

**BRIEF OF THE CASE****DATED: 02.03.2023**

|  |  |
|--|--|
| <b>Complaint No.</b>                   | <b>RERA-GRG-572-2023 (Suo- Motu Monitoring)</b>  |
| <b>Subject</b>                         | <b>Suo motu projects under Section 7(1) of the Real Estate (Regulation and Development) Act.</b>   |
| <b>Details of the Suo-Motu</b>         |  |
| <b>Name of the project</b>             | Aspiration, Sector-88A,88B and 89, Gurugram  |
| <b>Name of the promoter (Licensee)</b> | M/s Vatika Limited   |
| <b>Brief facts of the case</b>         | <p>It has come to the notice of the authority that the promoter have given advertisement on online portal i.e., <a href="https://www.vatikaevolutionplots.in/">https://www.vatikaevolutionplots.in/</a>, <a href="https://vatikaplots.visitindia.in/">https://vatikaplots.visitindia.in/</a>, <a href="https://vatika-sales.com">vatika-sales.com</a>, for above advertising/marketing of the DDJAY residential plots in the above-mentioned project. Further canopies have been placed on Dwarka Expressway, for advertising/marketing/booking/selling of plots in the residential plotted project under Deen Dayal Jan Awaas Yojana(DDJAY)situated in sector-88A,88B and 89, Gurugram.</p> <p>The advertisements have been downloaded on Monday,20.09.2021 at 11:55 AM and placed on record. The advertisements given by the promoter are floating all over virtual space and real estate market.</p> <p>Further, a complainant has also been received in the authority on 12.07.2021 from Mr. Ravi Luthra having address C-47, Inderpuri, New Delhi-11018196 in regard to the sale of plots by M/s Vatika</p> |

Limited without registering the project with the authority. The complainant has submitted that M/s Vatika Limited has launched the plots under DDJAY policy by the name "Vatika Evolution" in sector-88B, Gurugram. The plot Sizes offered by the promoter are 75, 120,150,180 Sq. yard and these plots are being sold by various brokers via their websites and also by pitching tents at various locations across Dwarka Expressway.

On the basis of the advertisement and complaint received in the authority, the engineer executives of the authority visited the site of the project on 21.09.2021. during the inspection it has been observed that a real estate agent named "Transaction Point" having corporate address 227, Suncity Arcade, Suncity, Gurugram had placed canopies near the project site and on Dwarka Expressway for marketing of the aforesaid project. Further a sales office has been developed in this township and it has been observed that the real estate named "Transaction Point" is marketing the aforesaid project through this sales office itself. He agent is detailing about the project by showing marketing plan of "DDJAY Plotted Colony" and collecting the EOI along with booking amount from the public and same is placed on record.

The authority in exercise of its powers under section 35 of the Real Estate (Regulation and Development) Act, 2016 has taken suo motu cognizance of the alleged offence and the matter is registered as a suo motu complaint vide no. RERA-GRG-3987-2021 dated 29.09.2021 for non-registration of project under section 3 of Real Estate (Regulation and Development) Act, 2016 was issued to the promoter with an opportunity of hearing on 18.10.2021.

On 18.10.2021 the legal representative of the promoter requested for adjournment of 15 days. The matter was fixed for 15.11.2021.



On 15.11.2021 Shri Venkat Rao, Advocate and Sanjeev Tirthani appeared on behalf of the promoter. The LR of the promoter requested that the documents as mentioned by him after inspecting the file during proceedings be handed over to him to file reply of the promoter and similar request was made by Ms. Sakshi Digvijay (LR) on behalf of Transaction Point. Both matters be clubbed. As per their request two weeks' time is granted to them for filing reply and details of the bank account of the Transaction point/Vatika where the money have been got deposited for the said project and under the guise of said project in the name of some project by the name Turning Point. The matter is adjourned to 20.12.2021 at 02:00 PM for a personal hearing.

On 20.12.2021, the matter is adjourned to 11.01.2023.

Whereas an application for registration of real estate affordable plotted colony namely "Aspiration" situated in sector-88B, Gurugram, Haryana was submitted by M/s Vatika. Ltd. before this Authority. At the time of registration proceedings of the project, it was pointed out that the suo- motu proceedings for non-registration under section 3(1) of the Haryana Real Estate (Regulatory and Development) Act, 2016 were pending with the authority. It was stated by the applicant on an affidavit that neither they have advertised nor sold any land/unit in this area sought to be registered. On the above facts the authority has registered the above-said project under section 5 of the RERA, Act 2016 vide Rc no. RC/REP/HARERA/GGM/655/387/2022/130 dated 23.12.2022.

