

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

Date of Decision **28.10.2022**

NAME OF THE BUILDER		VATIKA LIMITED		
PROJECT NAME		TURNING POINT		
SR. NO.	COMPLAINT Nos.	Complainant	versus	Respondents
1.	CR/4655/2020	ASHISH KUMAR DHIMAM AND ANR.	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
2.	CR/4698/2020	ARUN SHARMA AND ANR	<i>Versus</i>	VATIKA LIMITED
3.	CR/4700/2020	MADAN SINGH AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
4.	CR/4736/2020	BISWAJIT ACHARYA AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
5.	CR/4760/2020	HIMANSHU PACHAURI	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
6.	CR/4778/2020	ANJALI RATHORE AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
7.	CR/4815/2020	VINOD KUMAR AGARWAL	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
8.	CR/4823/2020	AMIT KUMAR GUPTA	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
9.	CR/4838/2020	GAURAV KUMAR AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
10.	CR/4853/2020	SHARAD DROLIA	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
11.	CR/4856/2020	MANOJ TANEJA	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
12.	CR/4860/2020	HIMANSHU ARORA	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.



13.	CR/4875/2020	PRITESH SAPARIA	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
14.	CR/4900/2020	VIKAS JINDAL AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
15.	CR/4903/2020	UMAR SHAFI BANDAY AND ORS	<i>Versus</i>	VATIKA LIMITED
16.	CR/173/2021	ASHISH KUMAR AGGARWAL	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
17.	CR/221/2021	MUKTA SINGH AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
18.	CR/314/2021	KAPIL TIWARI AND ORS	<i>Versus</i>	VATIKA LIMITED
19.	CR/315/2021	RAHUL ARORA AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
20.	CR/318/2021	RISHAB ROHIT JAIN AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
21.	CR/403/2021	SUDHIR NAYYAR AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
22.	CR/404/2021	RAHUL SAHI AND ANR	<i>Versus</i>	VATIKA LIMITED
23.	CR/413/2021	AYUSH VARDHAN AGARWAL	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
24.	CR/567/2021	RUCHIR CHAWLA AND ANR	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
25.	CR/1043/2021	ANURAG SINGH NIRMAL	<i>Versus</i>	VATIKA LIMITED
26.	CR/1905/2021	KETAV SHARMA V/s VATIKA LIMITED	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Indiabulls Housing finance Limited.
27.	CR/1908/2021	ARVIND PANDEY AND ANR V/s VATIKA LIMITED	<i>Versus</i>	R:1 VATIKA LIMITED R:2 ICICI Bank Ltd.
28.	CR/2728/2021	ASHISH MALHAN V/s VATIKA LIMITED	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.



Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

S/Sh. Deepak Jain, Abhijeet Gupta & Tanpreet
Gulati(Advocates) for complainants at serial no. 1 to 24
& 26 to 28

Complainant(s)

None for complainant at serial no. 25

S/Sh Venket Rao & Pankaj Chandola (Advocates)
S/Sh. Vidhur Sikka & Gaurav Dua (Advocates)

Respondent No.1
Respondent No.2

ORDER

1. This order shall dispose of all the 28 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between the parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely "Turning Point" (Group Housing Colony), Sector 88B, Gurugram (Hr.) being developed by the same respondent-promoter i.e., Vatika Ltd. The terms and conditions of the builder buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to develop/construct the project, seeking refund with interest, assured return, renewal of the lease deeds & litigation expenses.

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3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, total sale consideration, amount paid up & relief sought are given in the table below:

