

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

Complaint no.	:	5270 of 2022
Date of filing complaint:		08.08.2022
Date of decision	:	17.10.2023

Nitin Khullar R/o: 9-8A, Nehru Enclave East, Kalkaji Extension, New Delhi-110019.	Complainant
Versus	
M/s Vatika Limited Address: Vatika Triangle, 4 th Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurugram, Haryana-122002.	Respondent

CORAM:	
Shri Ashok Sangwan	Member

APPEARANCE:	
Sh. Pushkar Rai Garg (Advocate)	Complainant
Sh. Pankaj Chandola (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/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 there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	"Tranquil Heights- Phase 1"-Vatika India Next, Sector-82-A, Village Shikohpur, Gurugram, Haryana.
2.	Nature of project	Group housing colony
3.	Area of the project	11.218 acres
	HRERA registered/not registered	Registered vide no. 359 of 2017 dated 17.12.2017 for area admeasuring 22646.293 sq. mtrs. Valid up to 30.04.2021
4.	DTCP license no.	22 of 2011 dated 24.03.2011
	License valid up to	23.03.2017
5.	Unit no.	1103, 11 th Floor, Tower-E (Page 37 of complaint)
6.	Unit area	2290 sq. ft. [super-area] (Page 37 of complaint)
7.	Date of booking	30.12.2013
8.	Allotment letter	27.10.2015



		(Page 27 of complaint)
9.	Date of builder buyer agreement	30.07.2015 (Page 34 of complaint)
10.	Addendum to BBA	16.02.2016 (Page 75 of complaint)
11.	New unit	D-702 admeasuring 2650 sq. ft. (Page 75 of complaint)
12.	Possession clause	Clause 13 <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 & 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.</i> (Emphasis supplied) [Page 45 of complaint]
13.	Due date of possession	30.07.2019
14.	Total sale consideration	Rs.1,95,92,370/- (As per statement of account dated 23.03.2017 on page 86 of complaint)
15.	Amount paid	Rs.51,02,270/- (As per statement of account dated 23.03.2017 on page 86 of complaint)

16.	Offer of possession	Not offered
17.	Completion certificate/occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- a. That the complainant had booked an apartment in the project "Tranquil Heights", Sector 82A, Gurugram, Haryana on 30.12.2013 and made an advance payment of Rs.8,00,000/-. Thereafter, a builder buyer agreement dated 30.07.2015 was executed between the complainant and the respondent. The complainant vide email dated 17.11.2014 requested the respondent for copy of allotment letter dated 27.10.2015 and copy of BBA for the purpose of getting the bank loan sanctioned. The respondent however vide email dated 19.11.2014 assured the complainant that the BBA would be dispatched within two months. The complainant again requested the respondent vide email dated 26.11.2014 and 14.04.2015 for the copy of allotment letter and BBA for the purpose of getting the bank loan sanctioned.
- b. That the respondent vide email dated 15.04.2015 informed the complainant that the demand for increased area which was previously 2150 sq. ft. has been increased by 140 sq. ft., thus aggregating to 2290 sq. ft. thereby increasing the amount of consideration to Rs.9,00,900/- out of which Rs.2,70,270/- is due.

- c. That vide addendum to the Apartment (Vatika India Next) Builder buyer agreement was executed on 16.02.2016 and the complainant was re-allotted a new unit no. D-702 admeasuring about 2650 sq. ft. in lieu of unit no. E-1103 in the subject project. Pursuant to the said addendum agreement, all payments received by the respondent on account of unit no. E-1103 shall be treated as a part payment of sale consideration of unit no. D-702 and shall constitute a valid discharge to such effect.
- d. That the respondent vide email dated 01.04.2016 informed the complainant about the changes in payment plan and the due principal amount of Rs.17,10,826/- including TDS of Rs.17,108/-. The complainant vide email dated 05.04.2016 asked for clarifications regarding the changes in the payment plan, thereby informing the respondent that the change in size of the unit was not factored in the new payment plan.
- e. That the complainant visited the site of construction in person on several occasions and found that no activity whatsoever was taking place in regard to construction of the building. The complainant vide email dated 19.12.2016 expressed concerns to the respondent regarding the fact that construction activity has not commenced since two years.
- f. That the complainant had paid a total sum of Rs.51,02,270/- to the respondent till date. On 11.01.2018, the complainant received a credit in its account statement from the respondent of Rs.3,27,275/- towards brokerage adjustment. However, till date the amount is not paid to the complainant in its bank account. In accordance with clause 18 of the builder buyer agreement, the

complainant is entitled to compensation/penalty at the rate of Rs.7.50/- per sq. ft. per month of the super area i.e., 2650 sq. ft. since stipulated date for delivery of possession i.e., July 19, 2019 till the date of realisation. Till 23.07.2022, the total amount of compensation that has accrued is Rs.6,73,027/-.

