

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

**Complaint no. : 5581 of 2019**  
**First date of hearing: 13.12.2019**  
**Date of decision : 25.08.2022**

Smt. Sandhya Singh Parmar

**R/o:** H. no. 8, Block-Z, Tatvam Villa, near Vipul  
Trade Centre ,Sohna Road, , Gurugram

**Complainant**

Versus

1. M/s Vatika One on One Pvt. Ltd

**Regd. Office:** Flat No. 621-A, 6<sup>th</sup> floor Devika  
Towers 6, Nehru Place, New Delhi-110019.

2. Haryana Shehri Vikas Pradhikaran

**Regd. Office:** - HUDA Complex, Sector-14,  
Gurugram, Haryana-122001

**Respondents**

**CORAM:**

Shri K.K. Khandelwal

Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Sukhbir Singh Yadav (Advocate)

Sh. Venket Rao (Advocate)

None

**Complainant  
Respondent no. 1  
Respondent no. 2**

**ORDER**

1. The present complaint dated 13.11.2019 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	"One on One", Sector-16, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	Project area	12.13 acres
4.	DTCP license no.	05 of 2015 dated 06.08.2015 valid upto 05.08.2020
5.	Name of licensee	Keshav Dutt & others
6.	RERA Registered/ not registered	<b>237 of 2017 dated 20.09.2017 valid upto 19.09.2022</b>
7.	Unit no.	522,5 <sup>th</sup> floor, block 3, admeasuring 500 sq. ft. (annexure P2, page 83 of complaint) & 521, 5 <sup>th</sup> floor, block 3, admeasuring 500 sq. ft. (page 85 of complaint)
8.	Date of allotment letter	25.09.2017 (annexure P2, page 83 of complaint)
9.	Date of builder buyer agreement	<b>Not executed</b>
10.	Due date of possession	Cannot be ascertained
11.	Total sale consideration	Rs. 92,40,000/- for both the units (page 87 & 93 of complaint)
12.	Amount paid by the complainant	Rs. 46,20,000/- as per application form dated 01.09.2017 (page 87 of complaint)  Rs. 46,20,000/- as per application form dated 01.09.2017 (page 93 of complaint)
13.	Occupation certificate	06.09.2021

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- I. The complainant had made two applications, on 01.09.2017 to the respondent-builder for allotment of two units in its commercial building "One on One" situated in Sector-16, Gurgaon. Two allotment letters dated 25.09.2017 for two units being unit no. 521 and 522 in the block 3, 5<sup>th</sup> floor in commercial building "One on One", Sector-16, Gurugram, Haryana measuring 500 sq. ft. each were issued in favour of the complainant. The basic sale price for each unit was fixed at Rs. 41,25,000/- based on the calculation of Rs. 8,250/- per sq. ft.
  - II. The complainant has submitted that under clause 2 of both the allotment letters dated 25.09.2017, a monthly assured return was to be paid to her after receipt of 100% of basic sale consideration, at the rate of Rs. 150.26 per sq. ft. per month on *super area* and was to be paid till completion of construction of the said building. After completion of building, she was to be paid a minimum committed return of Rs. 131/- per sq. ft. for three years from the date of completion of the said building. Under clause 3 of both the allotment letters, the lease/rentals of minimum of Rs. 131/- per sq. ft. was accrue to her from the lease of the properties for the first lease arrangement and these lease rentals were based upon the *super area* of the two units. As per sub clauses (a) of clause 3 if the rent from the lease was to be less than the minimum of Rs. 131/- per sq. ft. then she was to entitled to a refund by the respondent builder at the rate of Rs. 141.18/- per sq. ft. for every Rs. 1/- by which achieved rent was less than Rs. 131/- per sq. ft. As per sub clauses (b) of clause 3, if the rent achieved was more than Rs. 131/- per sq. ft., then she was to be liable to pay additional amount to the respondent-builder at the rate of Rs. 70.59/- per sq. ft. on

the *super area* for every Rs. 1/- in excess of the minimum rent of Rs. 131/- per sq. ft.