Vatika Limited							
Project Name		Turning Point (Group Housing Colony)					
Sr. No	Complaint No./Title/Date of filing	Reply status	Unit no.	Allotment letter	Date of execution of builder's agreement	Total sale consideration Amount Paid up	Relief sought
1.	CR/4655/2020 Ashish Kumar Dhiman & Anr. Vs. Vatika Limited & Anr. D.O. F 22.12.2020	Received	801, tower-West End 1 (Page 27 of complaint)	N/A	15.02.2019 [page no.27 of complaint]	TC-Rs.67,23,375/- AP- Rs.29,92,552/-	1. Refund. 2. Compensation. 3. Litigation Cost
2.	CR/4698/2020 Arun Sharma & Anr. Vs. Vatika Limited D.O. F 17.12.2020	Received	303, West End-5 (page 24 of complaint)	N/A	20.07.2018 [page no. 22 of complaint]	TC-Rs.95,40,800/- AP- Rs.21,40,000/-	1. Refund. 2. Compensation. 3. Litigation Cost
3.	CR/4700/2020 Madan Singh & Anr. Vs. Vatika Limited & Anr. D.O. F 17.12.2020	Received	801, West End-7 (page 16 of complaint)	16.02.2018	14.06.2018 [page no. 19 of complaint]	TC- Rs. 62,58,375/- AP- Rs. 28,02,151/-	1. Refund. 2. Compensation. 3. Litigation Cost
4.	CR/4736/2020 Biswajit Acharya & Anr. Vs. Vatika Limited & Anr. D.O. F 17.12.2020	Received	201, West End-7 (page 16 of complaint)	N/A	19.07.2016 [page no. 30 of complaint]	TC- Rs.71,10,875/- AP- Rs.31,36,767/-	1. Refund. 2. Compensation. 3. Litigation Cost
5.	CR/4760/2020 Himanshu Pachauri Vs. Vatika Limited & Anr. D.O. F 18.12.2020	Received	601, West End-1 (page 21 of complaint)	N/A	20.11.2018 [page no. 20 of complaint]	TC- Rs.66,89,625/- AP- Rs.7,74,057/-	1. Refund. 2. Compensation. 3. Litigation Cost
6.	CR/4778/2020 Anjali Singh Vs. Vatika Limited & Anr. D.O. F 18.12.2020	Received	1901, West End-8 (page 25 of complaint)	N/A	14.06.2018 [page no. 22 of complaint]	TC- Rs.62,58,375/- AP- Rs.28,02,152/-	1. Refund. 2. Compensation. 3. Litigation Cost

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Complaint No. 173 of 2021 & 27 other
Complaints

7.	CR/4815/2020 Vinod Kumar Agarwal Vs. Vatika Limited & Anr. D.O. F 22.12.2020	Received	2102, West End-8 (page 22 of complaint)	N/A	17.07.2018 [page no. 21 of complaint]	TC- Rs. 83,61,980/- AP- Rs. 69,85,661/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured Return
8.	CR/4823/2020 Amit Kumar Gupta Vs. Vatika Limited & Anr. D.O. F 22.12.2020	Received	2901, West End-7 (page 22 of complaint)	N/A	20.07.2018 [page no. 21 of complaint]	TC- Rs. 65,95,875/- AP- Rs. 29,53,352/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured Return
9.	CR/4838/2020 Amit Kumar Gupta Vs. Vatika Limited & Anr. D.O. F 21.12.2020	Received	502, West End-3 (page 22 of complaint)	N/A	16.11.2018 [page no. 21 of complaint]	TC- Rs. 99,37,505/- AP- Rs. 44,21,059/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Renew the lease deed
10.	CR/4853/2020 Sharad Drolia Vs. Vatika Limited & Anr. D.O. F 21.12.2020	Received	2705, West End-8 (page 22 of complaint)	N/A	13.07.2018 [page no. 20 of complaint]	TC- Rs. 82,01,050/- AP- Rs. 9,18,179/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Renew the lease deed
11.	CR/4856/2020 Manoj Taneja Vs. Vatika Limited & Anr. D.O. F 22.12.2020	Received	1005, West End-8 (page 21 of complaint)	03.11.2017	15.02.2018 [page no. 20 of complaint]	TC- Rs. 83,12,590/- AP- Rs. 9,46,603/-	1. Refund. 2. Compensation. 3. Litigation Cost
12.	CR/4860/2020 Himanshu Arora Vs. Vatika Limited & Anr. D.O. F 22.12.2020	Received	602, West End-4 (page 21 of complaint)	N/A	18.09.2018 [page no. 18 of complaint]	TC- Rs. 88,72,305/- AP- Rs. 39,61,708/-	1. Refund. 2. Compensation. 3. Litigation Cost
13.	CR/4875/2020 Pritesh Saparia Vs. Vatika Limited & Anr. D.O. F 22.12.2020	Received	1502, West End-1 (page 21 of complaint)	N/A	05.10.2018 [page no. 19 of complaint]	TC- Rs. 84,09,590/- AP- Rs. 37,41,144/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured return
14.	CR/4900/2020 Vikas Jindal Vs. Vatika Limited & Anr. D.O. F 23.12.2020	Received	302, West End-4 (page 21 of complaint)	N/A	23.04.2019 [page no. 17 of complaint]	TC- Rs. 91,79,120/- AP- Rs. 40,83,877/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured return

