

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

<b>Complaint no. :</b>	<b>600 of 2018</b>
<b>Date of filing complaint:</b>	<b>26.04.2018</b>
<b>First date of hearing:</b>	<b>30.05.2018</b>
<b>Date of decision :</b>	<b>25.08.2022</b>

M/s Teleone Consumers Products Pvt. Ltd. (201-A) through its authorised signatory <b>R/o:</b> 468, 3rd floor, Shivaji Market, Pitampura, Delhi-110034	<b>Complainant</b>
Versus	
M/s Vatika Limited <b>address:</b> Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	<b>Respondents</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Akash Yadav (Advocate) With Sh. Kailash Chief Administrative Officer	Complainant
S/Sh. Venket Rao & Pankaj Chandola (Advocates)	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 provisions 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.No.	Heads	Information
1.	Project name and location	Vatika Express City at sector 88A & 88B, Gurgaon, Haryana.
2.	Project area	100.785 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP License	<b>94 of 2013 dated 31.10.2013 valid upto 30.10.2019</b>
5.	Name of the licensee	M/s Malvina Developers Pvt. Ltd. & 20 others
6.	RERA Registered/ not registered	<b>Registered vide no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022</b>
7.	Plot no.	26, G-17, block no. G (page 21 of complaint)
8.	Plot admeasuring (super area)	301.39 sq. ft
9.	Date of booking	12.08.2013
10.	Date of allotment	15.01.2014 (annexure C2, page 18 of complaint)
11.	Date of letter issued for execution of apartment buyer agreement	29.10.2014 (page 74 of complaint)
12.	Date of execution of builder buyer agreement	Undated BBA placed in file



13.	Due date of possession (As per possession clause 9 of unsigned BBA: 48 months from the date of execution of BBA)	15.01.2018 Due date is calculated from the date of allotment letter as there is no date mentioned on BBA
14.	Total sale consideration	Rs. 2,29,01,119/- (as per SOA dated 05.07.2018, annexure R-14, page 35 of reply)
	Basic sale price	Rs. 2,01,93,130/- (as per SOA dated 05.07.2018, annexure R-14, page 35 of reply)
15.	Amount paid by the complainant	Rs.1,25,85,303/- (as per SOA dated 05.07.2018, annexure R-14, page 35 of complaint)
16.	Completion/part completion certificate	Not obtained
17.	Offer of possession	Not offered
18.	Letter w.r.t refund	04.03.2017 (page 98 of complaint)
19.	Legal notice	02.04.2018 (page 111 of complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complainant:

- a. M/s Teleone Consumers Pvt. Ltd. booked a plot measuring 300 sq.yds @Rs. 67,000/- per sq. yds. dated 12.08.2013 in "Vatika City Express Plot" by paying the booking amount of Rs. 11 lacs to the respondent. Subsequently, the respondent asked for further installments which the complainant paid within the time specified. Thereafter, the complainant repeatedly asked the respondent to execute and provide the buyer's agreement and for allotment of plot in favour of it. On 15.01.2014, the respondent issued to the complainant an allotment of plot. At

the end of October 2014, the respondent asked the complainant to sign the agreement, which was non-negotiable on its unilateral terms and condition. After the signing of agreement, the respondent asked for further instalment and which the complainant paid accordingly.

- b. The complainant till May 2016 has deposited substantial amount of Rs. 1,23,22,062/- against the allotted unit. However, in the month of Feb 2018, its official went to inspect the site where he found no development of the allotted unit. So, the complainant was left with no alternative but to send a legal notice to the respondent on 02.04.2018, replied by it on 10.05.2018 denying all the averments made by the complainant.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- Direct the respondent to refund a sum of Rs. 1,24,26,527/ to the complainant along with interest @18% per annum from the date of payment till the date of actual realization.
  - Direct the respondent to pay a sum of RS. 30,00,000/- towards compensation for mental pain, agony, physical harassment.
  - Direct the respondent to pay a sum of Rs. 50,000/- towards cost of legal notice and professional fee expenses.

**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:

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- (a) The complaint is an abuse of the process of the authority and is not maintainable. The complainant has not approached this authority with clean hands and is trying to suppress material facts relevant to the matter.
- (b) It is submitted that the complaint is premature. There is no cause of action arises in favour of the complainant. It is submitted that the said agreement was executed on 19.11.2014. Accordingly, the due date for handing over the possession of the plot was 19.11.2018. There is no question, of delay in handing over the possession of the plot to the complainant. Therefore, the complaint is liable to be dismissed on this ground alone.
- (c) The complaint filed by the complainant before the authority besides being misconceived and erroneous, is untenable in the eyes of law and liable to be rejected. The complainant has misdirected itself in filing the above captioned complaint before this authority as the relief being claimed by it cannot be said to even fall with the realm of jurisdiction of this authority.
- (d) Apparently, in the present case, the complainant is seeking a claim for refund of sum paid towards said plot instead physical possession and along with interest as also the compensation, which, from reading of the provisions of the 2016 Act and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication after due deliberation, if at all, by the adjudicating officer and not by this authority. That on this ground alone, the complaint is liable to be dismissed.

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6. 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:**

7. 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 allottees 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.

**G. Entitlement of the complainant for refund:**

**G.1 Direct the respondent to refund a sum of Rs. 1,24,26,527/- to the complainant along with interest @18% per annum from the date of payment till the date of actual realization.**

8. The complainant booked a plot on 12.08.2013 in the project named "Vatika Express City". On 15.01.2014, an allotment letter was issued in favour of the complainant and was allotted a plot bearing no. 26, G-17, block no. G for a total sale consideration of Rs. 2,29,01,119/-. It paid Rs. 1,25,85,303/-. A buyers' agreement is placed on file but neither any signature nor any date is mentioned on it. Therefore, the due date is calculated from the date of allotment i.e., 15.01.2014, accordingly the due date comes out to be 15.01.2018. On 04.03.2017, the complainant wrote a letter to the respondent seeking refund as it has not completed the project till date. Thereafter, on 02.04.2018 it sent a legal notice to the respondent and sought refund and which was replied by it on 10.05.2018, denying all the averments made by the complainant.



9. Keeping in view of the above said facts and submission made by complainant, the authority observes that the complainant surrendered the unit by sending a letter w.r.t. refund on 04.03.2017(*inadvertently mentioned vide a legal notice dated 08.03.2019*). The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

*"5. AMOUNT OF EARNEST MONEY*

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the amount of the real estate i.e .apartment/plot/building as the case may be in all case where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

10. In view the aforesaid legal provisions, the respondent would refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this order along with an interest @10% p.a. on the refundable amount, from the date of surrender (04.03.2017) till the date of realization of payment.

**G.II Litigation expenses & compensation**

11. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal titled



as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (i) RCR (C) 357* has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the Authority:**


12. Hence, the Authority hereby passes this order and issues 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 is directed to refund the deposited amount of Rs. 1,25,85,303/- after forfeiting 10% of the basic sale price of the unit (of Rs. 2,01,93,130/-) within a period of 90 days from the date of this order along with an interest @10% p.a. on the refundable amount, from the date of surrender (04.03.2017) till the date of realization of payment.



- 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.
13. Complaint stands disposed of.
14. File be consigned to the Registry.

*V.K. Goyal*  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. KK Khandelwal)**  
Chairman

**Dated: 25.08.2022**

Haryana Real Estate Regulatory Authority, Gurugram

  
**HARERA**  
GURUGRAM