

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

**Complaint no.:** 1586 of 2021  
**Date of filing complaint:** 18.03.2021  
**Date of decision:** 06.03.2024

Usha Kapur and Vijay Kumar Kapur  
**Both R/o:** D-31, First Floor Mohammed Pur,  
Bhikajicama Place, New Delhi- 110066

**Complainant**

**Versus**

M/s Vatika Limited  
**Registered office:** Vatika Triangle, 4<sup>th</sup> floor,  
Sushant Lok, Phase-1, Block-A, Mehrauli-  
Gurugram road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Vikas Pandey (Advocate)

**Complainant**

Sh. Harshit Batra (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 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Tranquil Heights- Vatika India Next", Sector- 82 A, Village Shikhopur, Gurugram, Haryana
2.	Nature of the project	Residential Group Housing Colony
3.	Project area	11.218 acres
4.	DTCP license no. and validity status	22 of 2011 dated 24.03.2011 valid upto 23.03.2017
5.	Name of licensee	Stanway Developers Pvt. Ltd. and Mandell Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.11.2017 valid upto 30.04.2021
7.	Unit no.	301, 3 <sup>rd</sup> Floor, Tower A (3BHK- Type B) (as per BBA at page no. 31 of complaint)
8.	Unit area admeasuring (Super Area)	1925 sq. ft. (as per BBA at page no. 31 of complaint)
9.	Allotment Letter	25.09.2014 (Page no. 21 of complaint)
10.	Date of builder buyer agreement	31.08.2015 (Page no. 28 of complaint)
11.	Possession Clause	<b>Clause 13.</b> <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 48 (Forty Eight) months from the date of</i>



		<p><i>execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 &amp; 37 or due to failure of 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></p> <p>(as per BBA at page no. 39 of complaint)</p>
12.	Due date of possession	31.08.2019 (Calculated to be 48 months from the date of execution of BBA)
13.	Total sale consideration	Rs. 1,32,30,043/- (as per Account Statement dated 09.03.2023 at page no. 29 of reply)
14.	Amount paid by the complainants	Rs. 69,74,803/- (as per Account Statement dated 09.03.2023 at page no. 29 of reply)
15.	Occupation certificate/ Completion Certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
  - a. That the complainants applied for allotment of a residential unit in the project, namely "Tranquil Heights- Vatika India Next", situated at Sector-82A, Village Shikhopur, Gurugram by making a payment of Rs. 6,00,000/- to the respondent promoter.
  - b. That thereafter, the respondent promoter issued allotment letter dated 25.09.2014 and allotted a residential unit no. 301, 3<sup>rd</sup> floor, Phase- 1,

Tower- A, 3BHK (Type-B), measuring 1925 sq. ft. in the said project of the respondent for a total sale consideration of Rs. 1,26,17,894/- including preferential location charges, club membership and other charges on the terms and conditions mentioned therein.

- c. That a builder buyer agreement dated 31.08.2015 was executed between the parties. That the complainants had paid an amount of Rs. 69,55,102/- to the respondent in respect to the said unit and same was acknowledged by the respondent.
- d. That the complainants time and again called the Respondent and made personal visits for clarifications and taking over the possession of the said unit but the respondent failed to handover possession of the said unit and kept on delaying the matter on one pretext or the other.
- e. That the possession of the unit was to be delivered within 48 months from the date of execution of builder buyer agreement, which also expired on 31.08.2019. That the complainants visited the said project and found that the construction of the said project is stopped and the respondent is not in a position to start construction of the said project.
- f. That in March, 2021, the complainants decided to withdraw from the project due to the respondent's failure to adhere to the construction plan, leading to doubts about the project's completion and seeks for the refund of the entire paid-up amount along with interest from the respondent.

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

4. The complainants have sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by the complainant to the respondent along with the prescribed rate of interest.



- ii. Direct the respondent to pay an amount of Rs. 10,00,000/- on account of compensation and harassment to the complainant.
  - iii. Direct the respondent to pay Rs. 5,00,000/- as litigation expenses.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by respondent:**

