

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

Complaint no. : 1122 of 2019
First date of hearing: 06.12.2019
Date of decision : 24.08.2022

Arvind Chadha S/o Shri Ravinder Chadha
101, Chandra Society, Golf Course Road, Sector 56,
Gurugaon

Complainant

Versus

M/s Vatika Limited
Office: 4th Floor, Vatika Triangle, Sushant Lok-1,
Block-A, Mehrauli- Gurgaon Road, Gurgaon-
122002.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Ganesh Kamath (Advocate)
Sh. Venket Rao (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 12.03.2019 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 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 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 unit details, 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. N.	Particulars	Details
1.	Name and location of the project	"Xpressions By Vatika", Sector 88, distt-Gurgaon.
2.	Nature of the project	Residential floor
3.	Project area	133.022 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
5.	Name of licensee	Malvina Developer Pvt. Ltd. & 20 others Haben Developer Pvt. Lt. & 7 others
6.	RERA Registered/ not registered	Not registered सत्यमेव जयते
7.	Plot no.	Plot no- 14, E-23 *Note: Initially a unit was allotted in project namely "Vatika Express City" (Page no. 30 of complaint)
8.	Transfer of funds from express city plot to Xpressions by Vatika	17.03.2017
9.	New Unit	HSG-028, plot no. 26, St. H-33 in project namely "Xpressions by Vatika."
10.	Date of booking	Year 2014
11.	Date of letter for execution of BBA (Vatika Express City)	06.08.2015 (page 30 of complaint) <i>This was for the earlier allotted unit which was later on changed as the unit was not available with the respondent-promoter and hence, this date shall be considered for all intends and purposes.</i>
	Date of letter for execution of BBA (Xpressions by Vatika)	16.02.2018 (page 50 of complaint) <i>This letter for execution of BBA was sent on this date but with the understanding that BBA shall be treated as 06.08.,2015. Although in both the</i>

		<i>cases the due date of possession stand expire and the allottee is entitled for refund.</i>
12.	Due date of possession	06.08.2019 (Due date is calculated from the of letter issued by the respondent to execute the BBA i.e., 06.08.2019) [As no due date of possession has been mentioned and keeping in view the judgment passed by the Hon'ble Supreme Court in case titled as Fortune Infrastructure and Ors. Versus Trevor D'Lima and Ors (12.03.2018) this period for delivery of possession may be taken as 3 years) to safeguard the interest of the allottee]
13.	Total sale consideration	Rs. 98,20,497/- [as per SOA dated 20.11.2017, page 47 of reply]
	Total basic sales price	Rs. 87,33,010/- [as per SOA dated 20.11.2017, page 47 of reply]
14.	Amount paid by the complainant	Rs. 41,65,988/- [as per SOA dated 20.11.2017, page 47 of reply]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Notice for termination	15.06.2016 (page 97 of complaint)

B. Facts of the complaint

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

- I. The complainant submits that the respondent gave wide publicity in the print and electronic media for its project known as "Vatika Express City" promising a rosy picture of the project with acres of land to be divided into huge plots of land in the centre of the city. He approached the respondent in the year 2014 for booking a plot in the respondent's project and booked a plot bearing no. 11, E-41 admeasuring 252.23 sq.yds and paid an amount of Rs. 41,15,988/- at "Vatika Express City (Phase 1) under a specific payment plan. Further, the said allotment was changed, and he was

allotted plot bearing no. 14, E-23. The receipts of money received were issued by the respondent against all the payments done. An allotment letter cum buyer agreement was issued by respondent and signed by the parties.

- II. With continuous and timely payments, the complainant kept his end of the bargain, just so that the project doesn't get delayed, and he was not levied with any penalties. Whenever there occurred any delay, he agreed to the interest @ 18% p.a. as asked by it. Whereas the respondent not only deprived him with the plot booked. Moreover, it kept demanding the scheduled amount continuously, which he sincerely kept paying on time. While the respondent continued the malicious acts of defying the complainant to which he was oblivious from the beginning, the promises made by it of delivering the project within 36 months of booking didn't seem to be turning true, in as much as the respondent was lacking behind in completing the project proposed to be completed in three years. Another farce was played by it to deceive him and buy time to capitalize on the money paid by him and rather demand more money under the garb of showing a new project with the name "Vatika Xpression floors" which was projected to be near completing while the said hasn't yet been delivered by the respondent even after the transfer of the same from the erstwhile plot was made in the year 2017, while taking more than 40% of the total sale consideration of the new unit booked and not providing any term sheet or buyer agreement. He started to follow up with the respondent on timely delivery of the project, while simultaneously sincerely paying the said amount as demanded, including advance instalment as demanded by the respondent.

- A III. Due to the inability to deliver the plot allotted to the complainant, he engaged in several follow ups with the respondent. However, the

respondent could see that it would not be able to deliver the plot on time, and urged and manipulated the complainant to shift his unit, which promised to deliver in time. He saw this opportunity as a ray of hope and his best chance at getting his unit delivered. He had no other option but to give in. Hence, it agreed to shift the unit, from "Vatika Expression City" to Xpressions, a project of the respondent situated in sector 88B, Gurgaon, Haryana. After only filling the application form, the respondent had left the complainant to himself while keeping with it the money paid by him.

