

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

|                          |              |
|--------------------------|--------------|
| Complaint no.            | 4058 of 2023 |
| Date of filing complaint | 25.09.2023   |
| First date of hearing    | 03.01.2024   |
| Order reserved on        | 24.07.2024   |

Atul Kumar Jain  
**Resident of:** Prem Padm, 4239/A-2, No. 1, Ansari  
Road, Daryaganj, New Delhi-110002

**Complainant**

Versus

Vatika Limited  
**Regd. office:** Flat no. 621A, 6<sup>th</sup> Floor, Devika Towers,  
6, Nehru Place, New Delhi - 110019  
**Corporate office:** 7<sup>th</sup> Floor, Vatika Triangle, Block A,  
Sushant Lok, Gurgaon-1220022

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Nitin Jaswal (Advocate)  
Sh. Anurag Mishra (Advocate)

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

**A. Unit and project related details:**

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

| Sr. No. | Particulars                          | Details  |
|---------|--------------------------------------|--|
| 1.      | Name of the project                  | "Vatika Seven Elements", Sector 89A, Gurugram, Haryana<br>(Earlier "Vatika One Express City")  |
| 2.      | Nature of the project                | Group Housing  |
| 3.      | Project Area                         | 14.30 acres  |
| 4.      | DTCP License no. and validity status | 41 of 2013 dated 06.06.2013 valid upto 05.06.2017  |
| 5.      | Name of Licensee                     | M/s Strong Infrabuild Private Limited and Others   |
| 6.      | RERA Registered or not               | <b>Registered</b><br>Registration no. 281 of 2017 dated 09.10.2017 for area admeasuring 91345.535 sqm. Valid upto 31.03.2021   |
| 7.      | Unit no.                             | Apartment no. A-502, 5 <sup>th</sup> floor, Fourth Court Building.<br>(BBA at page 20 of complaint)<br>(Transferred on 15.01.2016 as earlier allotted unit was HSG-026-SKYPARK-1-8-802)  |
| 8.      | Unit area admeasuring                | 2195 sq. ft. (Super Area)<br>(BBA at page 20 of complaint)   |
| 9.      | Date of builder buyer agreement      | 15.02.2016<br>(Page 17 of complaint)   |
| 10.     | Possession Clause                    | <b>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b> - 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 <b>within a period of 48 Forty Eight months from the date of execution of this Agreement</b> 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 |



|     |  |   |
|-----|--|---|
|     |  | <i>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><br><b>(Emphasis supplied)</b><br>(BBA at page 28 of complaint) |
| 11. | Due date of possession   | 15.02.2020<br>(Calculated to be 48 months from the date of execution of BBA dated 15.02.2016)   |
| 12. | Basic Sale price   | Rs. 1,45,63,825/-<br>(Rs.1,41,24,825 BSP and Rs.4,39,000/- PLC)<br>(As alleged by complainant at page 5 of complaint)<br>(BBA at page 21 of complaint)  |
| 13. | Paid up amount   | Rs. 32,18,914/-<br>(As pleaded by complainant at page 5 of complaint and agreed to by the respondent at page 2 of its reply)  |
| 14. | Offer of possession  | Not offered   |
| 15. | Occupation certificate   | Not obtained  |
| 16. | Refund request made by the complainant   | 08.09.2021<br>(Page 59 of complaint)  |
| 17. | E-mail sent by complainant to respondent asking again for refund of amount paid by him along with interest | 30.05.2023<br>(Page 66 of complaint)  |

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- a) That the complainant is a 71-year-old senior citizen, who came to know the about the project "One Express City" being developed by the respondent through brochures and newspaper advertisements.
- b) That the complainant's daughter booked a unit in a project namely "One Express City" bearing number SKYPARK-1, 802 Type C and paid a total sum of Rs 21,09,880/- towards payment of instalments as demanded.

