

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

Complaint no. : 3902 of 2021
First date of hearing: 28.10.2021
Date of decision : 08.12.2022

Ashok Kumar Verma
R/o: Flat no. F-1, Indian Oil Corporation Ltd.,
Officers Quarters, 593-594 Katju Nagar, Ratlam
(M.P.) - 457001

Complainant

Versus

1. M/s Vatika Limited
Office: 4th Floor, Vatika Triangle, Sushant Lok-1,
Block-A, Mehrauli- Gurgaon Road, Gurgaon-
122002.
2. Housing Development Finance Corporation Ltd.
Office : Raman House, 169 Backbay Reclamation,
Mumbai-400020

Respondents

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Rajan Kumar Hans (Advocate)
Sh. Pankaj Chandola (Advocate)
Sh. Vikas Chaudhary (Advocate)

Counsel for the complainant
Counsel for the respondent no. 1
Counsel for the respondent no. 2

ORDER

1. The present complaint dated 28.09.2021 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	Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	18.80 acres
4.	DTCP license no.	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav warehousing Pvt. Ltd & 9 others
6.	RERA Registered/ not registered	Registered vide no. 213 of 2017 dated 15.09.2017 area admeasuring 93588 sqm. Valid upto 15.03.2025
7.	Unit no.	103, tower-westend-5 (page 23 of complaint)
8.	Unit area admeasuring	1655 sq. ft. (page 23 of complaint)
9.	Date of allotment	16.12.2016 (page 23 of complaint)
10.	Date of builder buyer agreement	02.01.2018 (page 25 of complaint)
12.	Total sale consideration	Rs. 1,03,83,765/- [as per SOA dated 10.11.2020 on page 56 of complaint]
13.	Amount paid by the complainant	Rs. 39,50,750/- [as per SOA dated 10.11.2020 on page 56 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Notice for termination	17.09.2018

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That on 01.10.2016, the complainant booked a unit by paying Rs. 3,00,000/- through RTGS. The complainant also filled the application form provided by the respondent no. 1. That on 16.12.2016, the respondent no. 1 issued an allotment letter for the unit against the allotted unit in the project.
 - II. That on 02.01.2018, a pre-printed one sided, arbitrary and unilateral flat buyer agreement was executed between respondent no.1 and the complainant. That as per clause 7 of the agreement, no specific date of possession was provided in the agreement. which is the direct contravention of the Act.
 - III. That as per the settled law it is assumed that the respondent no.1 was obligated to handover the possession latest by 02.01.2021. That as per agreement, the cost of the unit was arrived Rs. 1,03,01,015/-. A tripartite agreement was executed between the parties respondent no. 1 has got a loan sanctioned of Rs. 75,00,000/-.
 - IV. That as per the term & conditions of the tripartite agreement, the respondent no. 1 has assumed that liability of payments of pre-Emi for the period of 42 months from the first disbursement and the complainants does not have to pay the pre-emi in this period. It is pertinent to know that the amount of Rs. ,20,59,245/- was disbursed by the respondent no.2 on 25.02.2019. By these calculations the respondent no. 1 is supposed to pay the pre-emi. Till the month of august 2023. That till date the respondent no. 1 has called Rs. 39,50,750/- for payment and the complainant had paid Rs. 39,50,750/-.
 - V. That as per hat as per the **Fortune Infrastructure-v/s-Traver D'lima (2018) 5 SCC 442**, the hon'ble Supreme Court held that a person cannot

be made to wait indefinitely for the possession of flats allotted to them and they were entitled to seek the refund of the amount paid by them, along with compensation. In such cases When no delivery period is stipulated the court noted that a reasonable time has to be taken into consideration. In the facts and circumstances of this case. a time period of 3 years was deemed as reasonable for completion of the contract. The period of 3 years has elapsed in January 2021, but the respondent no. 1 has not even started the construction on the site as of yet. 18. that the various verbal reminders to the respondent no.1 and visit to the office went unanswered by the respondent no. 1 and complainant is forced to take the complainant to the honourable authority for the resolution of the matter.

- VI. That the main grievance of the complainant in the present complainant from respondent no.1, is that the complainant is an end user who wished to reside in the flat after his retirement but at present leaving the excavation of the site, no work has started at all on the site and The respondent no. 1 cannot deliver the apartment even in the next 3-4 years, 20. That the other grievance of the complainant in the present complainant from respondent no.2 is that it has failed to discharge the due diligence of the project and has disburse the loan amount of Rs. 20,65,000/- to the respondent even when the project was a non-starter.
- VII. That for the first time cause of action for the present complaint arose on 16.12.2016, when an allotment letter was provided to the complainant and on 02.01.2018, when the complainant Entered into Builder buyer agreement with the respondent. Further the cause of action arose on 02.01.2021, when the respondent party failed to offer the possession of the unit as per the Settled law in absence of the possession clause in the builder buyer agreement. Further the cause of action again arose on

various occasions, and on many dates till date, when the protests were lodged with the respondent about its failure to provide the possession of the unit. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondent no. 1 by an order of injunction and/or passes the necessary orders.

