

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

Complaint no. :	1198 of 2021
Date of filing complaint:	26.03.2021
First date of hearing:	15.07.2021
Date of decision :	13.05.2022

Bhavna Sachdev D/o Shri. Harish Mohan Sachdev R/o: H.no. 19, Bahubali Enclave, Karkardooma, New Delhi.	Complainant
Versus	
M/s Vatika One India Next Pvt. Ltd. Office: Flat no. 621-A, 6 th floor, Devika Towers, Nehru Place, New Delhi-110019 Also at:- Unit No.-A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next Gurugram-122012	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rajneesh Vats (Advocate)	Complainant
Ms. Ankur Berry (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details	
1.	Name of the project	"Vatika One India Next Pvt. Ltd.", Sector 81,82, 82A, 83, 84, 85 Gurugram, Haryana	
2.	Project area	281.58 acres	
3.	Nature of the project	Residential group housing colony	
4.	DTCP license no.	113 of 2008 dated 01.06.2008	71 of 2010 dated 15.09.2010
	Validity of license	31.05.2018	14.09.2018
5.	Name of the licensee	Browz Technologies Pvt. Ltd. & 38 Anr.	Blossom Properties Pvt. Ltd. & 43 Anr.
6.	Rera registered/not registered	Not registered	
7.	Allotment letter	23.08.2018 (annexure B, page 18 of complaint)	
8.	Unit details	P-682 (annexure B, page 18 of complaint)	
9.	Unit area admeasuring	500 sq. ft	

10.	Date of execution of BBA	Not executed
11.	Possession clause	Not given in file
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration as per CRA for refund (annexure R1)	Rs.48,53,520 /-
14.	Amount paid by the complainant as per CRA for refund (annexure R1)	Rs.48,53,520/-
15.	Occupation certificate /Completion certificate	Not received
16.	Offer of possession	Not offered
17.	Withdrawal letter from the project	05.12.2018 (annexure R2, page 17 of reply)
18.	Undertaking letter of the complainant	22.01.2019 (annexure R3, page 19 of reply)

B. Facts of the complaint:

- The complainant submitted that in the year 2018, the respondent approached her for booking a commercial unit in the project named Vatika One India Next Private Limited, Sector 81,82, 82A, 83, 84, 85 Gurugram, Haryana. In the month of August, the complainant paid to the respondent a sum of Rs.48,53,520/-, which included a sum of Rs.5,20,020/- towards GST for purchase of a commercial property admeasuring 500 sq. ft.
- That the respondent issued a written communication thereby allotting a priority number P-682 with respect to the allotment of a unit. The respondent assured the complainant that it would be

liable to pay Rs.75.83 per sq. ft., per month, totaling to Rs.37,915/- per month till the completion of the said project and thereafter, on the completion of the said project, it shall pay Rs.65/- per sq. ft. per month, being Rs.32,500/- per month to her for three years or until the said unit is put on lease, whichever is earlier.

5. That the respondent defaulted in the above said commitment and did not pay any amount to the complainant since November, 2018. The respondent issued an email dated 30.11.2018 containing baseless and incorrect excuses for not paying the due amount to the complainant. It was also revealed from the said emails dated 01.12.2018 & 30.11.2018 that the project had not even commenced and the construction was likely to start somewhere in April, 2019 and the proposed time for completion of construction of the said project was stated to be 24-30 months.
6. That the complainant issued a notice to the respondent, calling upon it for the return of the amount of Rs.48,53,520/-, paid by her to it. The respondent agreed to the demand of return of money raised by the complainant and stated in the email dated 16.01.2019 that the request of the complainant was under process and the process of refund would be completed by the end of April, 2019.
7. That the respondent again agreed to refund the above stated amount as demanded by the complainant vide email dated 27.03.2019 although in the said email, it was stated that the amount would be refunded in two installments in April and May, 2019 respectively. The complainant again issued a notice through her counsel calling upon the respondent to pay the above said amount

along with interest @ 12% p.a. for the period from 13.08.2018 till realization, and which has not been complied with by it.