- g. That the complainant has complied with every demand raised by the respondent and made timely payments including the instalments and taxes. However, the respondent on the other hand promised the completion of construction of the buildings within 48 months from the date of execution of the agreement but had taken any responsibility whatsoever to commence the construction activity on the site and have failed to give reasonable clarifications and updates regarding the delay to the complainant. The complainant had approached the respondent multiple times regarding the commencement of construction activity and the date of possession to which the respondent has failed to provide with the reasonable justifications to the complainant's queries and concerns. Therefore, the complainant seeks refund of all the payments made in regard to construction of the said property.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainant i.e., Rs.51,02,270/- along with interest therein @ 18% per annum with effect from the date of booking i.e., 20.12.2013 till the date of realisation.

- ii. Direct the respondent to refund the amount due to the complainant as brokerage adjustment of Rs.3,27,275/- along with interest therein @ 18% p.a. with effect from the booking date i.e., 30.12.2013 till the date of realisation.
- iii. Direct the respondent to pay compensation amount to the complainant in accordance with clause 18 of BBA at the rate of Rs.7.50 per sq. ft. per month of the super area i.e, 2650 sq. ft. since stipulated date for delivery of possession i.e., 19.07.2019 till the date of realisation.
- iv. Direct the respondent to pay Rs.5,00,000/-to the complainant as compensation towards damages and harassment.
- v. Pass such other orders as may be deemed fit and proper by the Hon'ble authority in the facts and circumstances of the case.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - a. That the respondent herein launched a group housing project under the name and style of "*Tranquil Heights*" situated and located at Sector-82A, Village Shikohpur, Tehsil Manesar, Gurugram, Haryana (henceforth referred as "*Project*"). Around the year 2013, the complainant herein, learned about project and approached the respondent to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
 - b. That after having keen interest in the above said project launched by the respondent, the complainant upon its own examination and

investigation booked an apartment flat/unit in the said project. The builder buyer agreement dated 20.07.2015, was executed between the complainant and the respondent for the unit bearing no. E - 1103, admeasuring super area 2290 sq. ft. for a total sale consideration of Rs.1,54,23,150/-. Out of the total sale consideration, the complainant has paid an amount of Rs.51,02,270/- till date.

- c. That as per clause 13 of the agreement in the complaint, the due date for handing over of possession to the complainant was within 48 months from the date of execution of the builder buyer agreement. Accordingly, the handing over of possession was supposed to be delivered by 30.07.2020, however, the possession of a unit was subject to the consideration of clause 14-17 & 37 of the agreement.
- d. That as per the agreement so signed and acknowledged by the respondent herein provided and estimated time period of 48 months for completing of the construction for the project i.e., "Tranquil Heights", and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project, which were unavoidable and purely beyond the control of the respondent. The following were the reasons that halted the construction and development of the project as under:

<u>REASONS FOR THE DELAY IN THE PROJECT "TRANQUIL HEIGHTS"</u>	
<u>S.NO.</u>	<u>REASONS FOR THE DELAY</u>
1.	<u>Laying of GAIL pipe line and loss of land in Right of User (ROU) alignment of GAIL corridor</u>