VIII. That the complainant wants to withdraw from the project as the promoter has not fulfilled his obligation as per obligations on the promoter under section 12 and Section 18, now the promoter is obligated to refund the amount paid.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent no. 1 to refund the entire amount of Rs. 10,85,750/- along with interest from the date of realisation of cheque till the actual payment of refund.
 - b. Direct the respondent no. 2 refund the amount of Rs. 28,65,000/-.
 - c. Direct the respondent no. 1 to provide Rs. 10,00,000/- as the compensation.
 - d. Direct the respondent no. 1 to provide Rs. 1,00,000/- as the litigation cost.
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 no. 1

6. The respondent no. 1 has contested the complaint on the following grounds.
 - a. That the complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.



- b. That it is submitted that the Id. adjudicating officer does not have jurisdiction to adjudicate upon the matters pertaining to seeking relief of fund. That in accordance with the amended HARERA, rules the power to grant relief of refund solely vest with the hon'ble authority, meanwhile, the hon'ble Punjab and Haryana High Court has upheld the amended rules vide its order dated 16.10.2020. Thereafter, the order of the hon'ble high court was challenged in SLP No. 13005 of 2020 before the hon'ble supreme court and the hon'ble apex court has stayed the operation of Hon'ble High Court order dated 16.10.2020. Thus, there is a status quo upon the amended HARERA Rules. Therefore, the Id. adjudicating officer does not have any jurisdiction to adjudicate upon the complaint seeking refund until the hon'ble Supreme Court decides the validity of the amended HRERA rules.
- c. Thereafter, having deep interest in the project constructed by the respondent no. 1, the complainant herein, booked a unit bearing priority no. HSG-026-Westend-5-103, for a total sale consideration of Rs. 1,03,01,015/- excluding other charges in the project.
- d. The respondent no. 1 vide invitation for offer for allotment letter dated 21.11.2016, called upon the complainant to take the allotment of the said priority no. no. 3BHK+S043. Thereafter, the respondent no. 1 vide allotment letter dated 16.12.2016, further allotted a unit bearing no. 103, tower west end 5, 1st floor in the said project.
- e. It is submitted that the complainant herein was aware of the payment schedule and agreed to pay the instalment as and when demanded by the respondent no. 1 as per the agreed payment schedule. That in spite after knowing the payment obligation the complainant has failed to make the requisite payment on time and the respondent no. 1 herein



was bound to serve a payment reminder to the complainant. The respondent no. 1 sent a payment reminder to the complainant on 17.12.2016, however, the complainant failed to make payment within stipulated time period. That on 06.11.2017, a builder buyer agreement was served to the complainant through post for signatures and the complainant was bound to deposit the same within 30 days but the same were left unanswered.

- f. That after much pursuance, on 02.01.2018, the aforesaid agreement was executed between the complainant and the respondent no. 1. It is submitted that the complainant was aware of terms and conditions under the agreement and post being satisfied with each and every terms agreed to sign upon the same with free will and consent.
- g. That despite after knowing the payment schedule and the due date of the instalment the complainant herein has failed to comply with the same. As a result the respondent no. 1 herein was bound to issue payment reminders on 05.04.2018, calling upon the complainant to make the requisite payment.
- h. That it is pertinent to bring the attention of the Id. adjudicating officer that the project is as per the milestone but the construction of the same was affected due to non-payment of the instalment by the complainant. That the despite after making several reminders the complainant herein has failed to pay any amount since 2018. And, on account of non-payment of the instalment the respondent no. 1 herein was bound to terminate the unit allotted to the complainant. That in order to meet the payment obligation the complainant herein opted to take a loan facility and the same was approved by the respondent no. 1 in permission to mortgage letter dated 31.01.2019.