It has come to the notice of the authority that two complaints bearing no. 7875 and 7876 of 2022, under Section 31 of the RERA Act, 2016, have been received in the authority on 23.12.2022. As per the complaint, the complainant on representations of M/s Vatika Ltd.

|   |  |
|---|--|
|   | <p>had expressed interest in the project called Vatika Aspiration, Sector 88B Gurugram vide "expression of interest" dated 31.03.2022. The respondent M/s Vatika Limited assured the complainants that they had already taken all the necessary approvals from the concerned authority and departments to develop and complete the said project. Further, the respondent started raising illegal and arbitrary demands of money from the complainant. The complainant has paid an amount of Rs. 31,32,576/- towards the sale consideration of the said unit in the project. The respondent acknowledged the aforesaid expression of interest vide its acknowledgement letter dated 16.06.2022. The respondent has accepted more than 28% payment toward the sale consideration of the said plot without executing the agreement to sell as prescribed in the Act, 2016. It has further been alleged that a notice for termination dated 28.12.2022, for the above unit has been issued by the respondent and is placed on record.</p> <p>From the above facts, it is proved that the project "Vatika Aspiration" in sector-88B, Gurugram, Haryana has already been marketed and sold which prima facie appears that M/s Vatika Limited has made false representation and mislead the authority while obtaining the registration of the project called "Vatika Aspiration" in sec-88B, Gurugram.</p> <p>Further, the authority has issued a show cause notice for revocation of registration under section 7(1) of the Real estate (Regulation and Development) Act, 2016 vide notice no. RERA-GRG-572-2023 dated 03.02.2023 to the promoter. The matter is fixed for 20.02.2023.</p> |
| <b>Proceedings<br/>dated<br/>20.02.2023</b> | Sh. Uma Shankar Legal Consultant Sh. Naveen Vashishth and Sh. Pankaj Chandola are present on behalf of the promoter. A reply has   |



|                    |   |
|--------------------|---|
|                    | been submitted by the promoter today. The same be examined and put up on file. The matter to come up on 27.02.2023.   |
| <b>First Reply</b> | <p>The promoter has submit the reply dated 20.02.2023 stating the following mentioned below:-</p> <ol style="list-style-type: none"><li>1. The Noticee Company i.e., M/s Vatika Limited had been developing the real estate project known under the name and style of 'Vatika India Next-2' Sector 88-B, Gurugram, which is duly registered before the Haryana RERA vide Memo No. HRERA/454/2017/1301 under the name of Vatika Express City (Xpressions for Phase-1). It is submitted that Vatika India Next-2 is a large township consisting of various projects. It is a matter of fact and record that the advertisement and sale, if any, were made by the Noticee Company in the above-said Project. On 31 March 2022, vide the Expression of Interest the complainants Durga Das Singla &amp; Ankit Singla (Complaint No. RERA-GRG-7875-2022) and the complainants Meenu Singla &amp; Jeensy Sharma (Complaint No. RERA-GRG-7876-2022) had expressed their interest for a Plot admeasuring 178.8 sq. yrds in the above-said township of the Noticee Company.</li></ol> <p>That however, as Plots admeasuring 178.8 Sq. yards were not available in the said Project and plots of larger area were available, which were not acceptable to the said buyers as they did not have the budget for the same. At that instance, the prospective buyers got to know about the proposed development of the Noticee Company in Sector 88B known under name and style of 'Aspirations' which also form part of Vatika India Next-2. The prospective buyers had approached the Noticee Company Company to get their Plot shifted in the Project 'Aspirations'. After detailed discussions, the said buyers</p> |

were duly and rightfully informed about the Company's ongoing process of filing for the Registration of the project, which was also duly done on 27.10.2022.

The said buyers were duly made aware of the provisions of the Real Estate (Regulation and Development) Act, 2016, and were communicated of the fact that no Unit can be sold in the Project Aspirations until and unless the registration of the Project is made by Authority. It was only on this condition, that the buyers were communicated in their letter dated 16 June 2022 that:

This letter is mere acknowledgement of the interest shown by the applicant and not admission/acceptance by Vatika or any of its associate Companies of any right/lien/charge of the applicant against any property, being developed or proposed to be developed by Vatika or any of its associate Companies.

