

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

Complaint no.	:	2238 of 2023
Date of filing complaint:		25.05.2023
First date of hearing:		06.10.2023
Date of decision	:	07.03.2025

1. Mr. Praveen Singh 2. Mrs. Akanksha Sood Both RR/o: H.No.183, Jalvayu Vihar, Sector 2, Noida, U.P. 201301, India.		Complainants
Versus		
M/s Vatika Limited Address: A-002, INXT City Centre, Ground Floor, Block A, Sector-83, Vatika India Next, Gurugram, Haryana 122012, India.		Respondent

CORAM:

Shri Arun Kumar

Chairman
APPEARANCE:

Ms. Varisha Sharma, Advocate along with Complainants in person	Complainant
Ms. Ankur Berry, Advocate	Respondent

ORDER

- 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at Sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 Valid up to 23.03.2017
5.	RERA Registered/ not registered	Registered vide no. 359 of 2017 admeasuring 22646.293 sqm. Valid up to 30.04.2021
6.	Date of allotment letter	N/A
7.	Unit no.	3304, 33 rd floor, building E [Page 25 of complaint]
8.	Unit area admeasuring	2290 sq. ft. (super area) [Page 25 of complaint]
9.	Date of builder buyer agreement	22.07.2016 [Page 22 of complaint]
10.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <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 other Clauses 14 to 17 &</i>

		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 off this agreement. (Emphasis supplied)
11.	Due date of possession	22.07.2020
12.	Total sale consideration	Rs. 1,64,78,840/- [Page 25 of complaint]
13.	Amount paid by the complainant	Rs. 71,42,099/- [As alleged by the complainant]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- a. That the residential apartment no. E-3304 on the 33rd floor in the said project was allotted to the complainants vide Apartment Buyer's Agreement dated 22.07.2016. As per the said Agreement dated 22.07.2016, the total price of the said unit was Rs. 1,64,78,840/- and the complainants have already paid Rs. 71,42,099/- till date, with no outstanding dues on their part. In terms of the said Agreement, the possession was to be handed over by the respondent within 48 months from the date of execution of the said agreement i.e. from 22.07.2016. However, till date the respondent has failed to (i) Execute and register the sale deed in favour of the complainants and (ii)

Hand over the actual legal possession of the said unit to the complainants.

- b. That the complainants till date have made a payment of Rs. 71,42,099/- as demanded consideration against the said unit. The complainants have made all the demanded payments with respect to the said unit in a timely manner without any delay or default whatsoever. In view of the aforesaid facts, the complainants had sent a legal notice dated 04.08.2021 terminating its allotment of the said unit in the said project seeking a refund of the entire consideration amount of Rs. 71,42,099/- along with an interest @ 18% p.a. for the delayed period. There has been no response from the respondent and hence, a complaint bearing no. CR/763/2022, case titled as Praveen Singh Vs. Vatika Limited was filed before HARERA. However, the same was dismissed by the Authority on the ground of misjoinder of parties, as the allotment was done in the name of two persons and the case has been filed by one of them. Moreover, the respondent has abandoned the said project. Therefore, there is no other alternative except repayment of principal amount along with interest by respondent in favour of complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount of sale consideration paid by the complainants amounting to Rs. 71,42,099/- along with interest @ 18% p.a. for the delay period.

- ii. Terminate the allotment of the said unit in the said project on grounds of the respondent failing to hand over the possession of the said unit till date (approximately 2 years and 8 months from Agreement and 4 years 5 months from the date of Allotment), failing to get the completion/ occupation certificate for the said project till date and failing to get the sale deed executed and registered in favour of the complainants till date.
- iii. Direct the respondent to pay cost of litigation to the complainants being a sum of Rs. 1,50,000/-.
- iv. Pass such other order or orders as are deemed fit and proper in the facts and circumstances of the present case in the interest of justice.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - a. That at the very outset the present complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
 - b. That the complainants have no locus standi or cause of action to file the present complaint. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions.
 - c. That the complainants being interested in the real estate development of the respondent under the name and style of "Tranquil Heights", situated at Sector- 82A, Gurugram Haryana tentatively booked a unit in the project of the respondent on 10.10.2014, bearing no. E-3304, 33rd floor, tower E, having an

area admeasuring 2290 Sq. ft. The project is duly registered with Haryana RERA with registration no. 359 of 2017 dated 17.11.2017.

- d. That the respondent, on 02.06.2015, sent two copies of the buyer's agreement to the complainant for execution, however, the complainant delayed in the execution of the agreement. In case of default of the complainant, reminders, and final opportunity were also sent to the complainant in that regard dated 06.07.2015, 19.08.2015, 06.10.2015, and 15.02.2016. The total sales consideration of the unit is Rs. 1,72,07,060 and the complainants have only paid an amount of Rs. 71,42,099/-.
- e. That according to clause 13 of the buyer's 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 is subject to failure of respondent due to the reasons mentioned in the clauses 14 to 17 and 37 or due to failure of the Allottee(s) to pay in time. The due date of delivery of possession was subject to *force majeure*. The project of the respondent has been gravely hit by the various *force majeure* conditions which are directly consequential to the timely completion of the construction of the project.
- f. That there is no intentional delay on part of the Respondent in adhering to the terms and conditions of the Agreement. That the force majeure conditions and events outside the power of the Respondent, are the cause of the delay. That there arose no cause of action whatsoever, in the present instance. That the

Respondent has not defaulted the Agreement or the Act, in any manner whatsoever, as the Respondent is not in control of the force majeure conditions, which are as under:

- That there was an unforeseeable and unexpected 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, the same affected the layout of the Project.
 - Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of **Sector roads** 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely;
 - 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;
 - Various NCT and High Court Order affecting the supply of raw materials for construction of the project, Demonetization, Covid-19. There was a complete ban on construction activities for a total of 377 days over various periods from April 2015 to February 2020.
- g. That it is comprehensively established that a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of **force majeure**. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the Agreement. In a similar case, where such orders were brought before the Hon'ble Authority in the **Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP"** decided on 17.05.2022, the Hon'ble Authority

was pleased to allow the grace period and hence, the benefit of the above affected 377 days need to be rightly given to the respondent.

