

<b>PROCEEDINGS OF THE DAY</b>		<b>10</b>
Day and Date	Friday and 17.02.2023	
Complaint No.	CR/894/2020 Case titled as RAM CHANDER AND RAVINDER Vs VATIKA LIMITED	
Complainant	RAM CHANDER AND RAVINDER	
Represented through	Complainant in person with Shri R.N. Dixit Advocate	
Respondent	VATIKA LIMITED	
Respondent Represented through	S/Shri Venket Rao and Pankaj Chandola Advocates	
Last date of hearing	20.12.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### Proceedings

The present complaint has been filed on **20.02.2020** and the reply has not been received till now.

The AR of the respondent has already supplied a copy of reply to the complainant and has filed a copy of reply and is taken on record. The AR of the respondent also paid Rs.5000/- as costs to the complainant during proceedings.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Tower", Golf Course Road, Gurugram
2.	Nature of the project	Commercial unit
3.	RERA Registered/ not registered	Not registered



HARERA  
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण गुरुग्राम

CR/89/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम हरियाणा

4.	Plot no.	P-254 admeasuring 500 sq.ft. (page no. 21 of complaint)
	Application for allotment of shop	15.05.2015 (page 21 of complaint)
5.	Date of builder buyer agreement	Not executed
6.	Due date of possession	15.05.2018 <i>Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that <b>when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</b> In view of the above-mentioned reasoning, the date of signing of application for allotment of shop, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 15.05.2018
7.	Total sale price	Rs. 77,84,000/- (as per SOA dated 10.12.2018, annexure vii, page 65 of complaint)
8.	Amount paid by the complainant	Rs. 81,09,013/- (as per SOA dated 10.12.2018, annexure vii, page 65 of complaint)
9.	Occupation certificate	Not obtained
10.	Offer of possession	Not offered

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम  
CR/899/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

The complainants have sought following relief:

**1. Direct the respondent to refund the entire amount paid by complainant.**

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 in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit 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.

The due date of possession as per agreement for sale as mentioned in the table above is **15.05.2018** and there is delay of **1 years 9 months 5 days** on the date of filing of the complaint.

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....."*

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

*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*



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CRT/894/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

*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,*

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.

The counsel for the complainant states that the allotted shop/tower is not yet constructed and the respondent has paid assured return till October 2018 only and no payment of assured return has been made after 2018. But as per the provisions under application form at page 21, the respondent was required to pay a monthly rent /commitment amount at the rate of Rs.64,860/- till completion of the project. The AR of the respondent company confirms that project is not yet completed and no OC has been obtained. In view of same, the refund is allowed alongwith prescribed rate of interest i.e. 10.60% per annum after adjustment of assured return already paid by the respondent to the complainant.

The authority hereby directs the promoter to return the amount received by him i.e., Rs. 81,09,013/- after adjustment of assured return already paid by the respondent with interest at the rate of 10.60% (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*.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging



HARERA  
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/894/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The complaint stands disposed off. Detailed order will follow. File be consigned to the registry.

V.I - 5  
Vijay Kumar Goyal  
Member  
17.02.2023