

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

Complaint no. : 4261 of 2020
First date of hearing: 11.02.2021
Date of decision : 28.10.2022

Ainul Islam
R/o: -Flat no. S-10/7, DLF Phase-III,
Gurugram, Haryana

Complainant

Versus

M/s Vatika Limited.
Office at: Vatika Triangle, 4th Floor, Sushant Lok I,
Phase I, Block A, Mehrauli Gurgaon Road, Gurugram,
Haryana 122002

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Uday Seth
Sh. Venkat Rao & Sh. Pankaj Chandola

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 15.12.2020 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 allottees 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.No. | Particulars | Details |
|-------|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Name and location of the project | "Vatika India Next" at sector 81, 82A, 83, 84 and 85, Gurgaon, Haryana |
| 2. | Nature of the project | Residential plotted colony |
| 3. | Date of allotment | N/A |
| 4. | Date of builder buyer agreement | 22.12.2009 (Page 32 of complaint) |
| 5. | Plot no. | 253, block F admeasuring 240 sq. yds. (page 36 of complaint) |
| 6. | Addendum to the plot | 7/N-9.1/84N admeasuring 240 sq. yds. (page 74 of complaint) |
| 7. | Finally allotted plot no. | 7/N-6/84N admeasuring 240 sq. yds. (page 75 of complaint) |
| 8. | Possession clause | 10. Handing over possession of the said plot to the allottee <i>That the Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said Township of the sector/part thereof where the said Plot is proposed to be located, within a period of three years from the date of execution of this agreement.</i> |
| 9. | Due date of possession | 22.12.2012 [Due date of possession calculated from the date of BBA] |
| 10. | Total sale consideration | Rs. 55,81,800/- (As Per BBA on page 37 of complaint) |
| 11. | Amount paid by the complainant | Rs. 52,69,093/- |



| | | (As alleged by the complainant (page 19 of complaint)) |
|-----|-------------------------|---------------------------------------------------------------------------------------------------|
| 12. | Occupation certificate | Not obtained |
| 13. | Offer of possession | 30.01.2017 (annexure P-9, page 98 of complaint) |
| 14. | Possession handing over | 30.01.2017 (as alleged by the complainant and the same is admitted by the respondent in is reply) |

B. Facts of the complaint

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

- I. That the complainant booked a residential plot in the project and in pursuance of same a cheque bearing no. 013073 amounting to Rs. 1,00,000/- dated 12.10.2009 was given to the respondent and the respondent by admitting issued receipt vide receipt number 35002 in his favour. Further, he issued the cheque bearing no. 013074 dated 23.10.2009 amounting to Rs. 4,54,580/- to it.
- II. That it is pertinent to mention here that at the time of entering into agreement dated 22.12.2009, the respondent had allotted plot bearing no. F/240/253 admeasuring 240 sq. yds. in the said project to the complainant in terms of clause 1.1 initially for a total consideration of Rs.55,81,800/-. In terms of clause 10 of the agreement, it was stipulated that the development of the township project would be completed within a span of three years from the date of execution of agreement and consequently the plot would be handed over to him.
- III. He had made the payment to respondent of instalments as per the schedule of payment annexed along with the agreement dated



- 22.12.2009. Since it was unable to have an arrangement with any bank for subvention plan, they converted the agreement from 'Home Loan linked plan' to 'Development Linked Payment Plan' with revised sale consideration of Rs. 52,20,000/-.
- IV. That the respondent was not able to deliver the possession to the complainant as per the promised schedule, hence, at the instance of it, the plot reference was changed to plot no. 7/N-9.1/84N/240 sq. yds. Sector-84 Gurgaon by way of an addendum dated 10.06.2013, while retaining all the other terms and conditions as mentioned in the original agreement dated 22.12.2009.
- V. That the complainant had never defaulted in any of the payment instalments as per the schedule of payment annexed along with the agreement dated 22.12.2009 and the addendum was signed solely at the behest and request of the respondent.
- VI. That subsequently, again the respondent failed to deliver the possession of the above-mentioned plot for which reason another addendum was entered between the parties as per which the reference of plot was again changed to plot no. 7/N-6/84N/240/Sector 84 by addendum dated 12.07.2016. Further, he made various payments as full and final payment to it.
- VII. Thereafter, finally on 30.01.2017, the respondent gave offer of possession of plot bearing no. 7, N-6, Vatika India Next, Gurgaon- payments to the complainant consequent to which he took physical

possession of the plot. He has been paying a monthly maintenance charge towards the plot to it.

- VIII. That the grievance of the complainant is despite giving the possession of plot more than 36 months ago, the respondent has drastically failed to get the same registered in the name of the complainant. He repeatedly visited at the office of it and contacted through numerous telephonic calls/emails, but it kept on delaying the registration of plot on one pretext or another and made him run from pillar to post.
- IX. That as a matter of last resort the complainant approached the undersigned counsel and got issued a legal notice dated 26.09.2019. However, despite effective service of legal notice upon the respondent, it failed to abide to the request of the complainant and did not even care to file a reply to the legal notice.
- X. That the conduct of the respondent is in total breach and contradiction of clause 16 of agreement dated 22.12.2009, which casts a duty upon it to prepare and execute the conveyance of title in favour of allottee after receiving the total consideration of the plot.
- XI. That till date an amount of Rs. 52,69,093/- has been paid by the complainant to the respondent against the plot purchased by him and there is delay of more than 6 years and yet the plot is not registered in his name despite there had been payment of 100% in favour of the respondent /promoter.



