



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 606 OF 2021

Yogi Garg and Naresh Kumar

....COMPLAINANT

VERSUS

Vatika Limited

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 29.06.2022**

**Hearing: 6<sup>th</sup>**

**Present:** Ms. Sidhi Bansal, ld. counsel for the complainant through VC.

Mr. Tarun Dhingra, ld. counsel for the respondent through VC.

### **ORDER (RAJAN GUPTA - CHAIRMAN)**

1. Case of complainants is that he is a subsequent allottee of a residential plot in the project of respondent namely "Vatika Central City" situated at Ambala. He got the unit transferred in his name from original allottee on 10.06.2010. Builder Buyers Agreement was executed on the same day i.e., 10.06.2010. As per BBA, delivery of the unit was to be made by 10.06.2013. Complainant has paid Rs.



21,90,332/- against total consideration of Rs. 33,98,500/-. Complainant has further alleged that project is not complete, and even after lapse of 8 years respondent has failed to give a valid offer of possession. Aggrieved by the same, complainant has filed this complaint seeking relief of possession along with delay interest.

2. Reply was filed by the respondent on 23.08.2021 in which he claimed that offer of possession was made to the complainant vide letter dated 12.10.2015, but complainant did not come forward to take possession after making balance payment. Various reminders were sent to the complainant but still he did not come forward to take possession. Resultantly, respondent cancelled the allotment vide termination letter dated 27.05.2016 and a cheque of Rs. 15,53,383/- along with termination letter was sent to the complainant.

3. Today, during the hearing, Ms. Sidhi Bansal, Id. counsel for the complainant argued that possession offered by the respondent was merely a paper possession as project of the respondent was not complete. Respondent issued a letter dated 12.10.2015 offering possession to the complainant but the fact is that at that time Completion certificate and Occupation certificate had not been obtained by the respondent and their project was only 70% complete. Therefore, offer of possession made by respondent was not a valid offer. It was issued merely to coerce the complainant to pay balance amount. Further, Id. counsel, Ms. Sidhi argued that complainant has not received any termination letter or the cheque as





claimed by respondent. She referred to clause 36 of BBA at page 50 of the complaint file according to which all notices to be served on the allottee and the promoter at their given address as contemplated by this agreement shall be deemed to have been duly served only if the letter was sent by registered post at their address. However, in the present case, no cancellation notice was sent through registered post. Respondent has not placed on record any proof to show that any cancellation letter was duly served upon the complainants through registered post. It was further argued by the ld. counsel for complainant that respondent has violated Section 11(3) of the RERA Act, 2016, according to which termination can be done only in accordance with terms of BBA. As per clause 14 of BBA, whenever promoter decides to cancel the agreement, he has to issue a notice of default to the allottee with an opportunity of a 30 days given to rectify the default. However, in the present case, respondent-promoter issued a pre-termination notice dated 29.12.2015 whereby complainant-allottee was called upon to rectify alleged default within 7 days. However, respondent-promoter did not follow the procedure of termination agreed and prescribed in the BBA which shows his malafide intentions. Further, nothing has been placed on record to prove that alleged cheque of Rs. 15,53,383/- was ever encashed by the complainant.





4. In reply to averments made by ld. counsel for complainant, Ld. counsel for respondent re-iterated the same argument as already have been stated in para 2 of this order.

5. After considering the arguments put forth by both parties, Authority observes that factual position reveals that complainant is subsequent allottee of the unit. He got it transferred from previous allottee in his name vide agreement dated 10.06.2010. Respondent vide letter dated 11.04.2014 confirmed transfer of the plot in favour of complainants. Complainant by the time has paid Rs. 21,90,332/- against total sales consideration of Rs. 33,98,500/-. Statement of account dated 29.12.2015 issued by respondent-promoter reflect the same amount received from complainants, which is annexed as Annexure C-9 at page no. 68-69 in complaint file. Respondent issued a letter of offer of possession dated 12.10.2015. Admittedly at that time, respondent had not received Completion certificate, therefore said offer of possession given by respondent was not a valid offer. Furthermore, adequate notice, as per clause 14 of BBA was not given to complainant before the termination. According to clause 14 of the BBA, Promoter had to issue a termination notice allowing allottee 30 days time to rectify default, if any, however, respondent issued pre-termination notice dated 29.12.2015 giving only of 7 days to the complainant, which was violation of the agreement between the parties. Also, clause 50 of BBA requires both parties to send notices only through registered



post, but, respondent has failed to prove that termination letter dated 27.05.2016 was sent through registered post. Complainant claims that they never received the said termination letter, therefore, termination was illegal, arbitrary and not done as per procedure agreed to in the BBA. As far as claim of respondent that they sent a cheque of Rs. 15,53,383/- to the complainant as refund after termination of their allotment, nothing has been placed on record by respondent to show that the said cheque was ever encashed. Complainant denies that they ever had received the cheque of Rs. 15,53,383/- from respondent.

On account of above facts and circumstances, Authority is of the view that termination of the plot by respondent was not as per BBA, therefore it deserves to be quashed. A fresh offer of possession deserves to be given by respondent to complainant along with payment of delay interest after adjusting remaining receivable and payables. A fresh statement of account deserves to be issued to the complainant by the respondent.

Accordingly, Authority directs the respondent to make a fresh offer of possession to the complainant in respect of the same unit. In case unit has been allotted by respondent to a third party, then possession of another similarly placed alternative plot should be offered. Respondent is also directed to pay delay interest on the paid amount to the complainant as per Rule 15 of RERA Rules, 2017. Authority has got the interest payable to the complainant calculated from its



Accounts Branch which works out to Rs. 19,24,966/- This interest has been calculated from the due date of offer of possession i.e., 10.06.2013 up to the date of passing this order i.e., 29.06.2022 at the rate of 9.70%. (SBI MCLR + 2%). Complainant shall also pay interest on balance unpaid amount to the respondent at the same rate i.e., 9.70%.

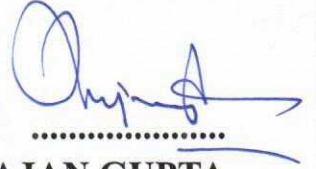
Authority is of view that complainant was not justified in not paying undisputed balance amount of Rs 12,08,168/-. Obligation to deliver possession within stipulated time is cast upon respondent and so is the case with complainant in making payment of justified charges. For the default on the part of respective parties, they have become liable to pay interest in terms of provisions of RERA Act, 2016 as ordered above. Therefore, it is decided that complainant will pay interest on the amount of Rs 12,08,168/- from the date when it was demanded (09.12.2015) till date of this order (29.06.2022). Such interest after calculation in terms of Rule 15 of HRERA Rules, 2017 (9.70%) works out to Rs. 7,68,974/-. Accordingly, a sum of Rs 19,77,142/- (12,08,168/- + 7,68,974/-) shall be paid by the complainant to the respondent. In view of the above observation, respondent is directed to issue a fresh offer of possession along with statement of account clearly mentioning the amount which is to be paid by complainant after adjusting delay interest and the net amount payable by complainant. Respondent is directed to give





offer of possession along with statement of accounts within 90 days of uploading of this order.

6. **Disposed of** in above terms. File be consigned to record room.



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**RAJAN GUPTA**  
**[CHAIRMAN]**



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**DILBAG SINGH SIHAG**  
**[MEMBER]**

