 69,24,736/- in the project in question. It is pertinent to bring into knowledge of this Ld. Authority that as per **clause 10** of the agreement, so signed and acknowledged the respondent herein provided and



estimated time period 48 (forty-eight) months for completing the construction of the project and the same was subject to various hindrances in midway of construction of the project which are purely beyond the control of the respondent.

17. Subsequent to the booking and the signing of the agreement, the respondent was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the ownership owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted/group housing/ commercial/ institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high-tension lines passing through these lands, which also contributed to the inevitable change in the layout plans. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of respondent, respondent was unable to execute and carry out all necessary work for the completion of the said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the project. That to further add to woes of respondent, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorized occupation of certain parcels by some farmers coupled with other regular obstructions and impediments, have resulted in respondent being unable to deliver as per contemplated date of possession.

18. The respondent vide offer of possession letter dated 16.11.2017, the respondent shall be commencing the process of handover of project and requested the complainants to clear the outstanding instalment due on offer of possession. That on 13.12.2017, the respondent vide reminder letter, reminded the complainants regarding the earlier intimation of possession letter and outstanding payment due against the unit in question and also requested to clear the pending dues to further enable the respondent to proceed with executing the necessary documents required for handing over the possession.
19. That again on 08.06.2018, the respondent herein issued Final opportunity letter, calling upon that the complainants have not complied with the formalities in respect to the handing over the possession and further requested the complainants to clear the outstanding amount due upon the offer of possession. However, after left with no other choice the respondent issued a notice of termination letter dated 18.06.2019, calling upon the complainants for the payment of Rs. 46,74,196.80/- within 7 days of the receipt of this letter, which the complainants failed to do so. That on 05.01.2021, the respondent received the occupation certificate, by the Director, Town and Country Planning, Haryana, Chandigarh. The complainants had not paid the due amount till this date. It is to bring to the knowledge of the Ld. Authority, that obtaining occupation certificate further implies that the respondent has already invested the amount received by the complainants in the project.
20. It is an evident fact, that the complainants herein have merely paid an amount of Rs. 28,46,328/- against the total sale consideration of the and still a substantial amount is pending due against the complainants. That

the respondent herein had obtained the occupation certificate in the year 2021 and since then had been requesting the complainants to clear the pending dues, but complainants are deliberately avoiding the same. The complainants are bound to take possession of the unit as the occupation certificate had already been received by the respondent. It is to note, that in case the relief of refund is allowed then the same shall be subject to the necessary deductions which the complainants have agreed under the agreement. Also, the respondent herein has invested the entire receivables towards the completion of the project and in case full refund is allowed then the interest of the allottees shall be at stake.

21. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

22. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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**

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.*

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.

23. 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. 2021-2022 (1) RCR (Civil), 357* and 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** 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."*

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

**F. Entitlement of the complainants for refund:**

**F.I Direct the respondent to refund the entire amount of Rs.28,46,328/- paid by the complainants to the respondent.**

25. The builder buyer agreement has been executed between the parties on 08.01.2015 and as per possession clause the due date of handing over of possession comes to be 08.01.2019. The total basic sale consideration was Rs. 68,61,400/- out of which the complainants have paid an amount of Rs. 28,46,328/-. The respondent has sent various intimation for

clearing the outstanding dues and subsequently on 18.06.2019 a final notice of termination has been sent to the complainant. In the meantime, they have received an OC for the said project on 05.01.2021. Lastly, final notice and mail w.r.t. termination has also been sent to the complainants on 19.02.2021 but no final cancellation letter has been sent by the respondent as per records available. So, for all practical purposes, the respondent treated the alleged notice for termination only as a formality, not to be acted from and replied to the issues raised by the complainants from time to time. If the cancellation of the allotment had actually been done as alleged, then there was no occasion for the respondent to send again a notice for termination even after a gap of two years and now the complainants-allottees have already wish to withdraw from the project and they have become entitled to their right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as it failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by it from the allottees in respect of that unit with interest at the prescribed rate

26. Keeping in view the fact that the allottees-complainants wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

27. 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) R.C.R. (Civil) 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 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*

28. 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). 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 allottees, as they wishes 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.

29. The authority hereby directs the promoter to return the amount received by them i.e., Rs. 28,46,328/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) (inadvertently vide proceeding dated 15.12.2023, the rate is mentioned as 10.75%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

**G.II Direct the respondent to award compensation of Rs. 2,00,000/-**

30. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.



31. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

**H. Directions of the Authority:**

32. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent /promoter is directed to refund the amount received from the complainants i.e., Rs. 28,46,328/- along with interest at the rate of 10.85% p.a. from the date of each payment till the actual date of refund of 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.
33. Complaint stands disposed of.
34. File be consigned to the registry.

**HARERA**  
**GURUGRAM**

  
Sanjeev Kumar Arora  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 15.12.2023