- c) That later due severe delay in completion of the project, the respondent proposed the complainant to transfer money into new project namely "Seven Elements" in Sector-89A, Gurugram, Haryana.
- d) That based on good faith, the same amount was transferred towards booking of unit number HSG 23/A-502 in the project "Seven Elements" on 15.01.2016 and thereafter a builder buyer agreement was executed on 15.02.2016.
- e) That clause 13 of the agreement dated 15.02.2016, stipulated timeframe for delivery of possession of the aforementioned unit to be 48 months from the date of execution of the BBA. That as of the filing of this present complaint, the construction remains unfinished.
- f) That the total sale price of the unit is Rs.1,45,63,825/- which includes two elements, Basic Sale Price (BSP) @ of Rs.6,435/- per sq. ft. super area which amounts to Rs.1,41,24,825/- and PLC @ of Rs. 200/- per sq. ft. super area which amounts to Rs.4,39,000/-. That the complainant duly remitted Rs.32,18,914/- as per the requisitions made by the respondent towards the said unit.
- g) That the possession must have been effectuated by the respondent in or prior to February 2020. This non-fulfilment of the same unequivocally contravenes the provisions of Section 18 of the RERA Act. That Section 18 of the RERA Act pertains to the builder's obligation to hand over possession as per the agreed terms. This section usually mandates the builder to adhere to the committed timeline and provides for compensation in case of any delay.
- h) That the respondent had miserably failed to deliver possession of the unit as per time frame stipulated in in the agreement or within a reasonable time thereafter.



- i) That as the flat was not delivered by the due date i.e. by February 2020, hence present complaint is filed seeking refund of their money along with compensation.
- j) That the complainant asked the respondent to refund the amount paid by him on 08.09.2021. The complainant had requested the respondent for refund on various occasions, but all went in vain.

**D. 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 along with interest.
  - II. Direct the respondent to pay litigation cost amounting to Rs.1,50,000/-.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**E. Reply by the respondent.**

6. The respondent has contested the complaint by filing reply on the following grounds: -
  - a) That the present complaint is liable to be dismissed as the complainant has come before this Authority with unclean hands and tried to mislead this Authority by false and frivolous averments.
  - b) That despite the challenges on account of huge default by the buyers and demonetization affecting the development of the project, the construction of "Turning Point" project was undertaken by respondent in right earnest and the same proceeded in full swing.
  - c) That the complainant had unit bearing no. HSG-023/A-502/Fourth court/seven elements property id 16-01-0260243.
  - d) That as per Clause 7 of the BBA executed with the complainant, construction of the project was contemplated to be completed subject to various force majeure circumstances mentioned in clause 9 thereof which provided for extension of time. It is further submitted that the present complaint is pre-mature as it is the admitted position of the complainant that the re-

spondent is required to handover the possession of the said unit within 48 months from the date of execution of the builder buyer agreement and therefore filing a pre-mature complaint is not maintainable at all and the same must be dismissed on the said ground.

- e) That the complainant has only made payment of Rs.32,18,914/- towards the booking of the said unit which is approximately 25% of total sale consideration. Also, the complainant has not made any further payment 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.
- f) That the pace of construction and timely delivery of unit in a project where majority of buyers have opted for the construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If buyers of units in such projects delay or ignore to make timely payments of demands raised, then inevitable consequence is the case of construction getting affected and delayed. That most of the flat buyers including the complainants, in "Turning Point Project" have wilfully defaulted in the payment schedule which has also contributed to the delay in construction activity and affecting the completion of the project.
- g) That complainant has delayed and defaulted in making timely payments of instalments to the respondent. The said delay by complainant in payment of the timely instalments has also contributed to delay in completion of the unit in addition to other factors beyond the control of the respondent. That obligation for payment of the instalments was first on the complainant and then obligation of the respondent was to complete and hand over the unit.
- h) That demonetization of currency notes of Rs.500 and Rs.1000 announced vide executive order dated 08.11.2016 which affected pace of development of the project. 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 and media. Capping on withdrawal and non-availability of adequate funds with banks had further escalated this problem many folds.