- Vatika had planned the whole township including Tranquil Heights prior to GAIL Notification which came during the year 2009 and after this notification, Vatika Limited submitted a detailed representation to the Gail authorities and HUDA administration for re-routing of the GAIL pipe line since the Company had received the licenses in the township and had sold the plots to third parties based on approved layout plan.
- Based on our representation, a letter no (GAIL/ND/Projects/CJPL) dated 29.05.2009 was given by GAIL (India) Ltd to the Director Town & Country Planning, Haryana requesting thereunder for issuance of NOC for re-routing of Chhainsa- Gurugram -Jhajjar-Hissar natural Gas pipeline of GAIL in Sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram.
- A meeting was held between Gail and the administrator Huda on 07 July 2009 to discuss feasibility report on re-routing of GAIL pipeline which was already submitted to the office of administrator. GAIL requested the administrator, Huda, Gurugram to submit the said feasibility report of re-routing of GAIL pipeline to Director Country & Town Planning, Haryana.
- District town planner vide its letter dated 05-Aug-2009 proposed to Gail India that the re-routing of gas pipe line should be through green belt/ corridor of the proposed master plan and further asked GAIL India to mark the same on the copy of sajra plan.
- Civil Writ Petition No 16532 of 2009 (O & M) titled as "Shivam Infratech Pvt. Ltd &Anr. Vs. Union of India & others" and Civil Writ Petition No 18173 of 2009 titled as "Vatika Limited and Others Vs. Union of India and Others" was jointly decided by Hon'ble High Court of Punjab & Haryana at Chandigarh vide its order dated 21.12.2009, whereby, the Hon'ble High Court has denied for the re-routing of GAIL pipeline.
- Due to non-issuance of consent by state of Haryana, GAIL without waiting further has executed & completed gas pipeline work as per original schedule, thus approx 90-100 plots of the township effect due to this Layout of GAIL Pipeline.
- Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, Vatika Limited applied for license pertaining to Tranquil Heights on 26.07.2010. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs to 20 mtrs vide its letter dated 04.03.2011 that passes through the Project Land.

	<ul style="list-style-type: none"> Although GAIL had reduced the ROU by 10 mtrs, but since they had denied the re-routing of the GAIL pipeline, Vatika Limited not only lost number of plots but had to re-design the Project Land that consumed money and time and hence the construction of Project get delayed.
2.	<p><u>Acquisition of sector road land parcels in the Township/ Tranquil Heights</u></p> <p><u>Acquisition of sector road by way of Notification</u></p> <ul style="list-style-type: none"> The Govt of Haryana had notified Gurgaon Manesar Urban Complex 2021 vide their notification dated 05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. accordingly. The acquisition process of sector roads was initiated by the Govt. in the year 2010. <p>Sector dividing road 81/82, 82A/82, 82/83, 83/84, 84/85;</p> <p>Section 4 of Land Acquisition Act – 11-02-2010</p> <p>Section 6 of Land Acquisition Act – 19-02-2010</p> <p>Award / Compensation 14-06-2010</p> <p>However the acquisition of sector dividing road 84/85 was de-notified by the Govt in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr roads has resulted in massive delay in laying of services, thus impacting development. The sector road is a main entrance of the project “Tranquil Heights” and till date, the sector has not been constructed by the Government Authorities.</p> <ul style="list-style-type: none"> <u>Acquisition of sector road by way of Govt. Policies (24 Mtrs)</u> <p>=</p> <p>After de-notification of Sector Road as mentioned in sub para (a) of (iii) above, the Govt. had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The Department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure “Integrated Infrastructure Development. Including Roads, Water</p>

Supply, Drainage, Electricity, Telecom etc. By virtue of said policy, the farmers have to surrender their land (falling under acquisition) to the Govt. and have to obtain TDR certificate there from in lieu of his/her land. Thereafter, the Farmers have to sale the TDR certificate to the Developers.

Director Town & Country Planning, Haryana, in a joint meeting held at Gurgaon had directed Developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers. Munadi and Public notice was published in leading news papers on 29.11.2013 but it was very difficult to buy the land falling exactly within the proposed road section. Vatika had faced issues in purchasing land under TDR policy due to the reasons such as;

- (i) Farmers, whosoever is interested in selling his land would like to sell his/her entire land/ownership irrespective of the thing that Developer want the entire land parcel or a piece of the same,
- (ii) There is no recourse or timeline for farmers who do not agree to sell their lands falling within roads result delay in acquisition by Developer,
- (iii) Farmers do not wish to follow the lengthy acquisition process as same involves surrender of land to govt., obtaining of TDR certificate, negotiation with Developers, Selling of land in full or part to Developers etc. and
- (iv) Farmer is not satisfied with the amount of sale consideration offered by the Developer and demanding huge amount which is much higher than the market rate.

Since the 24m road / sectoral plan roads function as sub-arterial roads of the Development and also serve as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e water supply, Sewerage, Drainage, Electricity, Telecom etc., it is important for us to have the same in our township/project land. Two sector roads (24 mtr) are falling in the Project land and due to non acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc to the Project Land has become big challenge for us.

