



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभ्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

11

Day and Date	Friday and 13.01.2023
Complaint No.	CR/3963/2021 Case titled as SUMITA CHADHA AND ANR Vs VATIKA SEVEN ELEMENTS PVT. LTD.
Complainant	SUMITA CHADHA AND ANR
Represented through	Ms Ashma Sachdeva, proxy counsel
Respondent	VATIKA SEVEN ELEMENTS PVT. LTD.
Respondent Represented	S/Shri Pankaj Chandola and Mayank Grover, Advocates
Last date of hearing	20.9.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint has been received on 19.10.2021 with the adjudicating officer and the reply on behalf of respondent was received.

Succinct facts of the case as per pleadings and annexures are as under:

S. N.	Particulars	Details
1.	Name of the project	Seven Elements, Sector 89A, Gurgaon-Manesar, Haryana.
2.	Project area	14.30 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	41 of 2013 dated 06.06.2013
	Validity of license	05.06.2017
5.	Name of the licensee	Strong Infrabuild Pvt. Ltd. & Anr.
6.	Rera registered/not registered	Registered vide memo no. 281 of 2017



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CR/3163/2021

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7.	RERA registration valid up to	31.03.2011
8.	Allotment letter	08.10.2013 [page 33 of complaint]
9.	Unit details	A-202, first court (page 33 of complaint)
10.	Unit area admeasuring	1970 sq. ft
11.	Date of execution of BBA	22.04.2015 (page 39 of complaint)
12.	Possession clause	13. Schedule for possession of the said apartment. The developer based on its present plans and estimated and subject to all just exceptions, contemplates to complete construction of this said building/said apartment within a period of 48 months from the date of execution of this agreement 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 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 (Emphasised supplied) (page 42 of complaint)
13.	Due date of possession	22.04.2019
14.	Total sale price	Rs.1,54,79,354/- (inclusive BSP, PLC, EDC/IDC, IFMSD)
	Basic sale price	Rs. 1,38,46,420/- (page 42 of complaint)



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15.	Amount paid by the complainants	Rs. 47,82,591/- (as per SOA dated 05.01.2015, page 109 of complaint)
16.	Occupation certificate /Completion certificate	Not received
17.	Offer of possession	Not offered

The complainants have sought following relief:

- 1. Direct the respondent to refund the payment made till date by the complainant.**
- 2. Direct the respondent to pay interest @18% per annum on the total amount paid by the complainant to the respondent from the date of first payment till the date amount is disbursed.**

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 plot 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.

The due date of possession as per agreement for sale as mentioned in the table above is **20.04.2019** and there is delay of 2 years 5 months 29 days on the date of filing of the complaint.

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

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**



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12.05.2022. it was observed

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."

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). 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 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 the unit with interest at such rate as may be prescribed.

The authority hereby directs the promoter to return the amount received by them i.e., Rs. 47,82,591/- along with interest at the rate of 10.60% (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*.

- 2. Direct the respondent to pay a sum of Rs. 5 lacs towards damages for the physical and mental torture, agony, discomfort and undue hardship cause to the complainant as a result of the above acts and omissions on the part of the respondent.**
- 3. Direct the respondent to pay an amount of Rs. 1,50,000/- as litigation expenses.**

The complainants in the aforesaid relief are seeking relief w.r.t compensation. 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.*



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(Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

Matter stands disposed off. Detailed orders will follow. File be consigned to the registry.


Sanjeev Kumar Arora
Member

V-1-3
Vijay Kumar Goyal
Member
12.01.2023