

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

Complaint no.	3327 of 2023
Date of complaint	21.07.2023
Date of decision	10.01.2024

Ms Umamaheshwari Hampi Reddy Arudappa <b>Registered address:</b> Flat No. B-13, Amrapali Apartments, Sambhaji Nagar, Near Talati Office, Kulgaon, Badlapur (East), Maharashtra-421503.	<b>Complainant</b>
<b>Versus</b>	
M/s Vatika Ltd. <b>Registered address at:</b> Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, ph-1, Block-A, MG Road, Gurugram-122002	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Priyanka Agarwal Advocate	Complainant
Anurag Mishra Advocate	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 provision 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, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Tranquil Heights, situated at; Sector-82A, Village Sikohpur, Tehsil Manesar, District Gurugram, Haryana.
2.	Nature of the project	Group Housing Colony
3.	Project area	22,646.293 sq. mtrs.
4.	DTCP license no.	22 of 2011 dated 24.03.2011
5.	Name of licensee	Stanway Developers Pvt. Ltd., Mandell Developers Pvt. Ltd., Sahar Land and Housing Pvt. Ltd., & 5 Others
6.	RERA Registered/ not registered	Lapsed project
7.	Unit no.	HSG-020-A-2604-Phase-1 (Pg no. 31 of Complaint)
8.	Unit area admeasuring (Carpet area)	977.47 sq. ft. (Pg no. 31 of Complaint)
9.	Date of execution of builder buyer agreement.	18.03.2016 (Pg no. 35 of Complaint)
10.	Possession clause	Clause 13 of BBA <i>The Developer based on its present plans and estimates and subject to all just exception 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</i>

		<i>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-1 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>
11.	Due date of possession	18.03.2020
12.	Total sale consideration	Rs.1,11,19,635/- (Page no. 38 of Complaint)
13.	Amount paid by the complainant	Rs.35,47,931.95/- (Page no. 31 of Complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The Complainant has made the following submissions:

- I. The complainant trusting the respondent has booked a 2 BHK apartment area ad measuring 1550 sq. ft., along with a car parking space in project of the respondent namely "ONE EXPRESS CITY" at sector-88A&B, Gurugram. Thereafter an expression of interest for residential apartment was executed between the parties on 24.03.2014 under the construction link scheme, for the total sale consideration of Rs.1,04,62,500/- against which complainant/allottee has paid an amount of Rs.21,74,103/- without allotment of unit no.
- II. That the respondent shifted the unit of the complainant from "One Express City" to "Tranquil Heights" stating that "One Express City" project is indefinitely delayed due to land dispute and allotted the unit bearing no. 2604, in building/tower-A, admeasuring super area of the unit 1635 sq. ft. with previous paid amount and advance

amount of Rs.50,000/- through cheque 000089 on dated 19.02.2016. Thereafter, the builder buyer agreement was executed between respondent and complainant on 18.03.2016, where, the buyer's agreement was executed just to create a false belief that unit will be delivered in time bound manner, however, builder even did not mention the due date of possession in buyer's agreement.

- III. That as per the buyer's agreement dated 18.03.2016 the total sale consideration of unit is Rs.1,11,19,635/-, out of which the respondent/builder demanded only Rs.35,53,827.77/- till August 2016 and till date of filing of complaint, the complainant had paid a total amount of Rs.35,47,931.95/- till March, 2017.
- IV. That the complainant had applied for home loan before ICICI Bank home loan and on date 18.06.2014 ICICI Bank issued an offer letter for ICICI Bank home loan facility vide application no.777-9749116 for an approved loan amount of Rs.75,00,000/- and complainant paid processing fees, administrative charges and other charges Rs.42,697/- to the ICICI Bank.
- V. That the respondent launched the project "Tranquil Heights" in 2011 and complainant associated with project in 2014. As agreed between both the party's, the respondent raised the payment demand as according to progress of construction of project, but complainant did not receive any demand after February, 2017. As the respondent was not doing any construction progress after 2017. The project has been abandoned from 2017.
- VI. That the complainant did not see any sign of construction on site from long period (2017 to till date) they have apprehension of project has been abandoned and after the enquiry it was understood that the

respondent/builder was not interest to continuing the project, but this information was not shared with buyers officially.

VII. The complainant visited the office of the respondent in 2017 and had raised query regarding project was dumped, at the time of booking builder committed the due date of possession in March, 2020 but from 2017 project is abandoned, also as per the site visit till date by the complainant the respondent has not completed the super structure.

VIII. That no construction has taken place in this project as on date of filing of the present complaint.

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

4. The complainant has sought the following relief(s):

- I. Direct the respondent to refund the entire amount paid along with the prescribed rate of interest from the date of payment to till realisation.

