

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

Complaint no. : 592 of 2019

Date of decision : 22 .09.2021

VED PRAKASH AND RASHMI SONI  
R/O : # 2238, Ground Floor,  
Sector-46, Gurugram

**Complainants**

Versus

1.M/s VATIKA LIMITED  
Address : Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok Phase-I, Block-A  
Mehrauli Gurgaon Road  
Gurugram, Haryana-122002

2. ANIL BHALLA,  
Address : Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok Phase-I, Block-A  
Mehrauli Gurgaon Road  
Gurugram, Haryana-122002

3. GAUTAM BHALLA.  
Address : Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok Phase-I, Block-A  
Mehrauli Gurgaon Road  
Gurugram, Haryana-122002



4. GAURAV BHALLA  
Address : Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok Phase-I, Block-A  
Mehrauli Gurgaon Road  
Gurugram, Haryana-122002

5. MANU RAJ SINGH  
Address : Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok Phase-I, Block-A  
Mehrauli Gurgaon Road  
Gurugram, Haryana-122002

**Respondents**


**APPEARANCE:**

For Complainants:  
For Respondents:

Rohit Oberoi (Adv)  
Kapil Madan (Adv)

**ORDER**

1. This is a complaint filed by Ved Prakash and Rashmi Soni (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.
2. As per complainants, on 29.03.2014, they jointly booked a flat in project "**One Express City**", situated at sector-88 B, Gurugram.

  
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They (complainants) made payment of Rs 3,00,000 as booking amount. The respondent vide an allotment letter dated 17.03.2015 allotted a unit admeasuring 1590 sq. ft. for a total consideration of Rs 1,27,99,102 including BSP, EDC, IDC etc.

3. The respondents assured them (complainants) that the possession of the unit will be delivered within 36 months from the date of booking. They (complainants) on various occasions requested respondents to execute buyer's agreement but no agreement is executed till now. When they visited the site of project, they found that no construction work has been started. Delivery of possession of unit can not be expected in near future. As per the payment plan opted by them (complainants), they made timely payment of Rs 21,92,701.
4. As respondents did not give any information regarding commencement and completion of construction of project, the complainants made request for refund of the amount paid by them with interest, but respondents ignored their request.
5. In this way, the respondents have committed gross violation of the provisions of section 18(1) of the Act, and hence complainants are forced to file present complaint, seeking refund of entire amount of Rs 21,92,701, along with, Rs 1,00,000 towards cost of litigation.
6. The particulars of the project, in tabular form are reproduced as under:

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S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name	" One Express City",
2.	Project Location	Sector 88 B Gurugram, Haryana
3.	RERA Registration	Unregistered.
<b>UNIT DETAILS</b>		
1.	Unit no.	202
2.	Unit measuring	1590 sq. ft.
3.	Date of Booking	29.03.2014
4.	Date of Allotment Letter	17.03.2015 (Pg. No. 35)
5.	Date of Buyer's Agreement	Not Executed
<b>PAYMENT DETAILS</b>		
6.	Total sale consideration	Rs 1,27,99,102
7.	Amount paid by the complainants	Rs 21,92,701

7. The respondent no. 1 contested the complaint by filing a reply dated 22.10.2019. It raised preliminary objection about jurisdiction of Adjudicating Officer to adjudicate complaints seeking refund. It is further averred that complainants had approached independent property broker Straightway Prop. Mart Pvt. Ltd. and had booked the subject unit through the said broker. The complainants never visited the office of

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respondents and the delay in execution and signing of buyer's agreement is on the part of complainants.

8. The possession of the unit was scheduled to be delivered within 48 months from the date of execution of buyer's agreement but the said agreement has not been executed till date due to the laxity of complainants. The construction work of the project is delayed due to cogent reasons beyond the control of respondent.
9. As per respondent no. 1, there is no delay on its part and complainants were offered ready to move option in another project 'Turning Point' vide email dated 02.03.2017 to which complainants had responded and enquired but now on fictitious ground has filed the complaint.
10. There has been no breach on the part of respondent no. 1, and complainants themselves have violated the terms of expression of interest form, by not adhering to the payment scheduled as agreed by them (complainants). Due to slump in market, complainants have refused to take alternate unit and have stopped making payments towards the subject allotment. Moreover, complainants in their email have mentioned that they want refund of money due, to their financial constraints.
11. The counsel for complainants submitted that the offer of alternative unit in project Turning Point was made to



complainants on 02.03.2017 but the size of said unit was small with only one master room, there was lack of facilities in the offered project and accordingly said offer was not acceptable to complainants. The construction work of the alternative unit offered by respondent started in January 2019 i.e. after 5 years from the date of booking and only 5 % construction work of the project Turning Point has been completed.

12. It is submitted by ld. counsel for the respondent no. 1, that the project could not be completed due to reasons which were beyond the control of respondent. The progress of project was affected by orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April 2015 and in November 2016. Demonetization and , GST affected the development of project. The sudden outbreak of pandemic Covid-19 resulted in completely stoppage of work having no labourers and contractors etc. The Haryana Real Estate Authority has also extended registration and completion date by 6 months which was supposed to expire on or after March 25, 2020.
13. The re-routing of high tension lines passing through the land resulted in change in layout plans. The construction of NH 352 W, under process resulted in unwanted delay in completion of

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project and the upliftment caused by HUDA in NH 352 W resulted in deferment of construction of project.

14. The respondent no. 1 in its earlier reply before the Authority had contended that jurisdiction to adjudicate the refund cases is with the adjudicating officer but in its latter reply has contended that the jurisdiction is with the Authority. These are contradictory pleas taken by the same respondent no. 1. Moreover, Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd.** Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019, Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was



further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.

15. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status qua ante i.e. when the complaints seeking refund, compensation and interest were entertained by the Adjudicating Officer. Considering all this, I don't find much substance in plea of respondent alleging that this forum has no jurisdiction to try and entertain complaint in hands.

16. It is not the plea of respondent that on the date, when Act of 2016, came into force, it had obtained the completion certificate for the subject project, so it's an ongoing project and under the Act, respondent was under obligation to get this project registered within three months.

17. As per section 13 (1) of Act, the respondent/builder is under an obligation to execute registered agreement before accepting more than 10 % of total consideration of unit.

Provision is reproduced as under :

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*Section 13 :*

*(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

18. It is an admitted fact that no BBA has been executed between the parties till now and there is no evidence to substantiate that parties agreed on any terms and conditions for sale/purchase of unit in question verbally.

19. Complainants claimed to have paid Rs 21,92,701/- and alleged that construction work has not even started. Respondent did not contradict the said plea. The only plea taken by respondent is that it offered alternative unit to complainants, but latter did not accept it. Respondent/developer could not force complainants/buyers to accept alternative accommodation, unless compelling circumstances, which are not claimed here. In these circumstances, respondent no. 1, who received payments

from complainants was bound to refund said amounts to the latter.

20. However, complainants have impleaded five respondents but same applied for allotment of unit only to respondent no. 1. Booking amount and other payments have been accepted by respondent no. 1 only and hence respondent no. 1 is liable towards the complainants.

21. The complaint in hands is, thus, allowed. Respondent no. 1 is directed to refund the amounts received from complainants till now i.e. Rs 21,92,701/- within 90 days from today, along with interest @ 9.3% p.a. from the date of receipts till realization of amount. Said respondent is also burdened with cost of Rs.50,000/- to be paid to the complainants.

File be consigned to the Registry.

22.09.2021

  
(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 25.09.2021.