- i. That 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 as per clause 5 of the BBA, the respondent is under obligation to complete the said project in consonance with the validity period of registration of the project, i.e., 90 months from the date it was issued Le. 15.09.2017 and the same has been expressly envisaged under clause 5 of BBA. Therefore, as per clause 5 of BBA the respondent is under obligation to complete the project by March, 2025.
- j. It is submitted that the present complaint is filed by complainants on baseless and absurd grounds. It is clearly mentioned under clause 7.1(A) of the agreement that in case of any unforeseen circumstances faced by respondent no. 1 in the mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- k. That the respondent no. 1 is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the BBA. It is pertinent to apprise to the Id. adjudicating officer that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 (hereinafter referred to as 'GST' which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent No. I also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- l. In past few years construction activities have also been hit by repeated bans by the courts/tribunals/authorities to curb pollution in Delhi-NCR



Region. In the recent past the environmental pollution (Prevention And Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- m. The hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.
- n. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no, 40-3/2020-DM-1(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for



an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- o. Despite, after such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.
- p. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the state. It is



a matter of fact, that despite after lifting the restrictions the respondent was bound to resume with the construction activity in a hybrid mode i.e., only with the labours that were available within the region and nearby to the construction site.

q. Apart from the above, the progress of the construction of the project was also affected due to various other unforeseen circumstances such as:

- i. *Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.*
- ii. *The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.*
- iii. *The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.*
- iv. *Further, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs. was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road level. Till date the company is not clear about the concrete planning of GMDA/NHAI as regard to actual upliftment and moreover only 20% development work has not completed till date. To this effect, in November, 2018 company also wrote letter to GMDA seeking clarification about its actual planning buy till date no communication is received from GMDA. Thus, due to delay on the part of GMDA/NHAI, the Company's planning in laying down the facility for storm water drainage has been hindered.*
- v. *Delay in acquisition of sector roads by LAO/HSVP. Although license of the Project was granted in 2013 and LAC award was passed in 2016 and till date roughly around 20% development work has been completed by GMDA, thereby causing immense delay in the development work and consequently affecting the construction of the Project. It is important to note that sector roads are very pivotal for access and laying down services in the Project. The Company*



conceptualizes the project based upon the concrete planning of its services and sector roads. In the absence of development of sector roads, the Company in no manner can plan towards the laying of services and as a result, the development of the Project has been impacted.

- vi. *For a housing society, while internal development works are critical, if the external road networks are not laid, there is absolutely no provision to get electrical or water connections. There are numerous examples of societies being ready with no external services.*
- vii. *Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.*

r. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainant has not approached the Id. adjudicating officer with clean hands and hence, the complaint deserves to be dismissed with costs. The complainant is also guilty of placing untrue facts and is attempting to hide the true colour of his intention.

E. Reply by the respondent no. 2

- 7. The respondent no. 2 has contested the complaint on the following grounds.
 - a. That the respondent no. 2 is a financial institution that offers financial help in the form of home loans to its customers. It has only acted in the limited capacity of lender. The said loan was sanctioned and disbursed to the complainant in his individual capacity believing the warranties and representations provided by him to respondent no. 2. The loan so availed by him was to be repaid regularly as per the agreed terms of the loan agreement. It couldn't be disputed that the complainant had assumed singular liability to repay the loan as per the loan agreement. It is not the duty of the answering respondent either, to satisfy or convince the complainant or any other client regarding the reputation and credibility of the builder. Moreover, it is a reasonable expectation that the complainant approached the respondent no. 2 for availing the loan facility only after conducting his own independent verification and



being fully satisfied with the credibility of builder and the project. It is submitted that the complainant is trying to put blame of his own act on the respondent no. 2 which cannot be permitted.

b. It is submitted that the subject matter of the present complaint is a retail loan sanctioned and disbursed, repayment of which is absolute and express liability of the complainant. Any dilution to the agreed terms of home loan agreement and the tripartite agreement is unwarranted in law and any such assignment of loan as contended by the complainant is misconceived under law and hence may not be allowed.

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 on the basis of these undisputed documents and submissions made by the parties.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

10. 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.

F. II Subject-matter jurisdiction

11. 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.

12. 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.
13. 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 (Civil), 357*** and 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** 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 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."

14. 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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent no. 1 to refund the entire amount of Rs. 10,85,750/- along with interest from the date of realisation of cheque till the actual payment of refund.

GII. Direct the respondent no. 2 refund the amount of Rs. 28,65,000/-.