The buyers were categorically told that the purchase in the project Aspirations can only be made after the registration certificate has been duly granted by the Authority.

That at this stage, it is pertinent to note that no advertisement or sale has been made by the Noticee Company in regards to the Project Aspirations before 23.12.2022, i.e., the date of registration of the Project vide Memo No. GGM/655/387/2022/130. It is also pertinent to mention that no Agreement for Sale/Builder Buyer agreement has been executed between the Parties and hence, no sale has been made by the Noticee Company.

It is pertinent to mention here that the said transaction cannot be said to be the sale, advertisement or marketing of the project as the same was the transfer arising out of the some settlement proposal with the Complainant-Allottee. The Noticee Company



by no means had intention to take booking in the said project "Aspiration" before registration of the project. The Noticee Company had only proposed transfer the plot as a settlement and was proposed to be done only upon the registration of the project. Alternatively, the Noticee Company further offered to refund the amount paid by the Complainants along with interest. Thus, the said transaction does not fall within the ambit of section 3 of the Real Estate (Regulation and Development) Act, 2016 for not being the advertisement, market, book, sell or offer of sale etc.



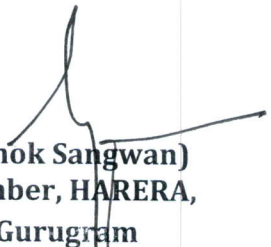

It is to note herein that as per the above provision, the promoter is restrained from advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner. However, in the instant case, the Noticee Company is not selling, advertising or marketing the said project but it is a settlement proposal between the parties effect of which was to be fructified only upon registration of the project before this Ld. Authority.

7. The said proposal also does not fall within the ambit of the definition of advertisement as provided under Section 2(b) of the RERA Act, 2016. The relevant provision is reproduced herein for ready reference:

2(b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot,

|     |  |
|-----|--|
|     | <p>building or apartment or to make advances or deposits for such purposes;</p>  |
| 8.  | <p>That the said transaction between the Complainant and the Noticee Company is not being covered by the above provision as the definition of advertisement does not state anything about proposed transfer between the parties. It is to note herein that the Noticee Company has not violated any provision of the RERA Act.</p>   |
| 9.  | <p>That payments made by the buyers were conditional and subject to the registration of the Project. That the prospective buyers, knowing well about the registration status of the Project showed their intent to still get an allotment in the project Aspirations post the attainment of the Registration Certificate. This is also evident from the fact that after the allotment letter was not issued by the Noticee Company, as such, the said buyers do not fall within the meaning of the definition of 'allottee' under Section 2(d) of the Act.</p> |
| 10. | <p>That at this stage, it is pertinent to highlight that the registration details of the Project are public knowledge, and available on the website of RERA. The buyers were completely aware of the fact of non-receipt of the registration certificate yet choose to make the payments towards their interest in the plot in the project, 'Aspirations'.</p>   |
| 11. | <p>That at this instance, it is pertinent to highlight that the relief sought by the Complainants in Complaint Nos. 7875/2022 and 7876/2022 are seeking possession of the alleged Plot. That this prima facie shows that the intent of the Complainants to get the possession in the Project Aspirations</p>   |



|  |  |
|--|--|
|  | and the fact that they were aware of the non-registration of the Plot.   |
| <b>Proceedings dated 27.02.2023</b>  | Sh. Jitendra Kumar (AR), Uma Shankar (Advocate) and Venkat Rao (Advocate) are present on behalf of the promoter.<br><br>The matter to come up on 02.03.2023. |
|  | <br><b>(Prachi Singh)</b><br><b>Planning Executive</b>                    |
| <p align="center"><b>Proceeding of the day dated 02.03.2023</b></p> <p>Sh. Pankaj Chandola (Counsel) and Sh. Uma Shankar (Consultant) are present on behalf of the promoter as the main counsel as well as A.R. of the promoter are not available today.</p> <p>On the request of the authorized persons, the matter is adjourned to 13.3.2023. No further adjournment shall be granted.</p> <div> <div> <br/> <b>(Sanjeev Kumar Arora)</b><br/> <b>Member, HARERA,</b><br/> <b>Gurugram</b> </div> <div> <br/> <b>(Ashok Sangwan)</b><br/> <b>Member, HARERA,</b><br/> <b>Gurugram</b> </div> <div> <br/> <b>(Vijay Kumar Goyal)</b><br/> <b>Member, HARERA,</b><br/> <b>Gurugram</b> </div> </div> |  |