- i) 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 which factum is also recorded in the BBA executed with each of the complainants. That almost all the buyers (including the complainants) have visited the project site and were aware of the fact that the project had no direct access road and the respondent was working on the getting a remedy for the same.
- j) That since entire money so recovered from the complainants 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 complainants.
- k) The factors which materially and adversely affected the project are being set out herein under:
  - a) Delay in payments by majority of the buyers of the said group housing project:
  - b) Demonetization of currency notes having effect on pace of construction.
  - c) Lockdown on account of Covid-19 pandemic.
  - d) Delay in supply of cement and steel due to various agitations and Covid-pandemic-2019.
  - e) Declaration of Gurugram as notified area for the purpose of ground water & restrictions imposed by the State government on its extraction for construction purposes.

7. All other averments made by the complainant were denied in toto.

8. That on the last date of hearing dated 24.01.2024, the respondent submitted that the unit of the complainant had been cancelled on 28.02.2022 on account of non-payment of the balance dues.

9. 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 oral as well as written submissions made by the parties.

**F. Jurisdiction of the authority**

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

**F.I Territorial jurisdiction**

11. As per notification no. 1/92/2017-ITCP 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.

**F.II Subject matter jurisdiction**

12. 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.*

13. 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.

14. 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. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to

entertain a complaint seeking refund of the amount and interest on the refund amount.

**G. Findings on the objections raised by the respondent.**

**G.I Objection regarding force majeure.**

16. The respondent promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as demonetization, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. But all the pleas advanced in this regard are devoid of merit. The various orders passed by other authorities cannot be taken as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 15.02.2020. *That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.* The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 15.02.2020 i.e., before 25.03.2020. Therefore, no extension on account of force majeure conditions due to outbreak of Covid-19 pandemic can be granted and as such the due date for handing over of possession remains to be 15.02.2020.

**H. Findings on the relief sought by the complainant.**

**H.I Direct the respondent to refund the amount paid by the complainant along with interest.**

17. The complainant was allotted unit no. A-502, 5<sup>th</sup> floor, Fourth Court Building in the project "Vatika Seven Elements", Sector 89A, Gurugram, Haryana of the respondent/builder. The builder buyer agreement was executed between the parties on 15.02.2016. The complainant had paid an amount of Rs.32,18,914/- against the total sale consideration of Rs.1,45,63,825/-. As per clause 13 of the builder buyer agreement the possession of the unit was to be offered within



48 months from the date of the execution of the buyer's agreement. Hence, the due date of possession comes out to be 15.02.2020.

18. The complainant states that there were no signs of completion of the project. Therefore, he stopped making further payment and vide letter dated 08.09.2021 and further via e-mail dated 30.05.2023 has requested the respondent to refund the amount paid by him against the subject unit. On the contrary, the respondent states that the complainant has failed to abide by the terms and conditions of the agreement and defaulted in making payments.
19. The complainant herein, intends to withdraw from the project and is seeking refund of the paid-up amount as provided under Section 18(1) of the Act. Section 18(1) proviso reads as under.

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

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

21. The due date of possession was 15.02.2020 and occupation certificate of the buildings/towers where allotted unit of the complainant is situated is not yet received by the respondent. The allottee has become entitled to his right under Section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter has failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.

22. 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 case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under: -

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

23. 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 agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed



by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

**24. Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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.*

25. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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 ease uniform practice in all the cases.

26. Consequently, as per the 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., 24.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11%.

27. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter

shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***

***Explanation. —For the purpose of this clause—***

- i. the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;***
- ii. the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"***

28. 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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11% p.a. (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 Haryana Rules 2017 *ibid*.

**H.II Direct the respondent to pay litigation cost amounting to Rs.1,50,000/-.**

29. 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.

**I. Directions of the Authority**


30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to refund the amount i.e., Rs.32,18,914/- received by it from the complainant along with interest at the rate of 11% 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 deposited 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.

31. The complaint stands disposed of.

32. File be consigned to registry.

**Dated: 24.07.2024**



**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory  
Authority, Gurugram