- III. It is submitted that neither the promoter disclosed to the complainant stage of completion of construction of the project and the building nor the respondent/builder produced any document to show that the two units have been put on lease till date. Further, under clause 3, the respondent/builder was authorized to lease out the units on behalf of the complainant only for the first lease as mentioned. Thereafter, the possession of the unit would have vested with the complainant who would have the choice of either leasing out the units through the respondent/builder or to lease them out herself.
- IV. The entire sale consideration of Rs. 92,40,000/- for the two units was paid by the complainant to the respondent/builder's escrow account no. 02800350000419 *vide* cheque no. 000132 dated 05.09.2017 drawn on Standard Chartered Bank for Rs. 46,20,000/- and the second cheque bearing no. 000131 dated 05.09.2017 drawn on Standard Chartered Bank for Rs. 46,20,000/-. Therefore, the entire payment has been received by it and has not specified the completion date or the date of delivery of possession in the allotment letters dated 25.09.2017.
- V. As the entire consideration had been paid by the complainant as on 01.09.2017, clause 2 of both the allotment letters regarding monthly assured returns came into operation from September 2017 onwards and the respondent/builder continued to pay the monthly assured returns to the complainant as per the allotment letters till October 2018. However, after October 2018, the respondent/builder without any reason, stopped paying the monthly assured returns to her and has not paid till date of filing of this complaint. She sent a letter dated 11.05.2019 to Vatika Pvt.

Ltd. acknowledging the payment of assured returns till October 2018 and also raised a demand for payment of assured returns pending from October 2018 onwards.

- VI. On a very short notice, one intermediary of the respondent/builder came to the residence of the complainant on 03.07.2018, while she was alone at home. Without allowing her any time to go through the terms and conditions carefully, hastily made her sign a builder buyer agreement. This was done in such a hurried manner, without allowing her to read the agreement and she was not even given a copy of the said buyer's agreement by the said intermediary. To her utter shock and dismay, when she asked for a copy of the signed buyer's agreement later, the respondent/builder informed her that the said buyer's agreement had been disposed of and was "no longer valid due to compliance with the newly enforced rules of Haryana RERA". She was given a shoddy explanation by respondent/builder despite the fact that she had paid Rs. 23,600/- for each unit to respondent/builder to register the said agreement. It appears from the conduct of the respondent/builder that it deliberately disposed of the original buyer's agreement in order to get a more onerous buyer's agreement signed by her, after the entire sale consideration had already been paid, under the guise of change in rules and regulations under the Act, 2016.
- VII. The complainant was taken back to find that the new proposed buyer's agreement sent by the respondent/builder *vide* email dated 23.04.2019 was a completely new arrangement which was not even close to the terms of the allotment letters. The respondent/builder asked her to sign the attached proposed buyer's agreement within 30 days. However, there

were glaring inconsistencies and deviations in the proposed buyer's agreement from the allotment letters dated 25.09.2017.

- VIII. It is submitted that the respondent/builder has failed to specify to the complainant till date any schedule for completion of the project or for handing over the possession of the units, which violates the provisions of the Act. Unofficially, the respondent/builder had verbally promised the complainant that the possession would be handed over by June 2019, which has already passed without any sign of possession of the properties. Despite various efforts, respondent/builder failed to supply a registered date of possession. Subsequently, the complainant has gathered the information by way of an RTI application to the concerned authority that the date of completion for the project as registered with RERA is 19.09.2022.
- IX. The date of application and allotment letter is incorrectly shown as 07.09.2017 whereas in fact the application was signed on 01.09.2017 and the two allotment letters were issued on 25.09.2017. Despite the complainant having pointed out this factual error, the respondent/builder is not willing to rectify even such evident errors in the proposed buyer's agreement and is pushing the complainant to sign the error ridden buyer's agreement as it is, with material deviations from the allotment letters, so that it can take advantage of these ambiguities in case of any disputes arising later. This amounts to an '*unfair practice*' on the part of the respondent/builder as laid down in section 7 of the RERA Act.
- X. There are "ancillary charges" mentioned in clause 12 of the proposed buyer's agreement without specifying any particulars or qualification of the said charges which would be liable to be paid by the complainant. This is yet another device by the respondent/builder to keep a window open

to extort more money illegally out of the complainant after the full and final consideration has been paid by her and fully acknowledged by the respondent/builder.