**D. Reply by respondent:**

5. The Respondent has made the following submissions:

- I. The Project "TRANQUIL HEIGHTS" is a residential group housing project being developed by the respondent on the licensed land admeasuring 11.218 Acres. It is submitted that the License No.22 of 2011 and approval of building plan and other approvals granted for the "Tranquil Heights Project" has been obtained on 24.03.2011 by Respondent and the construction whereof was started in terms thereof. Further, after establishment of the Haryana Real Estate Regulatory Authority the Respondent applied for registration of its Project and the authority registered the said project vide registration dated 17.11.2017.

- II. It may be noted that despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of Turning Point Project was undertaken by the respondent in right earnest and the same proceeded in full swing.
- III. That the complainant had booked unit bearing No. 2604, Tower A admeasuring super area 1635 Sq. Ft. vide builder buyer agreement dated 18.03.2016.
- IV. It is submitted that as per clause 13 of the builder buyer agreement executed with the complainant, the construction of the project was contemplated to be completed in 48 months from the date of said BBA subject to force majeure circumstances mentioned in clauses 14 to 17 & 37 thereof which provided for extension of time. The slowdown in construction and delay, if any, is primarily because of default in making timely payment of instalments by the buyers including the complainant.
- V. Further, it is the admitted position that the complainant has only made payment of Rs. 35,47,932/- towards the booking of the said unit which is around 25% of the total sale consideration only. Also, the complainant has not made any further payment after the year 2016 till date. Thus, the complainant has defaulted in making the payment as per the terms of the said Agreement and therefore such frivolous complaint must be dismissed on the said ground itself.
- VI. It is pertinent to mention here that the respondent had offered "Payment Linked Plan" and "Construction Linked Plan" to its buyers. Few of the buyers had opted for "Payment Linked Plan" however most of the buyers in the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of

construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers including the complainant, in the turning point project have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.

- VII. It is submitted that the complainant has delayed and defaulted in making timely payments of instalments to the respondent. The said delay by the complainant in payment of the timely instalments has also contributed to the delay in completion and possession of the apartment in addition to other factors beyond the control of the respondent. It is an established law that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. A defaulter under an agreement cannot seek remedy for default against the other for delay. Needless to say that obligation for payment of the instalments (consideration) was first on the complainant and then the obligation of the respondent was to complete and hand over the apartment. Therefore, the complainant cannot allege delay in completion under the camouflage of refined wordings and misuse of the process of law. Therefore, the complainant is not entitled to any relief under the Consumer Protection Act, under the camouflage of refine wordings for their own use, will end up getting relief if it is so

granted by the Hon'ble Commission. It is submitted that for the aforesaid reason itself this complaint initiated by the complainant should be dismissed as non-maintainable.

VIII. It is submitted that beside the above major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated November 8, 2016 has also affected the pace of the development of the project. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wage's labourers. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non-availability of adequate funds with the banks had further escalated this problem many folds.

IX. It is deemed that prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access / approach roads, key distances, looked at the vicinities, physical characteristic of the project etc. and then filed an application for allotment with the OP which factum is also recorded in the builder buyer agreement executed with each of the complainant. Not only this, basis the individual requests, the OP also caused site visits for the prospective buyers who had made requests for visiting the Project site before making application for allotment. It is submitted that almost all the buyers (including the complainant) have visited the project site and were aware of the fact that the



project had no direct access road and the OP was working on the getting a remedy for the same.

- X. It is submitted that as far as the service tax is concerned nothing has been recovered illegally and the same has been recovered in accordance with the rules, policies, laws prevailing from time to time and deposited to the govt. account. Since entire money so recovered from the complainant have been duly deposited to the service tax department and as soon as the concerned department will release the money, the same will be returned to the complainant. However, it is also submitted that as per the judgement of CESTAT, Allahabad (2016(7)TMI52) in the matter titled as commissioner of central excise, Lucknow Vs Eldeco Housing & industries Pvt. Ltd. It is observed that the money which is deposited with the department in lieu of the service tax, the same has to be directly returned to the buyers by the concerned department.
- XI. That it may be pointed out that almost all the buyers of the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of construction and timely delivery of apartments in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers in the said group housing project have wilfully defaulted in the payment schedule which is the main cause of the delay in the construction activity and affecting the completion of the

project. This wilful default by the flat buyers is due to the fact that most of them have purchased the flats as an investment option when real estate market was doing well in the year 2014. When in the year 2015-2016 onwards, the real estate market started facing slowdown, the flat buyers started defaulting in payment of instalments. The complainant is well aware of the above-mentioned facts and reasons behind the delay in completion of the project. Hence the present complaint before this Hon'ble commission is a malafide attempt to misuse due process of law and gain unlawful enrichment at the cost of the OP when the real estate market is down. In view of the above-mentioned facts and grounds, this complaint must be dismissed.