- IV. The complainant persuaded the respondent to deliver the possession of the plot or refund the money paid, as it had not only cheated him but also utilised his hard money for personal benefits. The respondent promised to deliver the said project on time and requested him to provide it with adequate time to perform its part of the bargain, to which he agreed and continued payments with a hope of completion of the project. The respondent whose plans since the very beginning were to deceive the complainant, cheated and defrauded him by misappropriating the money and by not offering the possession of the plot.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to refund the amount paid by the complainant along with interest @24% p.a. as does not want any association with the respondent
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
- That the complainant is trying to shift his onus of failure on the respondent as it is he who failed to comply his part of obligation and



miserably failed to pay the instalments in time despite repeated payment reminders being sent by it from time to time. It is denied that the complainant made payments as per demands raised by the respondent or as per the schedule of payment.

- b. The complainant never adhered to the demand raised or payment schedule as per the agreement. It is submitted that the respondent issued various demand letters whereas, the complainant kept mum of all the demands and made default in clearing outstanding dues as per the demands raised or schedule of payments mentioned in the agreement. It is pertinent to mention here that the complainant booked the plot for financial and speculative gains for investment purpose only and due to the huge slump in real sector now, he wants to back out from the project and shifting his onus on the respondent for illegal gains.
- c. That on 07.10.2014, the respondent raised a demand to clear the dues of Rs. 20,57,994/-. However, he made part payment on 21.10.2014 of Rs. 10,80,000/- and further Rs. 4,20,000/-, then further on 12.11.2014 Rs. 1,00,000/- and Rs. 2,00,000/- after termination of stipulated time. On 07.01.2015, the respondent raised demand to clear the dues of Rs. 20,57,994/-. The complainant defaulted and has not made the payment till date. On 07.01.2015, the respondent raised demand to clear the dues of Rs. 20,57,994/- and the complainant defaulted and has not made the payment till date. Further on 09.04.2015, the respondent raised demand to clear the outstanding dues of Rs. 20,57,994/-. However, the complainant ignored the demand.
- d. That on 21.07.2015, the respondent raised demand to clear the outstanding dues of Rs. 38,141/-. However, the complainant failed to comply with the demand letter or payment schedule. The complainant ignored all the demand raised and made partly payments after

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termination of stipulated time. This gesture of the complainant clearly shows that he is defaulter by nature and has malicious intention to back out from the project due to huge slump in real estate sector. It is submitted that the delay in handing over of the possession is due to reason beyond the control of it. However, it is submitted that the construction work of the project is about to complete, and possession of the complainant's unit is scheduled in the third quarter of 2021 as already communicated by the respondent to him.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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) The promoter shall-

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(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.

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."** 2021-2022(1)RCR(C), 357 and followed in case of **Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication

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under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to refund the paid amount along with interest.

14. The complainant has submitted that he purchased a plot at "Vatika Express City" and was allotted a plot bearing no. 11, E-41 admeasuring 301.67 sq. yds and paid an amount of Rs. 5,00,000/-. The respondent informed the complainant that the plot no.11, E-41 does not exist and take another plot else, the complete amount shall be forfeited. The complainant applied for loan with ICICI bank but the bank refused to extend a loan against the new property as the said unit was not even existing. Thereafter, the respondent manipulated the complainant to shift the plot from "Vatika Express City" (Originally allotment) to Xpressions. It is pertinent to mention here the respondent even today has not completed the project nor obtained occupation certificate nor offered the possession of the allotted unit.

15. The respondent has issued various demand letters/notice of termination for the previous unit to the complainant. However, the payments were delayed and some were not even paid by him. It is submitted that the complainant as per free will had lodged written request vide letter dated 21.03.2017 for transfer of the booking from Express City Plots to Xpressions by Vatika and

accordingly, the respondent has duly transferred the booking. The super structure of the current unit bearing number HSG-028, plot no. 26, St. H-33, top level, Sector 88B, Gurugram, Haryana is complete, and possession is scheduled by last quarter of next year. It is further submitted that the respondent has been issuing various letter for execution of buyers' agreement.

16. Keeping in view of the above said facts and submissions made by the complainant, the authority observes that the complainant surrendered the unit by filing a complaint dated 12.03.2019. 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 consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases 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."

17. Keeping in view the aforesaid legal provisions, the respondent shall 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

@ 9.80% p.a. on the refundable amount, from the date of surrender till the date of realization of payment.

F. Directions of the authority

18. 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 function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the amount of Rs. 41,65,988/- after deducting 10% of the basic sale consideration of Rs. 87,33,010/- of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 9.80% p.a. on the refundable amount, from the date of surrender 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.

19. Complaint stands disposed of.

20. File be consigned to registry.

V.K. 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2022


(Dr. K.K. Khandelwal)

Chairman