XI. In light of the glaring falsities, on sided provisions and deviations in the proposed buyer's agreement, the complainant requested the respondent/builder to make corrections and appropriate modification in the said clauses of the proposed buyer's agreement so that it is true to the terms and conditions of the allotment letters dated 25.09.2017. The respondent/builder sent an email dated 24.05.2019 with an updated buyer's agreement attached to it. However, the said update buyer's agreement also did not address any of the concerns raised by the complainant and was, therefore, equally inadequate as the previous draft of the buyer's agreement sent by the respondent/builder. The complainant vide email dated 29.05.2019 again informed the respondent/builder about the persisting objections in the proposed buyer's agreement and sought modifications to address the same. However, later the respondent/builder has informed the complainant that it would not make corrections/modifications suggested by her until she signs the addendum agreement sent by it via email dated 08.07.2019. As a result, till date there is no valid buyer's agreement executed between the parties and no conveyance deed even after 21 months from the date of signing the allotment letters and making the 100% payment of sale consideration of Rs. 92.40 lakhs.

XII. The respondent/builder has sent an addendum agreement vide its email dated 08.07.2019 to the complainant in which even more onerous terms were sought to be imposed upon the complainant. Moreover, it was imposing the addendum agreement upon the complainant as a

precondition to signing the proposed buyer's agreement, which amounts to "unfair practice" as well as coercion and undue influence.

XIII. The complainant has respectfully submitted that this kind of pressure tactics was not acceptable to her because of the addendum agreement makes assured returns payable only till 30.06.2019 even though construction of the building is still not complete. Further, clause 2 also makes assured returns payable at the time of handing over possession of the units, without specifying any date for such handing over of possession; (b) clause 3 of the addendum agreement envisages deleting the assured returns clause completely, which is not mandated by law for the time being in force, with respect to agreements which have already been entered into and acted upon by the parties. The respondent/builder cannot unilaterally delete the provision of assured returns from the contract because she had entered into the agreement based on that promise and she has already paid the full amount of sale consideration; and (c) clause 4 which provides for a completely new leasing agreement for the two properties virtually taking away, for all times to come, all the rights of the complainant to deal with her own units. The respondent/builder not only retains the perpetual right to lease out the properties at whatever terms and conditions may please the respondent/builder, without any say of the complainant whatsoever, but even the authority to pay the taxes is withheld by it.

XIV. The complainant is not willing to accept the unconscionable and highly onerous terms of the addendum agreement or the proposed buyer's agreement without any necessary modifications and corrections. The proposed addendum agreement, in effect, completely substitutes various clauses of the allotment letters dated 25.09.2017, upon which the while



transaction was based. The addendum agreement also seeks to impose provisions which are much more onerous to the complainant and are in no manner similar to the terms and conditions agreed to in the allotment letters dated 25.09.2017, based on which the entire payment of Rs. 92,40,000/- was made by her to respondent/builder.

- XV. The respondent/builder has failed to provide the complainant with the completion certificate or the occupancy certificate or the sanctioned plans and it has sent an email dated 14.06.2019 informing her that it has already "secured a lease for the entire premises of the project from a multinational client".

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

4. The complainant has sought following relief(s).
  - a. Direct the respondent/builder to execute a buyer's agreement in terms of the allotment letters dated 25.09.2017.
  - b. Direct the respondent to disclose the date of handing over the possession of the units and to comply with the dates so disclosed and to pay interest for delayed possession.
  - c. Direct the respondent to give complete disclosure regarding the current status of the properties.
5. None turned up on behalf of respondent no. 2, despite due service and as such it was proceeded against ex-parte.
6. 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/builder:**

7. The respondent has contested the complaint on the following grounds.
  - a. It is submitted that the present complaint is premature. There is no cause of action arising in favour of the complainant. It is submitted that



the present project is registered project under RERA vide memo no. HRERA-443/2017/1165 as per which the construction of the project is to be completed by 19.09.2022. Therefore, the construction work of the project is well within time and the complaint is premature. It is submitted that the complainant is not entitled for the reliefs sought as the authority has provided a timeline for completion of the project by 19.09.2022 and the respondent would complete the project accordingly.

- b. That the complainant is not an allottee, but “an investor” who is seeking assured return from the respondent, by way of complaint, which is not maintainable under the Act, 2016. The complainant has booked the said unit and executed the agreement for the commercial space having the terms and conditions of getting assured return and monthly amount getting from leasing and as per which, she has been receiving assured return in the form of profit and speculative gains on her investment. Thus, she is an investor and not allottee as she booked the commercial space units with a sole motive to earn profits on investment and speculative gains. The complainant has booked the commercial space unit for the purpose of getting the assured leasing and for gaining the further commercial advantage. However, after passing off ordinance and thereafter the Act and seeing the prevailing law i.e., The Banning of Unregulated Deposit Schemes Ordinance 2018” and further “The Banning of Unregulated Deposit Schemes Act, 2019”, the assured returns schemes have been completely banned. Therefore, it is submitted that as the complainant is an investor and does not fall within the purview of the authority.