3. Re-routing of 66KV high tension wires lines passing through the lands resulting in inevitable change in layout plans

4.	<p><u>Additionally, the Hon'ble Supreme Court, NGT, Environment Pollution Control Authority vide its various orders imposed a set of partial restrictions on the construction activities, some of which are as follows:</u></p> <ul style="list-style-type: none"> • No construction activities between 6 pm till 6 am (174 days) • Stop the usage of Diesel Generator Sets (128 days). • Stop entry of Truck Traffic into Delhi. • Close brick kilns, Hot Mix plants and Stone Crushers. <p>Stringently enforced rules for dust control in construction activities and close non-compliant sites.</p>
5.	<p>Covid-19 has ravaged the entire world and India is amongst the worst affected countries. A nationwide lockdown was imposed on 24th March 2020 and since then it has been a tough ride for the construction sector. With so much uncertainty because of Covid-19 Pandemic and fear of lock downs, labours were not willing to return the cities, raw material prices are increase rapidly. In the month of April 2021, the second wave of covid-19 hit the country, and the lockdown was again imposed. This has resulted in an almost complete washout of the 15 months from 24th March 2020 to June 2021.</p>
6.	<p>In 2012, the Hon'ble Supreme Court banned the use of ground water for construction because of that construction was stopped nearly for one year.</p>
7.	<p>Delay in laying of infrastructure services like water, sewer, street lights, and other infrastructure by HUDA (Now known as HSVP)</p>
8.	<p>Delay in approval process of electrical approval, finalization of load norms and setting up electrical infrastructure / substations.</p>
9.	<p>Delay due to the above-mentioned reasons, the overall cost of construction has increased Approximately by 20% since 2017.</p>

- e. That the project could not be completed and developed on time due to various hindrance such as government notifications from time to time and force majeure conditions, breakdown of Covid-19 pandemic and other such reasons stated above, which miserably affected the construction and development of the above said project as per the proposed plans and layout plans, which were unavoidable and beyond the control of the respondent.

- f. That the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, granted registration certificate bearing registered no. 359 of 2017 dated 17.11.2017 in the above said project of the respondent for approximate periods of 41 months, i.e., till 30.04.2021.
- g. That due to various hindrances and due to the reasons beyond the control of the respondent as stated above elaborately, the respondent was bound to file a proposal bearing "In Re: Regd. No. 359 of 2017 dated 17.11.2017, for the de-registration of the project "Tranquil Heights", and settlement with existing allottees before the registry of this Hon'ble Authority on 30.09.2022. The intention of the respondent is *bonafide* and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project as the project could not be delivered due to various reasons beyond the control of the respondent as stated above.
- h. That the complainant has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant is sustainable before this Hon'ble Authority and in the interest of justice.
- i. Hence, the present complaint under reply is liable to be dismissed and the complainant may be directed by this Hon'ble Authority to approach the respondent as and when the application for proposal for de-registration of the project "**Tranquil Heights**" filed by the respondent comes to finality by this Hon'ble Authority. Hence, this complaint deserves to be dismissed.

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 these undisputed documents and submission 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 allottees 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. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.** The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of

adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

G. Findings on the relief sought by the complainants:

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

14. The complainants booked a unit bearing no. 702, 7th floor, building D admeasuring 2650 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 30.07.2015. The complainant paid a sum of Rs. 51,02,270/- to the respondent against the total sale consideration of Rs. 1,95,92,370/- but due to misrepresentations w.r.t. the project, the complainant did not pay the remaining amount and is seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. Clause 13 of the buyer's agreement dated 30.07.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.
Emphasis supplied

16. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 30.07.2015, therefore, the due date of possession comes out to be 30.07.2019.

17. It is not disputed that the complainant is allottee in the subject project of the respondent having been allotted a unit no. D-702, 7th floor, building D admeasuring 2650 sq. ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,95,92,370/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and thus the respondent has filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site. Thus, the complainant is right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned.
18. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*, 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."

19. 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.
20. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and 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."

21. 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.
22. 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., 17.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 51,02,270/- 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 Brokerage adjustment of Rs.3,27,275/-

24. The complainant submitted that on 22.07.2018, he received a credit in its account statement from the respondent of Rs.3,27,275/- towards brokerage adjustment. However, till date the amount is not paid to the complainant in its bank account.
25. Since no documents have been placed on record by the complainant to substantiate and in support of the aforesaid contention, therefore the authority cannot deliberate upon the aforesaid relief.

G.III Litigation expenses & compensation

26. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:

27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the entire amount of Rs. 51,02,270/- paid by the complainant along with prescribed rate of interest @ 10.75 % p.a. as prescribed under

rule 15 of the rules from the date of each payment till the actual date of refund of the amount.

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

28. Complaint stands disposed of.

29. File be consigned to the registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.10.2023


Ashok Sangwan
Member


HARERA
GURUGRAM