15. Both these issues are interconnected. So, the same are being dealt with together.
16. Vide orders dated 12.08.2022, passed by the authority in the above-mentioned complaint, the complainant was allowed refund of the paid-up amount besides interest but after deduction of 10% of the basic sale consideration, on the allotted unit being cancelled and by observing that the unit of the allottee was terminated by the respondent/builder due to non-clearance of outstanding dues. So, the respondent/builder was left with no option but to cancel the allotment of the unit and return the remaining amount to the allottee after retaining 10% of the total sale consideration. The amount received from the financial institution with interest would be initially paid by the respondent/builder. After paying that amount, the remainder, if any, would be paid to the allottee with interest at the prescribed rate from the date of filing of complaint. Now, the applicant vide



application dated 11.10.2022 has requested for correction of proceeding of that day of above stated matter by taking a plea that even after cancellation of the unit, on 17.09.2018, the respondent/builder accepted payments against the same on 25.02.2019 and 05.03.2019 respectively. The counsel for the respondent states that the authority has already passed an order allowing 10% deduction in its above proceedings and hence no review lies now, although it is admitted that there was only a termination letter dated 17.09.2018 but no cancellation has been made till date. Further he cites order of Hon'ble Tribunal dated 22.04.2022 in appeal No.47 of 2022 directing that the authority has no jurisdiction to review its order and in para No. 37 even proceedings have been covered. However, the counsel for the complainant has drawn attention of the authority towards proceedings dated 12.08.2022 wherein refund has been allowed after deduction of 10% of the basic sale consideration on the basis of a wrong and false statement made by the respondent that due to non-payment of outstanding instalments by the allottee, the unit has been terminated after issuing notices which is factually incorrect as the respondent has given permission to mortgage subsequent to alleged cancellation and further has issued statement of account after 2 years of above date wherein the status of the unit is validated and hence the allottee is entitled for full amount without any deduction as has been allowed by the authority in 28 other similar cases of the same project as the respondent himself has filed an application for deregistration of the project and no progress in construction is happening at site except for some excavation work and thus enquiry officer appointed by the authority has concluded the project as having been abandoned. Therefore, the question of 10% deduction does not arise and rather in view of having abandoned the project, the

complainant is now entitled not only for full refund with interest but for compensation.

17. On the basis of license No. 91 of 2013 dated 26.10.2013 issued by DTCP, Haryana, a residential group housing colony by the name of "Turning Point" was to be developed by the respondent/builder over land admeasuring 18.80 acres situated in Sector 88-B, Gurugram. This project was later on registered vide registration certificate no. 213 of 2017 with the authority. After its launch by the respondent/builder, units in the same were allotted to the allottee and that too for various sale considerations. Though, the due date for completion of the project and offer of possession of the allotted units was mentioned as validity of registration certificate being 15.03.2025 but after expiry of more than 4 years from the booking, there is no physical work progress at the site except for some digging work. Even the promoter failed to file quarterly progress reports giving the status of project required under section 11 of Act, 2016. So, keeping in view all these facts, the allottee of that project approached the authority seeking refund of the paid-up amount besides compensation by taking a plea that the project has been abandoned and there is no progress of the project at the site. The version of respondent/builder is otherwise and who took a plea that the complaints being pre-mature are not maintainable. Secondly, the project has not been abandoned and there is delay in completion of the project due to the reasons beyond its control. Thirdly, the respondent/builder had been paying Pre-EMI interest as committed.
18. It was pleaded by respondent no.2 in the complaint that it advanced loan against the allotted unit leading to execution of tripartite agreement between them. But the primary responsibility to pay the loan amount was that of the allottee. So, in case of refund of any amount, the same be paid to

it against the loan amount so disbursed and the remainder if any be paid back to the allottee.

19. During the proceedings held on 12.08.2022, the authority observed & directed as under:

- i. Interim RERA Panchkula issued a registration certificate for the above project being developed by M/s Vatika Limited in the form REP-III prescribed in the Haryana Real Estate (Regulation and Development) Rules, 2017 vide registration no. 213 of 2017 on 15.09.2017 valid up to 15.09.2025 under section 5 of the Act ibid. But in spite of lapse of more than 4 years since grant of registration, It was alleged by the counsel of complainant that there is no physical work progress at site except for some digging work and appears to be abandoned project. No quarterly progress report is being filed by the promoter giving the status of work progress required under section 11 of the Act, 2016.
- ii. The license no. 91 of 2013 granted by DTCP has expired on 26.10.2017 and the same is not yet renewed/revived, while BBA has been signed declaring the validity of license. It becomes amply clear that the promoter is not only defaulting/omitting in discharge of its obligations under the Real Estate (Regulation and Development) Act, 2016 but at the same time, violating the provisions of the Haryana Development and Regulation of Urban Area, Act 1975 also.
- iii. The authority directed the respondent to furnish the details of bank account along with the statements of all the accounts associated with these promoters.
- iv. In order to safeguard the interest of the allottees and keeping in view the above facts, the authority exercising its power under section 36 of the Act, directs the promoter's M/S Vatika limited to stop operations from bank accounts of the above project namely "Turning Point".