6. The respondent made the following submissions in its reply:
- a) That the complaint is liable to be dismissed on the ground of non-joinder of necessary party as Usha Kapur and Vijay Kumar Kapur are both the allottees of the unit, however, Vijay Kumar Kapur is not the party to the present complaint. That for proper adjudication of the present complaint, it is necessary that both the allottees be made party to the suit.
  - b) That the complainants had booked a unit bearing no. 301, 3<sup>rd</sup> floor, Phase- I, Tower- A, admeasuring 1925 sq. ft. in the project of the respondent namely, "Tranquil Heights" situated at Sector- 82 A, Gurugram. That the project is duly registered with Haryana RERA vide Registration no. 359 of 2017 dated 17.11.2017.
  - c) That an agreement to sale was executed between the parties on 31.08.2015 for a total sale consideration of Rs. 1,32,30,043/-. That the complainants had only paid an amount of Rs. 69,74,803/- against the unit allotted to him.
  - d) That as per Clause 13 of the builder buyer agreement, the delivery of possession of the unit was proposed to be within 48 months from the

date of execution of the agreement, however, it was specifically mentioned that the same was subject to failure to deliver the same due to reasons mentioned in Clauses 14 to 17 and Clause 37 or due to failure of the allottee to make the timely payments.

- e) That the construction and development of the project had been affected due to various force majeure circumstances, which are as follows-
- i. That there was development of Gas Authority of India (GAIL) pipelines through the project land of the respondent. It is submitted that the township of respondent developer was planned prior to the notification of GAIL and thereafter, after the said notification, the respondent also submitted a detailed representation to GAIL and HUDA. That GAIL also wrote a letter to the Department of Town and Country Planning (DTCP) for re-routing of gas pipelines of GAIL in Gurugram concerned sectors. In reply to the letter of GAIL, DTCP wrote that the revised de-routing should be through the green belt. Thereafter, writ petitions were filed in the High Court of Punjab and Haryana related to revised routing of GAIL pipeline in Gurugram, which was denied by the Hon'ble High Court in its joint order in CWP16532/2009(O&M) titled as Vatika Limited vs Union of India, as a result of which GAIL completed its work as per the original schedule. The GAIL also reduced the rights of users from 30m to 20m which led to the respondent losing number of plots including the said project land.
  - ii. That the Respondent faced difficulties in construction and development of the said project due to presence of sector road in main entrance of the project which has not been constructed



till date. That there was de-notification of sector road, after which the government introduced land acquisition policies such as Transfer of Development Rights (TDR). That under the said TDR policy which came on 03.06.2014, farmers have to surrender their land fully under acquisition policy, obtain TDR certificate and sell it to the developers. Subsequently, the respondent tried to purchase the land but could not do so. That at present, two sector roads (24 meter) are falling in the project land and due to reason of non-acquisition of the same, the respondent had lost road connectivity and supply of construction material etc. to the project land.

- iii. That the delay in delivery of possession of the unit has also been affected by the land dispute which was filed by one of the land owners of the said project land.
- iv. That the construction of the project had also been hampered due to construction ban by NGT and EPCA until 2019 and thereafter due to impact of COVID-19 and therefore, a total of 347 days were consumed on account of circumstances beyond the control of the respondent.

f) That there was no intentional delay on part of the respondent in adhering to the terms and conditions of the Agreement.

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

**E. Jurisdiction of the authority:**

8. 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**

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 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.*



9. 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.

**F. Finding on the objection raised by the respondent.**

**F.1 Objection raised by the respondent regarding complaint being non-maintainable on ground of non-joinder of necessary party.**

It is contended on behalf of the respondent/builder that a builder buyer agreement dated 31.08.2015 was executed between the respondent and the two co-allottees, the 1st allottee being complainant herself i.e., Usha Kapur and the 2nd allottee is Vijay Kumar Kapur regarding allotment of a unit bearing no. 301, 3<sup>rd</sup> floor, Phase- 1, Tower- A, in the project of respondent named "Tranquil Heights" at Sector- 82-A, Gurugram. However, the present complaint is filed only by the 1st allottee i.e., Usha Kapur and the 2nd allottee is Vijay Kumar Kapur has not been added while filing the present complaint. Therefore, the co-allottee namely Vijay Kumar Kapur being necessary party was required to be added for complete, proper and effectual adjudication of the present matter, hence the present complaint is liable to be dismissed solely on the ground of non-joinder of necessary party as laid down by the Hon'ble Supreme Court in Vidur Impex and Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd. & Ors. (2012 (8) SCC 384). Hence, the present complaint is not maintainable in the present form and liable to be dismissed as proved under Order I, Rule 9 of the Code of Civil Procedure, 1908. However, to rectify this defect, the complainant filed an application for impleadment of Vijay Kumar Kapur as necessary party under Section 151 of CPC, 1908

and the same was allowed by this Authority vide its proceedings of the day dated 05.07.2023. Therefore, the plea of the respondent stands redundant and therefore, not maintainable.