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Complaint No. 173 of 2021 & 27 other
Complaints

15.	CR/4903/2020 Umar Shafi Banday & Anr. Vs. Vatika Limited D.O. F 23.12.2020	Received	2405, West End-8 (page 18 of complaint)	N/A	25.09.2018 [page no. 16 of complaint]	TC- Rs. 85,68,402/- AP- Rs. 15,81,295/-	1. Refund. 2. Compensation. 3. Litigation Cost
16.	CR/173/2021 Ashish Kumar Aggarwal & Anr. Vs. Vatika Limited & Anr. D.O. F 28.01.2021	Received	2002, West End-1 (page 21 of complaint)	N/A	10.04.2019 [page no. 19 of complaint]	TC- Rs. 83,19,740/- AP- Rs. 37,27,243/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured Return
17.	CR/221/2021 Mukta Singh & Anr. Vs. Vatika Limited & Anr. D.O. F 28.01.2021	Received	2901, West End-1 (page 30 of complaint)	N/A	12.02.2019 [page no. 28 of complaint]	TC- Rs. 67,50,000/- AP- Rs. 30,47,600/-	1. Refund. 2. Compensation. 3. Litigation Cost
18.	CR/314/2021 Kapil Tiwari & Anr. Vs. Vatika Limited & Anr. D.O. F 28.01.2021	Received	1802, West End-8 (page 19 of complaint)	N/A	20.07.2018 [page no. 16 of complaint]	TC- Rs. 82,67,980/- AP- Rs. 9,41,437/-	1. Refund. 2. Compensation. 3. Litigation Cost
19.	CR/315/2021 Rahul Arora & Anr. Vs. Vatika Limited & Anr. D.O. F 28.01.2021	Received	901, West End-1 (page 22 of complaint)	N/A	22.01.2019 [page no. 19 of complaint]	TC- Rs. 67,23,375/- AP- Rs. 7,58,416/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured Return
20.	CR/318/2021 Rishab Rohit Jain & Anr. Vs. Vatika Limited & Anr. D.O. F 28.01.2021	Received	402, West End-4 (page 18 of complaint)	N/A	07.12.2018 [page no. 17 of complaint]	TC- Rs. 93,39,480/- AP- Rs. 10,56,000/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured Return
21.	CR/403/2021 Sudhir Nayyar & Anr. Vs. Vatika Limited & Anr. D.O. F 18.02.2021	Received	3201, West End-8 (page 23 of complaint)	23.07.2018	03.05.2018 [page no. 21 of complaint]	TC- Rs. 64,27,125/- AP- Rs. 29,03,412/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Renew lease deed
22.	CR/404/2021 Rahul Sahi & Anr. Vs. Vatika ltd. D.O. F 18.02.2021	Received	102, West End-2 (page 18 of complaint)	N/A	28.05.2019 [page no. 16 of complaint]	TC- Rs. 82,81,890 /- AP- Rs. 23,14,046/-	1. Refund. 2. Compensation. 3. Litigation Cost

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23.	CR/413/2021 Ayush Vardhan Agarwal Vs. Vatika Ltd. & Anr. D.O. F 02.02.2021	Received	501, West End-7 (page 22 of complaint)	N/A	29.05.2018 [page no. 21 of complaint]	TC- Rs. 69,98,375 /- AP- Rs. 6,80,218/-	1. Refund. 2. Compensation. 3. Litigation Cost
24.	CR/567/2021 Ruchir Chawla & Anr. Vs. Vatika Ltd. & Anr. D.O. F 18.02.2021	Received	1101, West End-1 (page 21 of complaint)	N/A	24.08.2018 [page no. 19 of complaint]	TC- Rs. 68,85,875 /- AP- Rs. 30,59,672/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Renew lease deed
25.	CR/1043/2021 Anurag Singh Nirmal Vs. Vatika Ltd. D.O. F 05.03.2021	Received	703, West End-6 (page 22 of complaint)	21.03.2017	09.03.2018 [page no. 21 of complaint]	TC- Rs. 75,57,235 /- AP- Rs. 14,23,691/-	Refund.
26.	CR/1905/2021 Ketav Sharma Vs. Vatika Ltd. & Anr. D.O. F 16.04.2021	Received	305, West End-8 (page 18 of complaint)	08.10.2018	03.07.2018 [page no. 17 of complaint]	TC- Rs. 85,27,090 /- AP- Rs. 38,23,504/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured Return
27.	CR/1908/2021 Arvind Pandey & Anr. Vs. Vatika Ltd. & Anr. D.O. F 16.04.2021	Received	2103, West End-7 (page 21 of complaint)	N/A	23.02.2018 [page no. 20 of complaint]	TC- Rs. 1,14,76,153/- AP- Rs. 48,45,854/-	1. Refund. 2. Compensation. 3. Litigation Cost
28.	CR/2728/2021 Ashish Machan & Anr. Vs. Vatika Ltd. & Anr. D.O. F 09.07.2021	Received	G02, West End-6 (page 24 of complaint)	N/A	05.10.2018 [page no. 22 of complaint]	TC- Rs. 92,86,890/- AP- Rs. 41,31,935/-	1. Refund. 2. Compensation. 3. Litigation Cost 4. Assured return

4. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainants against the promoter M/s Vatika Limited on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for not developing the project which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligations. In some of the complaints, issues other than refund or independent issues have been raised and consequential reliefs have been sought.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottees are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing CR/173/2021, titled as **Ashish Kumar Aggarwal versus Vatika Ltd & Anr.** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

7. 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:

CR/173/2021, titled as Ashish Kumar Aggarwal versus Vatika Ltd & Anr.

S. No.	Heads	Description
1.	Name and location of the project	Turning Point, Sector 88 B, Village Harsaru, Distt.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 15.09.2017
7.	Unit no.	2002, tower-west end-1 (Page no.21 of complaint)
8.	Unit area admeasuring	898.03 sq. ft. (Page no. 21 of complaint)

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9.	Date of allotment	N/A
10.	Date of builder buyer agreement	10.04.2019 (page 19 of complaint)
11.	Due date of possession	15.03.2025 (till the validity of registration certificate)
12.	Tripartite agreement between the parties to the complaint	14.05.2019 (page 68 of complaint)
13.	Total sale consideration	Rs. 83,19,740/- [as per SOA, page 57 of complaint]
14.	Basic sale price	Rs. 81,76,740 [as per SOA, page 57 of complaint]
14.	Amount paid by the complainant	Rs. 37,27,243 /- [as per SOA, page 57 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

The complainant submitted as under: -

8. That, in pursuant to the elaborate advertisements, assurances, representations and promises made by respondent- builder in the brochure circulated by it about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the complainant upon being persuaded, considered booking a unit i.e. HSG-026-West End-1-2002 in the project "Turning Point", situated in Sector 88B, Gurgaon, Haryana under the subvention scheme. It was represented and assured by the respondent-builder that the project including the unit of the complainant would be completed by 2022 along with its possession.
9. That, in order to further persuade the complainant to book a unit in the project, respondent-builder offered a scheme of 'Assured Rental-No EMI' till actual possession wherein it assured him that it would be provided with monthly rentals against the rent charge of his residence each month till possession of the unit.

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10. That, the respondent-builder also persuaded the complainant to avail a home loan specifically from respondent no. 2, i.e. Piramal Capital & Housing Finance Limited in order to make timely payments for the unit and further assured him that in the event he availed the loan from that respondent, it would be solely liable to make the payments of the Pre-EMIs amount under subvention scheme till handing over the actual possession of the abovesaid residential unit to him.
11. That, relying upon its representations and being assured that it would abide by the commitments, the complainant in good faith booked a unit on 07.01.2019 by paying a booking amount of Rs.3,00,000/-being a part payment of the total sales consideration of the unit.
12. That, pursuant to the booking of the unit, a builder-buyer agreement dated 10.04.2019 was executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, date of completion etc. under the said builder buyer agreement. It promised, assured, represented and committed to the complainant that the residential project would be completed and handed over to the buyer within the above-mentioned stipulated period of time.
13. It was assured and represented that if due to any reason, the construction of the booked unit gets delayed, then the developer undertakes to pay the PRE-EMI's only to the buyer even after May 2022. It is also pertinent to mention that payment of the PRE-EMI's was to continue till the application for occupation certificate has been moved for the booked unit and is issued to the buyer.
14. That, thereafter, the complainant received an email dated 02.04.2019 wherein, the respondent-builder assured him that the assured rental scheme has been confirmed. Moreover, it also mentioned that he would be provided with assured rental of Rs. 14,500/-per month scheduled to be disbursed on

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15th date of every month starting from April 2019 after a deduction of 10% TDS on the assured rental, the till possession of the unit so offered.