XII. It is stated that the delay, if any, is on account of reasons beyond the control of the respondent, therefore, there is no breach whatsoever on the part of respondent. In any event, it is stated that the time stipulated for completion under the allotment / agreement is not the essence and the respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to respondent. On the perusal of below submissions, it would be clear that the complaint of the complainant with regard to delay in completion of construction of the possession is misconceived particularly for the following reasons:

- a) It is submitted that the respondent has, as will be elaborated herein below, indefatigably strived and made best efforts possible to ensure that its endeavor to complete the construction is achieved. Had it not been for the shortage of funds on account of huge defaults by the buyers in the project

including the complainant, the respondent would most certainly have succeeded in its endeavor.

- b) The complainant has failed to show in its complaint that the alleged delay was on account of wilful delay in construction of the apartment unit which is solely attributable to the respondent herein.
- c) The factors which materially and adversely affected the project are being set out herein under:
1. Delay in payments by majority of the buyers of the said group housing project.
  2. Demonetization of currency notes having affect of pace of construction.
  3. The Road construction and development works in Gurugram are maintained by the HUDA/GMDA but the NHAI has plan the development of Gurugram Pataudi-Rewari Road, NH-352 W under Bharatmala Pariyojana on 11.07.2018.
  4. The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr. Road (NH-352 W) near Harsaru Village shall develop &construct by the NHAI.
  5. The GMDA has approached the administrator, HSVP, Gurugram and request to direct HSVP/LAO to hand over encumbrance free possession of land from Dwarka Expressway i.e. junction of 88A/88B to Wazirpur Chowk to GMDA so that possession of land may be handover to NHAI on 08.09.2020.

6. The DTCP published a notification no. CCP/TOD/2016/343 on 09.02.2016 for erecting Transit Oriented Development (TOD) policy. Vatika Limited has filed an application for approval of revised building plan under (TOD) policy 05.09.2017 and paid amount of Rs. 28,21,000/- in favor of DTCP.
7. Vatika Limited has filed another application on 16.08.2021 for migration of 18.80 Acres of existing group housing colony bearing license no. 91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana.
8. No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W.
9. Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
10. Total and partial ban on construction due to the directives issued by the National Green Tribunal during various times since 2016.
11. Lockdown on account of covid-19 pandemic.
12. Delay in Supply of Cement & Steel due to Various Agitations and Covid-Pandemic – 2019.
13. Declaration of Gurgaon as Notified Area for the Purpose of Ground Water & Restrictions Imposed by The State Government on its Extraction for Construction Purposes.

- XIII. Due to the above-mentioned reasons the respondent had no option left but to make a request for withdrawal of application for grant of license for mix land use under (TOD) policy due to change in planning. The DTCP has accepted a request for withdrawal of application under (TOD) Policy on 17.08.2021 & forfeited the scrutiny fee of Rs. 19,03,000/-. Further, Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favor of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B.
- XIV. That due to the said loss suffered by the respondent in the said project, the respondent had no other option but to apply for de-registration of the said project.
- XV. That 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 and are not repeated herein for the sake of brevity and convenience.

**E. Jurisdiction of the authority:**

6. 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 the entire Gurugram District for all purposes 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 the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

So, given 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.

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

**F.I Objections regarding force Majeure**

7. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC to stop construction, notification of the Municipal corporations Gurugram, Covid 19, etc. The plea of the respondent regarding various orders of the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by SC banning construction in the NCR region were



for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent 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. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount deposited by the complainant along with interest at the prescribed rate.**

8. The complainant was allotted unit no. HSG-020-A-2604-Phase-1 in the project "Tranquil Heights", Sector-82A, Village Shikohpur, Gurugram, Haryana of the respondent/builder for a total sale consideration of Rs. 1,11,19,635/-. However, builder buyer agreement was executed on 18.03.2016 between the parties. Therefore, the due date for handing over the possession of the unit comes out to be 18.03.2020.
9. It has come on record that against the total sale consideration of Rs. 1,11,19,635/-, the complainant had paid a sum of Rs. 35,47,931/- to the respondent. However, the complainant contended that the unit was not offered to them despite this, and no occupation certificate has yet been obtained, further, the aforesaid project has lapsed, and application for de-registration has been filed with the Authority. 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. This view was taken by 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”.*

10. 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.
11. There has been an inordinate delay in the project which cannot be condoned. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding a return of the amount received by the promoter in respect of the unit with interest on





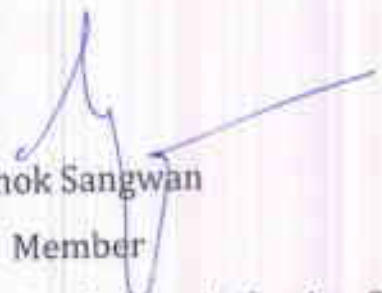
the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.

12. 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.

**H. Directions of the Authority:**

13. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with 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 i.e., Rs. 35,47,931/- received by it from the complainant/allottee along with interest at the rate of 10.85% 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 refund of the amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
14. Complaint stands disposed of.

15. File be consigned to the registry.

  
Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 10.01.2024**



**HARERA**  
GURUGRAM