- d. The complainant has come before this authority with ulterior motive. The complaint has been filed by her just to harass the respondent and to gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by her, a detailed deliberation by leading the evidence and cross-examination is required, thus only the civil court has competent and has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication, if at all the contents of the complaint are taken to be correct and true.
7. Vide orders dated 02.02.2022, passed by the authority a direction was given to the respondent/builder to execute builder buyer's agreement with the complainant as per terms and condition mentioned in the allotment letter dated 25.09.2017 besides complying with the provisions of section 19(2) of the Act, 2016. However, the final order could not be prepared and uploaded as to miscellaneous application dated 09.02.2022 and 21.02.2022 moved by the complainant remained pending and the same were disposed of by the authority vide different orders. This is how the case is being finally disposed of by this order.
8. 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 based on these undisputed documents and submission 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-

*(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.

### **F. Findings on the objection raised by the respondent.**

**F. I Objection regarding entitlement of profit from its resale on ground of complainants being investor.**

19. The respondent has taken a stand that complainant is an investor and not consumer, therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complainant under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects enacting a stating but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer, and paid total price of Rs. 92,40,000/- to the promoter towards purchase of two units in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter, it is crystal clear that the complainant is allottee as the subject units were allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and

there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**H. Findings on the relief sought by the complainant.**

**H.I Direct the respondent/builder by exercising powers under section 37 of the Act, to execute a BBA in terms of the allotment letters dated 25.09.2017 within a specified time period.**

13. A project by the name of One on One, situated in sector 16, Gurugram was being developed by the respondent/builder. The complainant coming to know about the same booked two units in its for Rs. 46,20,000/- each and paid a total sum of Rs. 92,40,000/- to the respondent/builder on 05.09.2017 vide account payee cheques. However, respondent/builder did not initially execute any buyer's agreement. But after much persuasion, it got executed from the complainant a buyer's agreement on 03.07.2018, containing clauses being unreasonable, biased, one-sided and against the terms and conditions of the allotment letter. The complainant protested to the same and was taken back when she received an email dated 23.04.2019, containing new buyer's agreement and the clauses contrary to the terms and conditions of the allotment. She was asked to sign that agreement within a period of 30 days. It was pleaded by the complainant that she never received the earlier signed agreement from the builder. Though, she received a new buyer's agreement later on but the same was not as per terms and conditions of the allotment letter. So, she did not sign that document and return to the

builder. Even while filing written reply, the respondent/builder nowhere pleaded that the earlier buyers' agreement was executed between the parties. The second one received vide email dated 23.04.2019 was containing unilateral and biased terms and conditions w.r.t the allotment of the units and not as per the letter of allotment. Though, it is pleaded on behalf of respondent/builder that the second buyer's agreement did not contain any such clause which may be termed as biased or unilateral one but the plea advanced in this regard is devoid of merit. The complainant accepted the allotment of the units subject to terms and conditions mentioned in the letter of allotment. So, if while executing there is any deviation from the same, then an allottee has a right to object to the same and the same is the case in hand. The respondent/builder accepted total sale consideration of the allotted units. So, it is his duty to execute buyers' agreement as per the terms and conditions mentioned in the letter of allotment dated 25.09.2017. Since, that was not done, so the respondent/builder is directed execute that document with the complainant as per terms and conditions of allotment contained in the letter dated 25.09.2017 of the allotted units within a period of two months.

**H.II Direct the respondent/builder to give complete disclosure regarding the current status of the properties as required under section 11 of the Act read with Rules, 2017.**

14. As per section 19(2) of the Act of 2015, the allottee is to know stagewise time schedule of completion of the project including the provisions for water, sanction, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale. So, in view of the mandate given above, the respondent promoter is directed to provide the current status of project to the complainant.



**I. Directions of the authority**

15. 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 authority directs the respondent/builder to incorporate those clauses in buyer's agreement mentioned in allotment letter dated 25.09.2017 of the allotted units in favour of the complainant.
  - ii. A period of 60 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
16. Complaint stands disposed of.
17. File be consigned to registry.

V.I - 3  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 25.08.2022

**HARERA**  
**GURUGRAM**