15. That, on 13.05.2019, a tripartite agreement was signed between parties w.r.t the terms agreed under subvention scheme, and wherein it had again explicitly assumed the liability of paying the Pre-EMI till May 2022 or till the time the actual possession is handed over to the complainant, which was in conformity with the date of delivery of possession of the unit. Moreover, he has no liability to pay Pre-EMI as per the scheme and representations including the assurances given by the respondent-builder and only it was liable to pay till actual possession is handed over to him. However, it is not out of place to mention herein that the respondent-builder is in breach of the covenants of the builder-buyer agreement including but not limited to the tripartite agreement(s), representations, schemes etc. and for the same, he cannot be held responsible by any stretch of imagination. It has already in breach and is non-compliant company as per the Act and rules set forth.
16. That, the loan amount of Rs 76,05,627/- taken from respondent no. 2 was sanctioned to the complainant. However, in this regard it is submitted that as per the terms and conditions of the tripartite agreement, subvention period was to be in operation till the time he was given the actual possession and till then, the respondent-builder was to be responsible until the actual possession is handed over to the complainant. It is pertinent to mention here that respondent no.2 even after signing the tripartite agreement and the loan agreement, refused to disburse any amount to respondent-builder, & rather with an intention to usurp more money, forced him to sign up for an additional insurance of Rs.1,26,937/- HDFC insurance policy vide letter dated 18.05.2019.
- A 17. That, the respondent-builder stopped paying the assured rental amount of Rs. 14,500/- due every month after March, 2020 to the complainant and

further no payments were made for the same and also no substitute arrangements was made for him after March, 2020.

18. That, the complainant was shocked and appalled when he visited the project site and saw no construction going on whatsoever and thereby giving the impression that it has abandoned the project completely. Furthermore, it is not extending the subvention till the final completion and handing over of the abovesaid unit to the complainant. Even as per its own website, only excavation work is there.
19. That, a legal notice was also sent to the respondent-builder on 06.10.2020 enquiring about the status of the residential project, rent-free accommodation and directing it to refund the amount already paid to it by him including the loan amount disbursed to it under the loan sanctioned and disbursed by the respondent no.2.
20. That, even at the time of the execution of the builder-buyer agreement, the respondent-builder had represented to the complainant that he was in possession of the necessary approvals from the DTCP, Haryana to commence with the construction work of the residential project. However, till date, no construction whatsoever has taken place at the site. Only, some excavation work has been done and since then, the site & the project have been abandoned by it. It is also submitted that it does not have necessary approvals from the DTCP for the project and this amounts to fraud being committed towards the complainant.
21. That the respondent-builder has not complied with the Section 4(2)(I)(D) of the Act 2016 for which several notices have been sent by this authority dated 18-Nov-2019, 24-Dec-2019, 25-Jan-2020, 23-Jan-2020, 20-Jul-2020 & 03-Sep-2020 respectively. Moreover, a penalty of Rs 25,000/- per day for till the date the default continues, with effect from 31.12.2019 was imposed on it by the authority for non-compliance. A show-cause notice was also issued to it

in which promoter was required to comply with the directions of the authority within one month from the date of receipt of the notice, otherwise it was directed to show cause as to why its registration certificate be not be revoked under section-7 of the Real Estate (Regulation and Development) Act 2016 and Rule-7 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

22. That it is abundantly clear that the respondent-builder has no intention of completing the above said project and till date, it has not filed any of the mandatory information with the authority, with regard to the completion of the project.
23. That the respondent-builder has on its own, extended the date of the completion of the project to the year 2028-29, which is absurd, arbitrary and unjust in nature. Furthermore, due to the absurd terms and conditions imposed by it and this extension of deadline has rendered the builder-buyer agreement executed by and amongst the parties, null and void. Further, it is not out of place to mention herein that the complainant is under eminent threat from the respondent no. 2 regarding the payments of the EMI's, as it is sending frivolous and baseless letters contrary to the terms and conditions agreed upon by the parties in the tripartite agreement, informing him that it would be deducting the EMI's from his account. It is submitted that the said action of the respondent no. 2 is illegal, void and cannot be permissible by any stretch of imagination.
24. That it is unambiguously lucid that no force majeure was involved, and the project has been at a standstill for several years. So, the respondent-builder cannot take a plea that the construction was halted due to the Covid-19 pandemic. It is submitted that he has already made a total payment of Rs. 38,54,180/-, to it towards the residential unit booked by him. Despite paying such a huge sum towards the unit, it has failed to stand by the terms and



condition of the builder-buyer agreement and the promises, assurances, representations etc., which it made to him at the time of the booking the abovesaid unit.