C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to pay delay possession charges to the complainant.
 - II. Direct the respondent to execute the conveyance deed in the name of the complainant along with delay interest in favour of the complainant.
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 contested the complaint on the following grounds: -
 - a) That the complaint is an abuse of the process of this authority and is not maintainable. The complainant is trying to suppress material facts relevant to the matter. He is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from it.
 - b) That the complainant took over peaceful and vacant physical possession of the unit through letter vide dated 30.01.2017, whereby he took over peaceful and vacant physical possession of the unit in question after fully satisfying themselves with regard to its measurement, location, dimension, approvals and development etc. It was further explicitly stated by him in the aforesaid letter that upon acceptance of possession they would not be entitled to raise any claim of any nature whatsoever regarding any variations

regarding any variation in the size, dimension, area, location or legal status, delay in possession of the unit in question. It is relying upon the aforesaid representation had changed its position to its detriment and proceeded to deliver possession of the unit in question. It is not out of the place to mention here that as per "Doctrine of Waiver" a party for whom certain statutory rights are granted, such party can waive those rights if no public interest is involved. In the present complaint he has waived off his rights to claim interest for delay in handing over of possession. Hence, the complaint is infructuous as he has already waived off his rights and concealed the same in the present complaint.

- c) That the present complaint is fixed with the oblique motive of harassing the respondent and to extort illegitimate money while making absolutely false and baseless allegations against the respondent.
- d) That the roots of the complaint appear to be infectious and therefore liable to be dismissed on the simple perusal as the content of relief sought by the complainant is ambiguous and wrong in the eyes of the prevailing law whereas the relief sought is found to be defectively articulated before the authority and have no stand over the issue of Jurisdiction. The prevailing jurisdiction clause under Section 72 of RERA Act specifically states that:

"72. While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely: (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default; (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."

The specific provision above mentioned has stated that quantum of compensation or interest should be adjudicate by the adjudicating officer and not the authority as the present complaint has erred in understanding the law of the land or the contentions submitted were found to be eclipsed. The rules of the rules of 2017 has established the provision under rule 29 that

"(1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'CAO', in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated."

The above prescribed rule has stated that complaint filed under section 12,14,16,17,18 under the Act requires to be filed before the adjudicating officer or specifically the provisions related to the compensation and interest shall be filed before the adjudicating officer of the HRERA and the complainant has undoubtedly mistaken on the ground to approach the authority.

- e) That the complainant relied upon various e-mails conversation 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.
7. 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 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)(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 complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to pay delay possession charges to the complainant.

F.II Direct the respondent to execute the conveyance deed in favour of the complainant along with delay interest.

12. The complainant has admittedly taken over possession of the allotted unit. So, accordingly from the date he has taken over possession i.e., 30.01.2017, he cannot be allowed delayed possession charges. Though, the possession of the unit was offered by the respondent before obtaining OC certificate but during the course of proceedings, it has been stated on its behalf that occupation certificate of the project namely "Vatika India Next" sector 81, 82 A, 83, 84 & 85 Gurugram has already been received and on the basis of which possession of the allotted unit was offered to the complainant. Even the counsel for the complainant is not pressing for the relief of delay possession charges and is rather seeking a direction for execution of conveyance deed in a time bound manner. So, in view of stand taken by the respondent through its counsel during the course of proceedings, it is directed to execute conveyance deed of the allotted unit in favour of the complainant within a period of 2 months.
13. Moreover, with respect to the conveyance deed a provision has been made under clause 16 of the buyer's agreement and the same is reproduced for ready reference:

"16. Conveyance of title of the said plot:



That the Promoter, its Associates Companies, its Subsidiary Companies, its Collaborators or Attorneys duly appointed in this regard, as the case maybe, shall prepare and execute along with the Allottee a deed in the manner as may be prescribed by the Govt. of Haryana to convey title/rights in the said Plot in favour of Allottee but only after receiving full payment of the total price of the said plot and all securities including Maintenance Security Deposits, interest, penal interest etc. on delayed installments, stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Agreement or as demanded by the Promoter from time to time prior to the execution of the said deed. If the Allottee is in default of any of the payments as set forth in this Agreement, then the Allottee authorizes the Promoter to withhold registration of the title deed in its favour until full and final settlement of all dues to the Promoter is made by the Allottee. The Allottee undertakes to cooperate fully for execution of the title deed within the time stipulated by the Promoter in its written notice failing which the Allottee authorizes the Promoter to cancel the allotment and terminate this Agreement and to forfeit out of the amounts paid by the Allottee the earnest money, delayed payment of interest any interest paid, due to payable, any other amount of a non-refundable nature and to refund the balance amount without any interest in the manner prescribed hereinabove. The Allottee shall be solely responsible and liable for compliance of the provisions of Indian Stamp Act, 1899 including any actions taken or deficiencies/penalties imposed by the competent authority(ies). The Allottee also undertake to pay without demur any increase in stamp duty/registration charges as may be effected by the Govt. authorities even if such an increase takes place after the Allottee has paid to the promoter all the dues/charge/fees etc. under this agreement.

14. Then, section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be



carried out by the promoter within three months from date of issue of occupancy certificate."

So, in view of the above-mentioned provisions, the respondent is directed to execute the conveyance deed of the allotted unit within 2 months in favour of the complainant at his expenses.

H. 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):

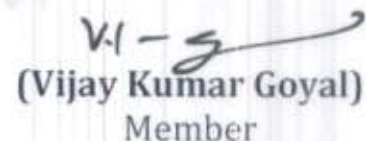
- i. The respondent is directed to execute the conveyance deed of the allotted unit within 2 months in favour of the complainant at his expenses.
- ii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

16. Complaint stands disposed of.

17. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)
Member

Dated: 28.10.2022