

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

Complaint no. :	1309 of 2019
Date of filing complaint:	28.03.2019
First date of hearing:	06.12.2019
Date of decision :	02.12.2022

Ajay Yadav
R/o: D-3, Nilamber Apartments, Rani Bagh
New Delhi-110034

Complainant

Versus

M/s Vatika Limited
Office : Flat No. 621-A, 6th Floor, Devika Towers,
6, Nehru Place, New Delhi 110019

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Manish Yadav Advocate
Sh. Vipin Maurya

Advocate for the complainant
AR for the 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 allottees 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 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.	Project area	393.358 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Not registered
6.	Plot no.	29, ground floor (page 29 of complaint)
7.	Plot area admeasuring	360 sq. yds.
8.	Date of allotment	28.03.2012 (annexure 2, page 24 of complaint)



9.	Re-allotment letter	19.09.2016 (annexure R3, page 21 of reply)
10.	New unit	15, F-1, GF admeasuring 1725 sq. ft. (annexure R3, page 21 of reply)
11.	Date of builder buyer agreement	31.07.2012 (page 26 of complaint)
12.	Possession clause	<p>15. Schedule for possession of the said residential plot</p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential Plot within a period of 3 (Three) years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein.</i></p> <p>Emphasis supplied</p>
13.	Due date of possession	31.07.2015 [Due date of possession calculated from the date of execution of agreement]
14.	Total sale consideration	Rs. 1,16,43,253/- (as per SOA dated 02.09.2021, annexure R5, page 29 of reply)
15.	Amount paid by the complainant	Rs. 20,61,411/- (as per SOA dated 02.09.2021, annexure R5, page 29 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:



3. That the complainant booked a apartment admeasuring of 360 sq. yd. for a basic sale price of Rs. 1,08,27,153/-, apart from preferential location charges (PLC) of Rs. 6,60,000/- IFMSD of Rs. 85,896/-; i.e. for total sale consideration of **Rs. 1,15,73,049/-**, in the project of the respondent vide application Form dated 25.11.2011 and also made payment of Rs. 6,66,740/- vide cheque no 434348 dated 10.11.2011 being the booking amount. That vide allotment letter the complainant was allotted one apartment bearing no. 29/SECTOR ROAD-1/360/GF/82B/VIN in the above detailed project of the respondent.
4. That accordingly the flat buyers agreement dated 31.07.2012 has been executed between the complainant and the respondent in respect of the plot no 29 having area of 360 sq. yd. situated on the ground floor in the project. That it may be pertinent to mention herein that the said plot was having a very good location and also the complainant was keen on this location to make his own house, and to reside there. That the same plot was chosen by the father of the complainant, and he had wished for the complainant to reside at the said plot after making his residence. However, the complainants father expired in the year 2013, without having his wishes fulfilled.
5. That vide letter dated 18.12.2013 and 31.07.2014, the respondent changed the allotment of the plot no 29/SECTOR ROAD-1/360/GF/82B/VIN to ground floor, 15, F-1, Vatika India Next, Gurgaon, Haryana arbitrarily and illegally without previous written approval of the complainant. The complainant strictly objected, disputed and refused to such re-allotment being illegal and unlawful



due to the reason that the re-allotted plot no 15 is not sector road 1 facing; nor it conform to previous preferential location, as well as, allotment requirements. The complainant replies the letter on dated 30.12.2013 & 12.08.2014 to the respondent thereby tendering its clear and undisputed objection and refusal to such re-allotment. The respondent unilaterally changed the allotment and allotted new unit to the complainant without consensus and discussion with the complainant. The respondent raised demand of Rs 8,81,273.12 /- to the complainant.

6. That the complainant was forced to file case before the Permanent Lok Adalat, Gurugram due to the delay tactics of the respondent and without having physical possession of the land and fed up with the continuing demand of the money against unilaterally allotted unit.

C. Relief sought by the complainant:

The complainant has sought following relief(s):

- i. Direct the respondent to refund the paid amount of Rs. 20,61,411/- along with interest.

D. Reply by respondent:

7. That the complainant has come before this authority with ulterior motive and 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 the complainant requires detailed deliberation by leading the evidence and cross examination, thus only civil court 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.