25. That the respondent-builder is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, but harassment of the complainant by misguiding him, keeping him in dark and putting his future at risk by rendering him homeless.
26. That the complainant is constrained and left with no option but to cancel the allotment. Further, he is seeking and is entitled to full refund of the amount including but not limited to all the payments made in lieu of the said unit, as per the terms and conditions of the builder-buyer agreement executed by it..

C. Relief sought by the complainant:

27. The complainant has sought following relief(s):
 - (i) Direct the respondent-builder to cancel the booking of the residential unit booked by the complainant & refund of the total amount paid i.e., Rs. 37,27,243 /- with interest as per Act.
 - (ii) Direct the respondent-builder to honour its obligation of paying the pre-EMIs to respondent no.2 & directing it not to harass and deduct the aforesaid pre-EMIs from the account of the complainant till the finalization of the complaint or till subvention period.
 - (iii) Direct the respondent-builder to pay the assured rentals to the complainant till the disposal of the complaint or till subvention period.
 - (iv) Direct the respondent to pay compensation & litigation cost.
28. On the date of hearing, the authority explained to the respondents 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



The respondent no.1 has contested the complaint on the following grounds:

29. That the present complaint is an abuse of the process of the authority and is not maintainable. The complainant is trying to suppress material facts relevant to the matter. He is raising false, misleading, frivolous, baseless and unsubstantiated allegations against it with malicious intent and the sole purpose of extracting unlawful gains from it.
30. That the complainant made several visits to the office of respondent-builder to know whereabouts of the project "Turning Point". He also enquired about the veracity of the project and was satisfied with every approval deemed necessary for the purpose of the development. He had immense and deep interest on the project carried out by it and booked a unit detailed above vide application dated 07.01.2019.
31. That the 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 agreement, it is under an 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 i.e. 15.09.2017 and the same has been enshrined under clause 5 of buyer's agreement.
32. It is pertinent to mention herein that section 18 read with section 19 of Act, 2016 and Rule 15 read with Rule 16 of Rules, 2017 provide for the right of the allottee to demand refund along with interest and compensation only on failure of the promoter to offer possession in accordance with the agreement to sale duly completed by the date specified therein. As discussed above, it has not violated any terms and conditions of the agreement and the

construction of the said project is well within the time and the present complaint is premature.

33. That the complaint is filed by complainant on baseless and on absurd grounds. It is clearly mentioned under clause 7.1(A) of the agreement that in case of any unforeseen circumstances faced by it in the mid-way of development of the subject project, then extension time would be granted for the completion of the project.
34. That the complainant signed the buyer's agreement after agreeing with every single clause and basic sale consideration of Rs. 83,19,740/-. The contentions alleged by him in regard to Pre-Emi facility have no foundation in buyer's agreement, and hence does not sustain in the eyes of law. It is pertinent to note that complainant was well aware about the assured rentals provided for a period of one year and which has already provided to him from April 2019 to March 2020. Further, it is to mention here that prior to booking i.e., 07.01.2019, it was assured him that the schedule date of delivery of possession would be as per the validity of RERA registration i.e., within 90 months from the date it was issued i.e., 15.09.2017 and the complainant upon agreeing to every detail of the project being carried out by respondent-builder made the booking of the allotted unit.
35. Thereafter, the tri-partite agreement was executed in between the parties on 13.05.2019. It is to be noted that the complainant availed a loan of amount of Rs. 76,05,627/- from respondent no.2 for making the payment towards the unit booked in the project of the respondent-builder. It is imperative to mention that he was offered with subvention scheme under which it

undertook the liability to pay the Pre-Emi in regard to the loan taken by him upto the subvention period mentioned under TPA. It is pertinent to note that as per schedule II of TPA, the Pre-Emi was to be born by it upto 5th May 2022. So, the claim of the complainant that it was obligated to pay Pre-Emi till actual handing over of possession is nothing but an afterthought to engage it in a fictitious litigation.

