

Complaint no. 2252 of 2019

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

Complaint no. : 2252 of 2019
First date of hearing: 12.09.2019
Date of decision : 03.11.2020

Shri Pravin Goel

R/o:- P-20, 1st Floor, Uppal Southend, Sohna
Road, Gurugram, Haryana

Complainant

Versus

M/s Vatika Limited

Regd. office: Vatika Triangle, 4th Floor,
Sushant Lok, Phase-I, MG Road,
Gurugram-122009

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Hemant Chaudhary

Advocate for the complainant

Shri Venket Rao

Advocate for the respondent

ORDER

1. The present complaint dated 22.05.2019 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Vatika India Next" in Sector 81, 82, 82A, 83, 84, 85, Gurugram
2.	Nature of the project	Residential township
3.	Project area	281.58 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid up to 31.05.2018 71 of 2010 dated 15.09.2010 valid up to 14.09.2018
5.	RERA registered/ not registered	Not registered
6.	Date of execution of plot buyer's agreement	20.07.2010
7.	Unit no.	Plot No. 17, Block-85B
8.	Area	240 sq. yds.
9.	New unit	Plot-31, St. R-61, Sector-85 (as per addendum to agreement dated 08.07.2013 on pg. 53 of the complaint)
10.	Payment plan	Construction Linked Plan

		(At page 45 of the complaint)
11.	Total consideration	Rs. 60,02,439/- (as per statement of account dated 27.05.2019 annexed at page 24 of the reply)
12.	Total amount paid by the complainant	Rs. 32,62,508/- (as per statement of account dated 27.05.2019 annexed at page 24 of the reply)
13.	Due date of delivery of possession (as per clause 10 of the agreement: 3 years from the date of execution of agreement)	20.07.2013
14.	Offer of possession	Not offered
15.	Specific reliefs sought	Direct the respondent to handover the possession and pay interest for delay in delivery.

3. As per clause 10 of the plot buyer's agreement the possession was to be handed over to the complainant within 3 years from the date of execution of the agreement, which comes out to be 20.07.2013. Clause 10 has been reproduced below:-

"10 HANDING OVER POSSESSION OF THE SAID PLOT TO THE ALLOTTEE

The Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete

construction of the said Unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11), (12 and Clause (30) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as per the demands raised by the Company 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."

4. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves his right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainant. Hence, this complaint for the reliefs as stated above.
5. The complainant submitted that even after re-allocation of the plot, the possession was not delivered to him and during his visit on the site of the re-allocated plot he was unable to trace the physical location of his plot and found that no such plot exist on the site.

6. The complainant submitted that vide email dated 11.03.2017, the promoter informed him that the plot has to be re-allocated again due to the reasons beyond the control of the promoter.
7. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
8. The respondent has filed reply on the following grounds:-
 - i. It is submitted that in the present case the complainant is seeking a claim for compensation along with physical possession and along with interest also. From reading of the provisions of the 2016 Act and 2017 Rules and also from the verdict dated 02.05.2019 of Hon'ble Appellate Tribunal, would be liable for adjudication after due deliberation, if at all, by the Adjudicating Officer and not by this Ld. Authority.
 - ii. It is submitted that the complainant relied upon various e-mails as annexed with the complaint were not supported by affidavit/certificate under section 65(B) of Evidence Act. Hence, the e-mails placed on record by the complainant has no authenticity, be invalid and is not an admissible document.
9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute.

Hence, the complaint can be decided on the basis of these undisputed documents.

10. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.
11. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10 of the plot buyer's agreement executed between the parties on 20.07.2010, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 20.07.2013. Since, the respondent has not offered the possession of the subject unit to the complainant so far. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot buyer's agreement dated 20.07.2010 to hand over the possession within the stipulated period.

12. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 20.07.2013 till the date of actual offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
13. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:
- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 20.07.2013 till the date of actual offer of possession along with a grace period of 6 months due to certain force majeure circumstances beyond the control of the promoter. *Further, the Respondent is directed to handover the physical possession of the said unit after obtaining OC from the competent authority.*
 - ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.

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- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the plot buyer's agreement.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
14. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondent. A copy of this order be endorsed to the registration branch.
15. Complaint stands disposed of.
16. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.11.2020

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10. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.
11. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10 of the plot buyer's agreement executed between the parties on 20.07.2010, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 20.07.2013. Since, the respondent has not offered the possession of the subject unit to the complainant so far. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot buyer's agreement dated 20.07.2010 to hand over the possession within the stipulated period.

12. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 20.07.2013 till the date of actual offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
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 - ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the plot buyer's agreement.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
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16. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.11.2020

Judgement uploaded on 02.12.2020