8. That the respondent has been facing the hardship on the ground realities due to again & again change in the layout plan of the project due to numerous reasons and roadblocks in development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL corridor which passes through the same. The negative effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted/group housing in the entire township. This was further complex with the non-removal or shifting of the defunct high-tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
9. That the residential plots in the project was not aligned and completed and changes are done due to the above and several other reasons & circumstances absolutely beyond the control of the respondent on various counts. Hence, the respondent was forced bowed and offered to the complainant a new plot bearing no. 15,F-1, Vatika India Next, Gurugram, admeasuring 1725 sq. fts. in the same vicinity.
10. That the respondent intimated the complainant about amendment in the allotment plan of all the plots in project. The respondent repeatedly intimated the complainant vide letter dated 18.12.2013, 14.06.2016 and 03.07.2014. Whereas the complainant did not

approach the respondent with a solution mind and reluctant on his illegal demand. That when the complainant did not respond the letters of the respondent, the respondent left no option other than to re-allot the best plot available at that particular time to the complainant and inform him simultaneously, as the respondent could not hold the construction of the project due to only for single plot.

11. It is submitted that the respondent completed construction of the said plot of the complainant and sent various letters for intimation for possession of the said plot vide letter dated 24.10.2016, 03.12.2016 and 08.06.2018 and various demand letters for due payments towards the cost of the plot. But the complainant was kept sleeping over the letter and did not bother to reply to respondent and neither pay balance due amount.
12. 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:

13. The plea of the respondents 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.1 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 complainants at a later stage.

F. Entitlement of the complainants for refund:

F.1 Direct the respondent to refund the paid amount of Rs. 20,61,411/- along with interest.

14. That the complainant booked an apartment admeasuring of 360 sq. yd. for a basic sale price of Rs. 1,08,27,153/-, apart from preferential location charges (PLC) of Rs. 6,60,000/- IFMSD of Rs. 85,896/-; i.e., for total sale consideration of Rs. 1,15,73,049. /-, in the project. That vide allotment letter the complainant was allotted one apartment bearing no. 29/SECTOR ROAD-1/360/GF/82B/VIN in the above detailed project of the respondent. Accordingly, the flat buyers' agreement dated 31.07.2012 has been executed between the complainant and the respondent in respect of the plot no 29 having area of 360 sq. yd. situated on the ground floor in the project. As per the agreement, the possession of the said unit was to be given by 31.07.2015. That such an inordinate delay in completion of the project itself is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between complainant and respondent. The complainant thereby wishes to withdraw from the project and demands refund of the amount already paid by him to the respondent.
15. The respondent states in reply that the residential plots in the project was not aligned and completed and changes are done due to the above and several other reasons & circumstances absolutely beyond the control of the respondent on various counts. Hence, the respondent was forced bowed and offered to the complainant a new plot bearing

no. 15, F-1, Vatika India Next, Gurugram, admeasuring 1725 sq. fts. In the same vicinity. The respondent intimated the complainant about amendment in the allotment plan of all the plots in project. The respondent repeatedly intimated the complainant vide letter dated 18.12.2013, 14.06.2016 and 03.07.2014. Whereas the complainant did not approached the respondent with a solution mind and reluctant on his illegal demand. That when the complainant did not respond the letters of the respondent, the respondent left no option other than to re-allot the best plot available at that particular time to the complainant and inform him simultaneously, as the respondent could not hold the construction of the project due to only for single plot.

16. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter dated in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
17. The due date of possession as per agreement for sale as mentioned in the table above is 31.07.2017 and there is delay of 3 year 7 months and 28 days on the date of filing of the complaint.
18. The AR has confirmed that the occupation certificate/completion certificate of the project where the unit is situated has still not been

obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:**

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

19. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.** It was observed that :

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



20. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
21. The authority hereby directs the promoter to return the amount received i.e., Rs. 20,61,411/- along with interest at the rate of 10.35% (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 the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the Authority:

22. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to return the amount received i.e., Rs. 20,61,411/- along with interest at the rate of 10.35% (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 the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 02.12.2022