



HARERA
GURUGRAM

SHARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana नया

पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

**Complaint No. : 3835/2020
Date of Decision : 14.10.2021**

**Jawahar Lal Sehgal
R/o D-06, Greenwoods, Sector-46
Gurugram-122002**

Complainant

V/s

**M/s Vatika Limited
4th Floor, "Vatika Triangle"
Mehrauli-Gurgoan Road,
Sushant Lok Phase-I Block-A
Gurugram-122002**

Respondent

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Present:

**For Complainant:
For Respondent:**

**Mr. Akhil Mangla , Advocate
Mr. CK Sharma, Dhruv Dutt Sharma,
Advocates**

ORDER

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14-10-21

This is a complaint filed by Shri Jawahar Lal Sehgal, (also referred as buyer) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief 'The Act of 2016') read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s Vatika Ltd.(also called as developer) seeking, directions to refund a sum of Rs.1,32,32,784/- alongwith interest @18%p.a. from the date advance payments till date, alongwith compensation as per clause 18 of Builder Buyer's Agreement(BBA).


2. According to complainant, on 14.03.2015, he booked a residential unit, measuring 2650 sq. ft in the project of respondent known as 'Tranquil Heights' consisting of multi-storied residential apartments. He (complainant) paid an amount of Rs.15,00,000/- to respondent at the time of booking and further paid Rs.1,17,32,784/-. On receipt of this amount, BBA was executed between the parties on 09.10.2015. The respondent allotted unit bearing No.2803, 28th floor, Block-D, admeasuring 2650 sq ft. for total sale consideration of Rs.1,70,95,150/-inclusive of BSP and other charges. Till date, he(complainant) had paid Rs.1,32,32,784/- which is about 80% of total sale consideration.

3. As per clause 13 of BBA, the respondent agreed to hand over possession of unit in question within 48 months from the date of execution of BBA but the same has failed to deliver the unit and thus committed criminal breach of trust. Citing all this, the complainant sought refund of amount alongwith interest and compensation.

4. Details of the complainant's case in tabular form are reproduced as under:

Project related details

I.	Name of the project	"Tranquil Heights "
II.	Location of the project	Sector 82-A, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	2803, 28 th floor, Block-D,
V.	Tower No. / Block No.	Block -D
VI	Size of the unit (super area)	Measuring 2650 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	14.03.2015
XI	Date of Allotment	09.10.2015
XII	Date of execution of BBA (copy of BBA be enclosed)	09.10.2015
XIII	Due date of possession as per BBA	Within 48 months from the date of execution of BBA i.e. 09.10.20215
XIV	Delay in handing over possession till date	More than 2 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause	
Payment details		
XVI	Total sale consideration	Rs.1,70,95,150/-


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XVII	Total amount paid by the complainants	Rs.1,32,32,784/-
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5. In its reply, respondent challenged maintainability of present complaint, alleging that booking of the unit in question was done prior to the enactment of the Act of 2016 and hence the same is not applicable in the present case. According to it, the tower in which the unit in question is situated is 75% complete and the possession will be handed over to the complainant subject to latter making payment of due instalments and also on availability of infrastructure facilities, as such sector's road, laying/providing of basic external and infrastructural facilities such as water, sewerage, electricity etc.

6. It is further the case of respondent that due to decision of GAIL to lay down its gas pipeline from within the duly approved and sanctioned project, it had to file a writ petition in Hon'ble High Court of Punjab & Haryana, seeking directions to stop disruption caused by GAIL towards its project. However, due to dismissal of said writ petition on grounds of larger public interest, construction was adversely affected. It forced the respondent to re-evaluate its construction.

7. Further, delay was caused due to acquisition of land for laying down sector roads for connecting the project. Project was further delayed due to MANREGA Schemes of Central Govt., disruption in supply of stone, sand and other construction material. In addition to these factors, NGT, in order to check air pollution in the NCR put ban on construction activities and lastly the Covid-19 further delayed the project. All these factors, which were beyond the control of respondent, caused delay in completion of project and timely delivery of possession to the complainant and other allottees.

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8. I have heard the learned counsel for parties and perused record on file.

9. So far as preliminary objection of respondent that this complaint pertains to compensation and interest, for grievance under sections 11(4), 12 & 18 of the Act, which lies before the Real Estate (Regulation and Development) Authority (in brief the authority) adjudicating officer is not empowered to try this complaint is concerned, Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came up 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.

10. 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, it 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 think there is no legal impediment in entertaining this complaint, seeking relief of refund.

11. It is well settled that a buyer cannot be made to wait for his/her dream house indefinitely. Even counsel for respondent is not in position to tell, till when project/unit in question will be completed and possession would be offered to the complainant. Respondent could not adduce any evidence to show the progress of work, status of work done so far. In such a situation the complainant is well within his right to seek refund of their amount alongwith interest etc.

12. Even as per respondent, writ petition filed by it against GAIL has been dismissed by the High Court. There is no evidence to establish as what portion of project land was acquired by Government for construction of connecting road. According to learned counsel for complainant, it did not affect the site of construction rather land acquired was as periphery of project. Similarly, according to him, pipeline of GAIL was also far from construction site. No order allegedly passed by NGT staying construction activities is put on file. It cannot be ascertain as from when to where construction activities remained stopped.

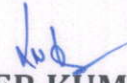
13. It is not disputed that respondent had agreed to hand over possession within 48 months of BBA, executed on 09.10.2015. Due date of possession comes to 09.10.2019. Complainant is stated to have paid Rs.1,32,33,784/- out of total sale consideration of Rs.1,70,95,150/-. Construction is not complete even till today.

14. The complaint in hands is thus allowed. The respondent-builder is directed to refund amount received from complainant i.e. Rs. 1,32,32,784/- to buyer i.e. complainant within 90 days from the date of this

order alongwith interest @ 9.3% p.a. from the date of each payment till realisation. The respondent is also burdened with cost of Rs.1,00,000/- towards cost of litigation etc to be paid to the complainant.

15. File be consigned to the Registry.

14.10.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 25.10.2021.