- h. That there is no intentional delay on part of the respondent in adhering to the terms and conditions of the agreement. That the force majeure conditions and events outside the power of the respondent, are the cause of the delay. That there arose no cause of action whatsoever, in the present instance. That the respondent has not defaulted the Agreement or the Act, in any manner whatsoever, as the respondent is not in control of the force majeure conditions. The Hon'ble Real Estate Regulatory Authority, Gurugram had granted the Registration Certificate to the project of the respondent bearing no. 359 of 2017 dt. 17.11.2017 which was valid till 30.04.2021. Although the respondent had *bonafide* intention to complete the project, however, following the *force-majeure* conditions that had affected the project of the respondent, the respondent could not complete the construction of the said project and had to approach the Regulatory Authority for a proposal for the De-Registration of the Respondent's Project, namely, "Tranquil Heights" dt. 30.09.2022.
- i. That the complainants themselves are at default and cannot benefit from their own wrongs. It is a matter of fact that the complainants have caused delay in making the timely payments of the instalments as evident from the statement of accounts annexed herewith, thereby violating section 19(6) of the Act. One of the main factors that caused delay in the project of the

respondent was delayed payments by the allottees like the present complainant. It is submitted that each and every real estate project is subject to timely payments by the Allottees and it is because of the allottees like the present complainants, that the real estate projects get delayed. That despite facing grave force majeure events, the respondent *bonafidely* tried to complete the construction of the project.

- j. That without prejudice to the rights of the Respondent, Refund of the amount and interest thereto, if any, has to be calculated only on the amounts deposited by the Allottees/Complainants towards the basic principal amount of the Unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards Delayed Payment Charges (DPC) or any Taxes/Statutory payments etc.
 - k. That the instant complaint has been preferred on absolutely baseless, unfounded, and legally and factually unsustainable surmises which can never inspire the confidence of the Hon'ble Authority. The accusations levelled up by the complainants are completely void and baseless and devoid of merits. Thus, the instant complaint needs/deserves to be dismissed.
- 6. All other averments made in the complaint were denied in toto.
 - 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 these undisputed documents and submission made by the parties.

- E. Jurisdiction of the authority:** 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 complainant 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. 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 the complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants:

- F.1 Direct the respondent to refund the entire amount of sale consideration paid by the complainants amounting to Rs. 71,42,099/- along with interest @ 18% p.a. for the delay period.**

F.II Terminate the allotment of the said unit in the said project on grounds of the respondent failing to hand over the possession of the said unit till date (approximately 2 years and 8 months from Agreement and 4 years 5 months from the date of Allotment), failing to get the completion/ occupation certificate for the said project till date and failing to get the sale deed executed and registered in favour of the complainants till date.

13. The complainants booked an apartment no. 3304, 33rd floor, building E, admeasuring super area of 2290 sq. ft in the respondent's project mentioned above. This led to the execution of buyers' agreement on 22.07.2016. The complainants paid a sum of Rs. 71,42,099/- to the respondent against the total sale consideration of Rs. 1,64,78,840/-. However upon abandoning of the project, the complainants by way of present complaint are seeking a refund of the paid-up amount along with 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)

14. The counsel for the respondent states that the project has been delayed due to force majeure conditions and the complainants have made the payment via loan from the banking institution.
15. Clause 13 of the buyer's agreement dated 22.07.2016 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 other 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 complainant 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 22.07.2016 and therefore, the due date of possession comes out to be 22.07.2020.
17. It is not disputed that the complainant is an allottee of the respondent having been allotted an apartment no. 3304, 33rd floor, building E admeasuring super area of 2290 sq. ft in the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,64,78,840/-. The respondent has admitted in their reply that the project could not be delivered due to various reasons and had to approach the Regulatory Authority for a proposal

for the De-Registration of the Respondent's Project, namely, "Tranquil Heights" dt. 30.09.2022. As of now, there has been no progress on the project site. Thus, the complainants are right in withdrawing from the project and seeking a refund of the paid-up amount along with 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*, 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 respondent-promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

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., **07.03.2025** is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 71,42,099/- with interest at the rate of

11.10% (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 Litigation cost of Rs.1,50,000/-

24. The complainant is also seeking relief w.r.t. litigation expenses. 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.

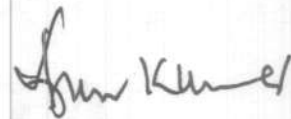
G. Directions of the Authority:

25. 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:
- The respondent-promoter is directed to refund the entire amount of Rs. 71,42,099/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual realisation of the amount after adjustment of amount paid, if

any, by the respondent on account of Pre-EMI from the refundable amount.

- ii. Out of the total amount so assessed, the amount paid by the bank/financial institution shall be refunded first to the bank and the balance amount along with interest, if any, shall be refunded to the complainants.
 - iii. 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.
 - iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants and even if any transfer is initiated with respect to subject unit the receivable shall be first utilized for clearing dues of allottee-complainants.
26. Complaint stands disposed of.
27. File be consigned to the registry.

Dated: 07.03.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram