

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

Complaint no. : 1445 of 2018
Date of first hearing: 13.02.2019
Date of decision : 16.05.2019

1. Mr. Vikas Mangla
2. Mrs. Garima Mangla
Both R/o 704, Santosh apartments,
Plot no. 39 B, Sector 6, Dwarka,
New Delhi -110075

Complainants

Versus

M/s Vatika Limited,
Through its Directors,
Regd. Office at:Vatika Triangle,
5th Floor, Sushant lok,
Phase I, Block A, Mehruli Gurgaon Road,
Gurugram -122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Bhupender Pratap Singh
Ms. Radhika Verma

Advocate for the complainants
Authorised representative for
the respondent

Mr. Venkat Rao

Advocate for the respondent

ORDER

1. A complaint dated 25.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Vikas Mangla and Mrs. Garima Mangla against the respondent M/s Vatika Ltd. in respect of apartment/unit described below in the project 'Vatika India Next', on account of violation of clause 10 of the plot buyer's agreement executed on 29.09.2010 for unit no.14, G-21, Avenue in the project "Vatika India Next" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the developer plot buyer's agreement has been executed on 29.09.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016
3. The particulars of the complaint are as under: -

1.	Name and location of the project	'VATIKA INDIA NEXT, comprising of sector 81,82,82A,83,84 & 85, Gurugram, Haryana
2.	Registered/not registered	Registered (263 of 2017 dated 03.10.2017)
3.	Revised date of registration	02.10.2022
4.	Nature of real estate project	Residential township
5.	Payment plan(as per annexure-II of plot buyers agreement)	Development linked payment plan
6.	DTCP license number	113 of 2008 dated 01.06.2008
7.	Date of welcome letter	08.05.2010
8.	Date of execution of plot agreement	29.09.2010
9.	Addendum to the plot	A new plot no.15,R-5 dated 23.11.2017 (300.1 sq. yd.)
10.	Addendum to the plot	14,G-21 avenue dated 10.08.2018 (300.1 sq.yd.)
11.	Date of offer of possession Annexure R-5, Pg87 of reply	24.09.2018
12.	Unit area	300 sq. yd.
13.	Unit no. (old)	29, block no. 29 B
14.	Unit no. (subject matter of the complaint)	14,G-21, Avenue
15.	Total consideration	Rs 84,05,481.52/- (as per account statement at annexure C6)
16.	Total amount paid by the complainant	Rs.83,86,026.05 /-(as per account statement at annexure C6)

17.	Due date of delivery of possession As per clause 10 of plot buyers agreement: within 3 years from date of execution of agreement	29.09.2013
18.	Delay of number of months/ years till date of offer of possession	4years 11months 26 days

4. As per the details provided above, which have been checked as per record of the case file. A plot buyer's agreement is available on record for unit no.14,G-21 according to which the possession of the aforesaid unit was to be delivered by 29.09.2013. The promoter has failed to deliver the possession of the said unit to the complainants by the due date as per plot buyer's agreement dated 29.09.2010. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The reply was filed by the respondent which has been perused by the authority.

FACTS OF THE CASE:

6. The complaints submitted that the complainants herein, are husband and wife and joint allottees of a residential plot in a residential plotted housing scheme being developed by the respondent company in Sector 82-85 Gurugram.
7. The complainants submitted that the respondent took out advertisement in the newspapers sometime in march 2010 in respect of residential plots being developed by it under the name "Vatika India Next" plots in Sector 85, Gurugram on inquiry the representatives of respondent company represented to the complainants that the said development will be ready in 3 years from booking and will be world class in respect of amenities including recreational facilities. .
8. The complainant submitted that the complainants herein, believing the representation of the respondent to be true, and having no reason to believe otherwise, decided to book a plot, bearing number 29 park B west street, sector 85B, Gurugram, and measuring 300 square yards, for a total consideration of Rs. 83,68,200/- that the above said booking was made on

7.04.2010 by paying an amount of 10% of basic sale price amounting to Rs. 8,29,545/-.

9. The complainants alleged that subsequent to the booking, the respondent company on 08.05.2010 issued an allotment letter to the complainants confirming the said booking. Complainant submitted that on 29.09.2010 the respondent company got executed a plot buyer agreement stipulating in clause 10 thereof that the possession of the said plot shall be handed over in 3 years from the date of execution of agreement.
10. The complainant submitted that it is of import to note that the 3 year time line expired on 29.09.2013. The respondent company made an offer of possession only on 24.09.2018, which in itself is a violation of the terms of the agreement and hence section 11 of RERA, thereby rendering the respondent company liable for payment of interest under section 18 of RERA for the delayed period – i.e. period between 29.09.2013 till the date of actual handover of possession.
11. The complainant alleged that it is evident on the face of the record that no progress happened at the site after Feb 2011

until Sep 2018 and consequently no demands were raised by the respondent company for the intervening 7.5 years except for demand for STP registration charges which was raised on 31.03.2017.

12. The complainant submitted that it now transpires that the respondent company did not have the requisite approvals in place from the Department of Town & Country Planning at the time of accepting the booking on 7.04.2010 or at the time of execution of the agreement on 29.09.2010. This is evident from the fact that the respondent company changed the allotment of plot twice, first as late as 23.11.2017 when the addendum got executed by the respondent company for change of location of plot from plot no. 29, park B1 west street, Sector 85B to plot no. 15, R-5, Vatika India Next, Sector 83, Gurugram - 122004. The respondent company therefore, acted in gross violation of section 11, 12, and 13 of RERA and has rendered itself liable for payment of interest and compensation in terms of the aforesaid sections and section 18 of RERA. While the present complaint is restricted to payment of interest at the prescribed rate, the complainants reserve

their right to file a separate claim for compensation before the adjudication officer as and when the said officer is appointed.

13. The complainants submitted that the respondent company made an offer of possession dated 24.09.2018 without compensating the complainants for the exorbitant delay of more than 5 years and without furnishing the occupation certificate or its equivalent for the plot to the complainants.
14. The complainants submitted that the complainants vide email dated 25.09.2018 addressed to respondents, informed the respondent company that any payments made or documents executed by the complainants henceforth shall be without prejudice to their rights vide the said email the complainants also requested the respondent to furnish the occupation certificate or its equivalent granted by the competent authority.. The complainant undertakes to file affidavit under section 65B of the Evidence Act, 1872 to prove the said email in case the said email is denied by the respondent company.
15. Complainants submitted hat the complainants have made all payments demanded by the respondent company but the

respondent company has neither furnished the Occupation Certificate for their unit to the complainants nor handed over possession to them till date, thus holding the complainants to ransom and inflicting severe financial hardship on them. The complainants are therefore, before this hon'ble authority to seek possession of their plot and payment of interest for the delayed period.

Issues to be decided

- i. Whether the respondent has acted in gross violation of section 11, 12, 13, and 18 of RERA?
- ii. Whether the complainants are entitled to payment of interest at the prescribed rate for the period between 29.09.2013 till the date of actual handover of possession?

16. Reliefs sought:-

- i. Direct the respondent company to handover possession of the plot to the complainants without further delay
- ii. Direct the respondent company to pay interest at the prescribed rate to the complainants for the delayed

period starting from 29.09.2013 to the date of actual handover of possession.

- iii. Grant liberty to the complainants to file a separate complaint for claiming compensation before the adjudicating officer, HARERA, as and when the said officer is appointed.

REPLY BY THE RESPONDENT:

17. The respondent submitted that the authority does not have the jurisdiction to try and adjudicate upon the complaint as clause 41 of the agreement provides for resolution of the dispute through arbitration.
18. The respondent submitted that the complainant approached a third party broker "ROI Realty" to get information about the project and voluntarily with their free will and consent jointly booked a plot in residential project "Vatika India Next" subject to other terms and conditions including the payment schedule thereof, for total sale consideration of Rs. 84,05,481.52/- and made a payment of Rs. 8,29,545/-. The complainant was provisionally allotted a plot bearing no. 29 park B1 west

St./85-B/VIN. It is further submitted that complainant after understanding the terms and condition which is mentioned in the booking form decided to purchase a plot and at the time of the booking , nowhere mention that unit will be handed over within 3 year.

19. The respondent submitted that the plot/ unit was tentatively allotted at the time of booking and the complainant, which they are referring in complaint is not an allotment letter but is welcome letter with information about the booking.
20. The respondent submitted that the plot buyer agreement was executed on 29.09.2010. The complainant has signed the said plot buyer's agreement agreeing to all the terms and conditions contained therein. It is further submitted that the time limit for handing over the possession given in clause 10 of the agreement was subject to other terms and conditions of the agreement such as timely payment of the instalments by the complainants and reason of delay which is beyond control of the respondent. It is submitted that the "Vatika India Next" township coming up in approx. 700 acres and respondent has already given possession more than approx. 5000 units in the

past few years which includes plots, villas, independent floors, group housing flats and commercial areas. That due to extraneous reasons which are beyond control of the respondent, the respondent was unable to execute and carry out all necessary work for completion in some part of the project. There was change in master layout plan of the project by the concern government agencies because of which the entire plot cluster map changed, and due to this there was a delay in the handing over the possession.

21. The respondent submitted that the complainant, at the time of booking, himself opted for a development linked payment plan/construction linked plan and all the demands raised by the respondent, were according to payment plan and at every stage of development/construction on the plot.
22. The respondent submitted that it is well within the knowledge of the complainant that the project is a developing project and respondent is in the process of getting all the approval. It is submitted that license no. was also clearly mentioned in the plot buyer's agreement. It is further submitted by the respondent that respondent showed the complainant some

options in the same sector and the complainant choose the unit, the same was reallocated. The complainant was very much agreeable to this and has sign an addendum to the plot buyer's agreement for the same. Again the complainant is not ready to wait and then again the developer understanding the urgency of the complainant re-allocation, the client seen the options by himself and choose the property to be reallocated. There is no violation of any law as the complainant by himself gave consent f the reallocation of the units.

23. The respondent submitted that the respondent issued offer possession to the complainant vide letter dated 24.09.2018 and also request the complainant to clear the due of Rs. 38,27,776.55. However, complainant had failed to clear the dues and to take the possession of their unit.

Determination of issues:

24. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

25. With respect to the **first and second issue** raised by the complainants, brief facts of the matter are that as per clause 10 of the builder buyer agreement dated 29.09.2010 for plot No.29, block-29B, admeasuring 300 square yards in project “Vatika India Next”, Sector 81, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of execution of BBA which comes out to be 29.09.2013. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.83,86,026/- to the respondent against a total sale consideration of Rs.84,05,481/-.
26. Counsel for the complainants submits that intimation of possession was sent to the complainants on 24.09.2018. As such keeping in view the relief sought, complainants is well within his right to claim possession of the unit as well as to claim delayed possession charges.

Findings of the authority

27. **Jurisdiction of the authority-** The authority has complete subject matter jurisdiction to decide the complaint regarding

non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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.

28. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be

bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

29. In view of the above, the actual date of delivery of possession was 29.09.2013, i.e. within 36 months from the date of signing of original BBA. However on account of some inevitable circumstances, the parties have concluded two addendum agreements dated 23.11.2017 and 10.8.2018 which have been placed on record (annexure P6 at page 83). Since the entire amount, as per statement of accounts has already been paid by the complainants to the respondent, as such, the buyer is entitled to late delivery possession charges. Intimation of offer of possession has been given to the complainant on September 24, 2018 which is not a complete offer of possession, as such, respondent is directed to complete all the formalities w.r.t offer of possession i.e. to get the occupation certificate/completion certificate and to hand over the unit or plot to the buyer. Till then the complainants are entitled to delayed possession charges @ 10.65% per annum from the committed date of delivery of possession. All the terms and conditions of original BBA shall prevail.

30. Counsel for the complainant has stated at bar that he is not pressing for grant of litigation charges, as such, no relief w.r.t litigation charges is awarded to the complainant.
31. In view of the fore-going facts, the respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 29.09.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till actual offer of possession.
32. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
33. The promoter shall not charge anything from the complainant which is not part of the BBA.
34. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
35. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants

and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

36. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
37. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.

Decision and direction of the authority:-

38. The authority exercising its power under section 37 of the Act hereby issues the following directions to the respondent:-
 - a) the respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 29.09.2013 as per the provisions of section

18 (1) of the Real Estate (Regulation & Development) Act, 2016 till actual offer of possession.

- b) Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The promoter shall not charge anything from the complainant which is not part of the BBA.
- c) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- d) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order

31. The order is pronounced.

32. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 16.05.2019

Judgement uploaded on 28.05.2019