**F.II Objection raised by the respondent regarding force majeure condition.**

10. It is contended on behalf of the respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT and EPCA, re-routing of tension lines passing through the land of the project, impact on the project due to policy of TOD and outbreak of covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden. Thirdly, the plea of covid-19 cannot be allowed as the due date of completion of project was 31.08.2019. Thus, the respondent promoter cannot be given any leniency on the basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

**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 prescribed rate of interest.**

11. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:





**"Section 18: - Return of amount and compensation**

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

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

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

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

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

**(Emphasis supplied)**

12. Clause 13 of the buyer's agreement dated 31.08.2015 provides the time period of handing over possession and the same is reproduced below:

*"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."*

13. That the complainants were allotted unit no. 301, 3<sup>rd</sup> floor, Phase- I, tower-A, measuring 1925 sq. ft. in the project of the respondent namely "Tranquil Heights", Sector- 82A, Village Shikohpur, Gurugram vide allotment letter dated 25.09.2014, for a total sale consideration of Rs. 1,32,30,043/-. Thereafter, a builder buyer agreement was executed between the parties in respect of the said unit on 31.08.2015. As per

clause 13 of the buyer's agreement, the possession of the unit was to be handed over within 48 months from the execution of that agreement. Thus, the due date of handing over of possession comes out to be 31.08.2019.

14. It is a part of record that against the total sale consideration of Rs. 1,32,30,043/-, the complainants had paid a sum of Rs. 69,74,803/- to the respondent in respect of the said unit. The complainants contended that the unit was not offered to them despite the due date of offer of possession being 31.08.2019 and occupation certificate had also not yet been obtained. It is pertinent to mention herein that even after expiry of more than 9 years from the allotment, there is no physical work progress at the site and the project is abandoned. Hence, in case allottees wish to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale.

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

15. The complainants are seeking refund the amount paid by him along with interest prescribed rate of interest 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.



16. 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., 06.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
17. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13 of the agreement executed between the parties on 31.08.2015, the possession of the subject apartment was to be delivered by 31.08.2019. The project is abandoned and therefore, in view of the above-mentioned facts, the allottees intends to withdraw from the project and are well within the right to do the same in view of Section 18(1) of the Act, 2016.
18. Moreover, 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 the case of ***M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)*** wherein it was observed as under: -

*"The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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 allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondent/promoter in respect of the unit with interest at such rate as may be prescribed.
20. It is proved from the facts detailed above and not rebutted by the developer that the project has already been abandoned and there is no progress at the spot. The developer used the monies of the allottees for a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. So, in such situation there has been an inordinate delay in the project which cannot be condoned. Thus, the complainants cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.
21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to a refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 8.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR)



applicable as of 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 Haryana Rules 2017 *ibid*.

**G.II. Direct the respondent to pay an amount of Rs. 10,00,000/- on account of compensation and harassment to the complainant.**

**G.III. Direct the respondent to pay Rs. 5,00,000/- as litigation expenses.**

22. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

23. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled *as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors. (supra)*, has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

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

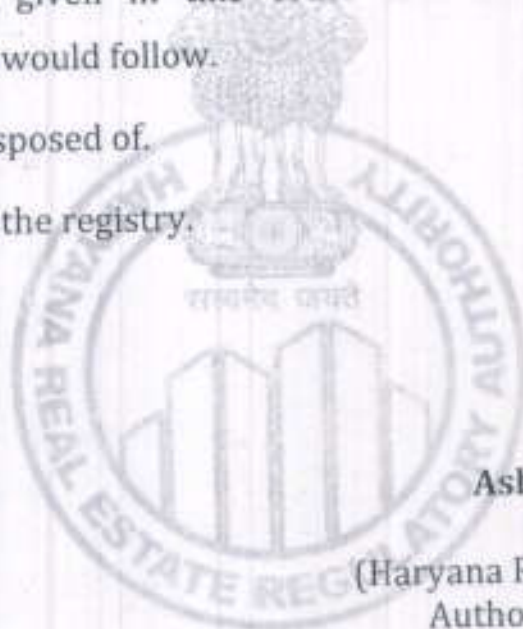
24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent-builder is directed to refund the paid-up amount i.e., Rs. 69,74,803/- received from the allottees deposited by them against their allotted unit along with interest at the prescribed rate of 10.85% per annum from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017.
- ii. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to the registry.

**Dated: 06.03.2024**



**Ashok Sangwan**  
**Member**

(Haryana Real Estate Regulatory  
Authority, Gurugram)

**HARERA**  
**GURUGRAM**