8. That the respondent has failed to deliver the said unit to the complainant and pay the amount of assured return as agreed upon since November 2018.
9. That the respondent had given assurance to the complainant, and it was promised that the above said unit would be handed over to her, complete in all material sense along with the assured return, as shown in the brochures. However, the same has not been complied with in any form whatsoever. Rather despite frequent reminder as well as requests, the respondent failed to commence the construction of the project much less of the unit in question. So, even in view of the above said facts and circumstances of the case, the respondent is liable to pay compensation on account of unfair trade practice and even on the ground, there is a breach of contract as well as there is a deficiency in services and duties of the promoter as mentioned in the Real Estate (Regulation and Development) Act, 2016.
10. That the respondent due to ulterior motives did not execute any agreement of sale in favour of the complainant though the entire amount of the said unit was taken at one time by it. So far, the respondent has not yet completed the project and as such is not in a position to give possession of the unit, which is in violation of its obligations/ responsibilities.
11. Therefore, in view of the above said facts, it is evident that the respondent has grabbed and usurped the hard-earned money of

the complainant, causing wrongful loss to her and the said act of the respondent is not sustainable in the eyes of law and she deserves to get compensation claimed in the instant complaint on the wrong and illegal action of the respondent.

12. That the complainant has suffered a loss and damage in as much as she had deposited the money in the hope of getting the said unit for commercial purposes. The complainant is not only deprived of the said unit but also the benefit of escalation of the price of the said unit and the prospective return, she could have got had she not invested in the project of the respondent. Therefore, the compensation in such cases would necessarily have to be higher than what is the agreed price and the terms of the allotment.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the entire amount paid by the complainant along with interest at prescribed rate of interest calculated from the date of receipt of amount till the date of amount is refunded.

D. Reply by respondent:

The respondent by way written reply made the following submissions:

14. That the complainant has come before the authority with un-clean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed

financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required. Thus, only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

15. It is submitted that the complainant has already exited from the project way back in 2019. The complainant had herself come to the respondent seeking cancellation of the allotment of the unit vide letter dated 05.12.2018 and accordingly the allotment was duly cancelled by the respondent. That upon cancellation of allotment, the complainant has already submitted an undertaking dated 22.01.2019.
16. That it is brought to the knowledge of the authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of her intention. The complainant even though exited from the project has come before the authority under the allegations of violations of section 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 and whereas she has failed to be bring on record even one violation under the above enumerated sections of the Real Estate (Regulation and Development) Act, 2016. That upon the execution of the Undertaking dated 22.01.2019, the booking/allotment of the unit in the project was cancelled and thus any claim whatsoever, filed by the complainant cannot be dealt by the authority since the Act,

2016 only deals with rights and duties between an allottee and promoter and the complainant herein is no longer an allottee. The complainant not being allottee, could not have filed the present complaint before the authority and hence the complaint deserves to be dismissed with cost.

17. That it is not the case of the complainant that the respondent has not developed and completed the project as per sanctioned plans, layout plans, and specifications. Rather, the complainant who had invested in the project of the respondent requested for cancellation of allotment and refund from it due to not receiving monthly commitments, which were declared illegal by implications of SEBI Act and the Banning of Unregulated Deposit Schemes Act, 2019 and thus the allotment being already cancelled, the present case before the authority also does not survive. Thus, the claim for violation of Section 14 of Act, 2016 is baseless and fictitious and the present complaint ought to be dismissed outrightly.
18. That it is not the case of the complainant that the respondent has failed to complete or is unable to give the possession of the unit. Rather nowhere in the complaint or the prayer clause, the complainant claimed lack/delay/demand of possession. The complete case of the complainant being only that of receiving monetary benefits, without there being any violation of the provision of the Act, 2016 and the present complaint be dismissed at the very outset.
19. That the claim of the complainant for violation of section 19 of the Act, 2016 and is baseless and false. Section 19 provides the rights &

duties of the allottee and the only claim of refund under section 19 comes to play when the promoter fails to give possession or if he discontinues the business. The respondent intended to complete the project. However, the complainant was not interested in taking the possession and rather wanted to cancel the booking and take refund. The allotment was duly cancelled upon the request of the complainant and now she has come before the authority under false and fabricated facts and without any locus standi .

20. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

21. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Entitlement of the complainant for refund:

F.1 Direct the respondent to refund the entire amount paid by the complainant along with interest at prescribed rate of interest calculated from the date of receipt of amount till the date of amount is refunded.

22. Vide letter of allotment dated 23.08.2018, issued by the respondent, the complainant was allotted the unit in question for a total sum of Rs. 48,53,520/- and that amount was paid by her on 17.08.2018 as evident from receipt annexure A at page 17 of the

complaint. A perusal of letter of allotment annexure B dated 23.08.2018 shows that certain terms and conditions of allotment of the unit were agreed upon by the respondent and the same as per clause 2 provides as under:

"That you have intended to purchase the said unit with leasing arrangement and the Company shall be authorized to put the said unit on lease for and on your behalf (Individually or in combination with other adjoining units) as and when the said unit is ready and fit for occupation. The company expects to lease the said unit (individually or in combination with other adjoining units) at minimum lease rent of Rs. 65/- per sq. ft. per month on super area of said unit for the first lease. However, in the event the achieved lease rent being higher or lower than 65/- per sq. ft. the following would be applicable.

a) If the achieved rental is less than Rs. 65/- per sq. ft. per month you will be refunded the amount calculated @Rs. 133.34/- per sq. ft. (Rupees One Hundred Thirty-Three & Thirty-Four Only) for every Rs. 1/- by which achieved rental is less than Rs. 65/- per sq. ft. per month.

B) If the achieved rate rental is more than Rs. 65/- per sq. ft. you will be liable to pay additional sale consideration calculated @Rs. 66.67/- per sq. ft. on super area of said unit for every rupee of additional rent achieved over Rs. 65/- per sq. ft. per month."

23. It is not disputed that in pursuant to terms and conditions of allotment of the unit, the respondent paid assured returns to the complainant upto October 2018 and did not pay any amount after that the respondent took two-fold defence to disclose the case of complainant. Firstly, it is pleaded that payments of assured returns were declared illegal with the implementation of SEBI Act and the Banning of Unregulated Deposit Schemes Act, 2019. Secondly, the complainant herself came to it on 05.12.2018 and sought cancellation of the allotment followed by an undertaking dated 22.01.2019. But both the pleas advanced in this regard are devoid of merit. First of all, the Banning of Unregulated Deposit Scheme Act

did not bare the respondent from paying assured returns against the allotted unit., Secondly, though the complainant approached the respondent for cancellation of the allotted unit followed by an undertaking of different dates but the same were not acted upon a number of reminders including a legal notice dated 08.07.2019 was sent to the respondent but with no positive effect. So, the plea of the respondent that complainant has already got cancelled her allotment and it does not come with the preview of allottee is untenable. If the respondent had paid the amount as per its commitment on the basis of withdrawal by the complainant, then the position might have been different. However, there is nothing on the record to show that after withdrawal from the project, the respondent returned any amount to the complainant except paying some amount upto October 2018 by way of assured returns.

24. Thus, the authority hereby directs the promoter to return to the complainant the amount received by it i.e., Rs. 48,53,520/- with interest at the rate of 9.40% (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 November 2018 (inadvertently mentioned w.e.f September 2018 in the proceeding of the day) upto the date till the actual date of refund of the amount within the timelines as provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority:

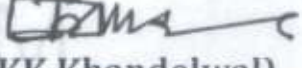
25. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the amount i.e., Rs.48,53,520/-received by it from the complainant along with interest at the rate of 9.40% p.a. from November 2018 upto the date of actual payment 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 deposited amount
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2022