20. Therefore, the banks are directed to freeze the accounts associated with the above-mentioned promoters in order to restrict the promoter from further withdrawal from the accounts till further order.

21. It was also observed that work at the site is standstill for many years. So, the authority decided to appoint Shr. Ramesh Kumar DSP (Retd.) as enquiry officer to enquire into the affairs of the promoter regarding the project. It was also directed that the enquiry officer shall report about the compliance of the obligations by the promoter regarding the project and more specifically having regard to 70% of the total amount collected from the allottees of the project minus the proportionate land cost and construction

cost whether deposited in the separate RERA account as per the requirements of the Act of 2016 and Rules 2017. He was further directed to submit a report on the above-mentioned issues besides giving a direction to the promoter to make available books of accounts and other relevant documents required for enquiry to the enquiry officer in the office of the authority. The company secretary and the chief financial officer as well as the officer responsible for day-to-day affairs of the project were also directed to appear before the enquiry officer. They were further directed to bring along with them the record of allotment and status of the project.

22. In pursuance to above-mentioned directions passed by the authority and conveyed to the promoter, the enquiry officer submitted a report on 18.10.2022. It is evident from a perusal of the report that there is no construction of the project except some excavation work and pucca labour quarters built at the site. Some raw material such as steel, dust, other material and a diesel set were lying there. It was submitted that despite issuance of a number of notices w.e.f. 17.08.2022 to 18.10.2022 to Mr. Surender Singh director of the project, non-turned up to join the enquiry and file the requisite information as directed by the authority. Thus, it shows that despite specific directions of the authority as well as of the enquiry officer, the promoter failed to place on record the requisite information as directed vide its order dated 12.08.2022. So, it shows that the project has been abandoned by the promoter. Even a letter dated 30.09.2022 filed by the promoter containing a proposal for de-registration of the project "Turning Point" and settlement with the existing allottees therein has been received by the authority and wherein following prayer has been made by it:

- i. Allow the present proposal/application
- ii. Pass an order to de-register the project "turning Point" registered vide registration certificate bearing no. 213 of 2017 dated 15.09.2017.
- iii. Allow the proposal for settlement of allottees proposed in the present application



- iv. To pass an order to club all the pending complaints/claims with respect to the project "turning Point" before the Id. Authority in the present matter and to decide the same in the manner as the Id. Authority will approve under the present proposal.
- v. To pass any other relief in the favour of the applicant company in the interest of justice.

23. Thus, in view of the proposal given by the promoter to the authority on 30.09.2022 and corroborated by the report of enquiry officer dated 18.10.2022, it is evident that the project namely "Turning Point" is not being developed and has been abandoned by the promoter. Even he is applying for de-registration of the project registered vide certificate no. 213 of 2017 dated 15.09.2017 and is filing a proposal for settlement with the allottee in the project by way of re-allotment or by refund of monies paid by them. So, in view of the stand taken by the developer while submitting proposal with authority on 30.09.2022 and the report of the Enquiry Officer, it is evident that the project has been abandoned. Thus, the allottee in the case are entitled to refund of the amount paid by them to the promoter against the allotment of their units as prescribed under section 18(1)(b) of the Act, 2016 providing for refund of the paid-up amount with interest at the prescribed rate of 10.35% p.a. from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017. A reference to section 18(1)(b) of the Act is necessary providing as under.

18. If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a)

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act



24. It is proved that the project has already been abandoned and there is no progress at the spot. The developer used the monies of the allottees for a number of years without initiating any work at the project site and continued to receive payment against the allotted unit. Even while filing replies, the developer took a plea that the project is taking up and which is otherwise false and against the facts on record. So, in such situation for claiming compensation, the allottees may file complaints separately before the adjudicating officer having powers under section 71 of the Act of 2016.
25. However, the respondent/promoter is further directed to first clear the outstanding loan amount with the financial institution taken against the allotted unit by the complainant and the remaining amount with interest is to be paid to the allottee with a period of 90 days.
26. The authority hereby directs the promoter to return to the complainant the amount received i.e., Rs. 39,50,750/- 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.

F. Directions of the authority

27. 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-builder is directed to refund to the complainant paid up- amount of Rs. 39,50,750/- received against the allotted unit along with interest at the prescribed rate of 10.35% per annum from the date of each payment till the date of actual realization.



- ii. The respondent/promoter is further directed to first clear the outstanding loan amount with the financial institution taken against the allotted unit by the complainant and the remaining amount with interest is to be paid to the allottee with a period of 90 days.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Sanjeev Kumar Arora)

Member


(Ashok Sangwan)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.12.2022