36. That the respondent-builder is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the agreement. It is pertinent to apprise the authority that the developmental work of the said project was slightly decelerated due to the reasons beyond its control like the impact of Good and Services Act, 2017 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. It is precluded that respondent-builder also has to undergo huge obstacle due to effect of demonetization and implementation of the GST.

37. That in the past few years, the 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 activities 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. 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 & that 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. Those orders forced the migrant labour to return to their native towns/states/villages creating an acute shortage of labour in the NCR Region. Due to the said shortage, the construction activities 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 should not be added while computing the delay.

38. That the current covid-19 pandemic resulted in serious challenges to the project with no available labour, 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-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on 25th March, 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. Even the 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 & 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 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 25th March, 2020.

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

- a) 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.
- b) 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.
- c) 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.
- d) Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the



acquisition and construction process, it had already laid down the services according to the earlier sector road levels. However, due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to it.

e) Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.

40. That it is submitted that the plea of the complainant in regard to assured rental scheme has no foundation in any agreement or communications existing between the parties. It is pertinent to note that it has offered assured rental scheme in lieu of good gesture and goodwill and therefore, vide email dated 02.04.2019, apprised him that the assured rental of Rs. 15,000/- per month along with the deduction of 10% TDS on the assured rentals for a period of one year has been processed. It is nowhere mentioned that the aforesaid scheme would be provide up to the due date of possession and also there was no such agreement signed in this regard. The assured rentals for a period of one year as agreed has already been enjoyed by complainant from April, 2019 to March 2020 and is not a part of any agreement. Therefore, genuineness of the claim of the complainant is liable to be verified in detail and would be adjudicated before appropriate civil court through producing of proper evidence. He raised various baseless and absurd allegations in order to gain favourable order by misleading the authority through producing bare submissions which are erroneous in the eyes of law.
41. That it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against it are nothing but an afterthought and a concocted story. Hence, the complaint filed by him deserves to be dismissed with heavy costs. It is brought to the knowledge of

the authority that he is guilty of placing untrue facts and is attempting to hide the true colours of his intention.

42. That the various contentions and claims raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by him are sustainable before this authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the authority.

43. All other averments made in the complaint were denied in toto.

E. Reply by the respondent No.2

The respondent no.2 has contested the complaint on the following grounds:

44. It is most respectfully submitted that the present complaint under reply is neither maintainable nor tenable and is liable to be dismissed as the perusal of the section 31(1) of the Act, 2016 makes it crystal clear that a complaint may be filed against the promoter or real estate agent. However evidently, the answering respondent no.2 i.e., Piramal Capital & Housing Finance Limited is neither promoter nor the real estate agent but a housing finance company. Hence, the complaint under reply is liable to be rejected.

45. It is respectfully submitted that the complainant has not come before this authority with clean hands and has concealed the material facts. It is settled

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law that case of litigant approaching any court of law by concealing the facts while making the averments made based on falsehood, is liable to be dismissed at the very threshold even before entering upon the merits.

46. It is submitted that that the answering respondent seeks the permission of the court to refer, rely on the terms and conditions of the loan agreement and the tripartite agreement executed between the parties. It is further submitted that said loan was granted in favour of complainant on the terms and conditions of as specified therein.
47. That without prejudice to the other objections taken in the reply, it is stated that the complaint has been filed with an intent of somehow avoiding the liability towards the answering respondent. It is stated that the same is evident from a mere reading of the prayer made by the complainant wherein he has wrongly prayed that the entire amount be paid to him and whereas admittedly, the entire outstanding due to the answering respondent is to be paid firstly in case of refund of any amount by the respondent-builder. It is stated that in case this forum makes directions for refund of any amount, then it is to be directed that the dues of the answering respondent are to be paid first and in case there is any shortfall, then the same are to be paid by the complainant to it. Further in the circumstance of any excess amount, the same be returned to the complainant.

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48. It is submitted that the answering respondent reserves its right to claim damages from the complainant for dragging it into false and frivolous proceedings and for damaging its goodwill and reputation. The complaint is not maintainable and is liable to be dismissed for the want of cause of action as the complainant has no locus standi to initiate the proceedings against the answering respondent.
49. 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 those undisputed documents and submissions written as well as oral made by the parties.
- E. Jurisdiction of the authority**
50. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E. I Territorial jurisdiction**
51. 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, the authority has complete territorial jurisdiction to deal with the present complaint.
- E. II Subject matter jurisdiction**

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52. 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.

53. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objection regarding entitlement of refund on ground of complainant being investor.

54. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same

time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

55. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F. II Objection raised by the respondent regarding force majeure conditions:

56. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT hon'ble Supreme Court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI, re-routing of high-tension lines passing through the land of the project, impact on the project due to policy of NIPL and TOD issued on 09.02.2016 and outbreak of Covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were note all of a sudden. Thirdly, due to Covid-19 there may be a delay but the same has been set off by the govt. as well as authority while granting extension in registration of the projects, the validity of which expired from March 2020 for a period of 6 months.
57. The due date of possession for completion of the project as per clause 7.1 is 15.09.2025. So, any situation or circumstances which could have an effect on the due date should have before fixing a due date. Moreover, the circumstances detailed earlier did not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

G. Findings on the relief sought by the complainant(s).



Relief sought by the complainant: The complainant(s) has sought following relief(s):

- i. Direct the respondent-builder to cancel the booking of the residential unit booked by the complainant & refund of the total amount paid i.e., Rs. 37,27,243 /- with interest.
 - ii. Direct the respondent-builder to honour its obligation of paying the pre-EMIs to respondent no.2 with a direction not to harass him and not to deduct the aforesaid pre-EMIs from his account till the finalization of the complaint or subvention period.
 - iii. Direct the respondent-builder to pay the assured rental to the complainant(s) till the disposal of the complaint or subvention period.
 - iv. Direct the respondent to pay compensation & litigation cost.
58. Relief no. 1, 2 & 3 are interconnected and so, the same are being dealt with together.
59. It is an admitted fact that 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. That 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 different persons on different dates 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. More than about 9 years from the date of booking of the units have already expired. There is no hope that construction of the project is likely to be completed by the target date. It is unlikely that the project having number of units with multiple stories is

likely to be completed within a short span leading to an inference to project being abandoned. 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 complainant along with 27 allottees 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 complaint(s) 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 allotment was made under subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

61. It was pleaded by respondent no.2 in some of the complaint(s) that it advanced loan against the allotted units leading to execution of tripartite agreements between them. But the primary responsibility to pay the loan amount was that of the allottee(s). 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(s).
62. During the proceedings held on 12.08.2022, the authority observed & directed as under:
 - a. 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.
 - b. 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.

- c. The authority directed the respondent to furnish the details of bank account along with the statements of all the accounts associated with these promoters.
- d. 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".

63. 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.

64. 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 an 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 with regard the project and more specifically having regard to 70% of the total amount collected from the allottee(s) 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.

65. 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 also 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 allottee(s) 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.

66. 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 allottees 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(s) in all the cases 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 10.25% 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

67. 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 allottee(s) for a number of years without initiating any work at the project site and continued to receive payments against the allotted units. Though while filing replies, the developer took a plea that the project is taken up but the same is otherwise false and against the facts on record. So, in such situation for

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- claiming compensation, the allottees may file complaints separately before the adjudicating officer having powers under section 71 of the Act of 2016.
68. It has been pointed out on behalf of respondent/builder that it was paying assured returns against the allotted units to some of the allottees up to certain dates. So, while allowing refund of the paid-up amount in their favour, a direction be given for adjustment of that amount from the total amount. Thus, while paying back the paid-up amount to the allottees who were receiving assured returns up to certain dates, that amount would be adjusted.
69. However, while paying sale consideration of the allotted units, some of the allottees raised loans from the different financial institutions and the same were deposited with the promoter. While refunding the amount deposited by the allottees who have raised loans against the allotted units, the promoter would clear such of the loan amount up to date with those financial institutions and the balance amount shall be paid to the allottees within a period of 90 days from the date of order.
70. The authority hereby directs the promoter to return the amount received with interest at the rate of 10.25% (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.

H. Directions of the authority

71. 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):

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- i. The respondent-builder is directed to refund the paid-up amount received from each of the allottee(s) deposited by them against their allotted units along with interest at the prescribed rate of 10.25% per annum from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017.
 - ii. The respondent builder has been paying assured returns against the allotted units to some of the allottees upon certain dates. So, while refunding the paid-up amount to them, the respondent-builder is entitled to adjust that amount from the total amount.
 - iii. While paying against the allotted units, some of the allottee(s) raised loans from the financial institutions i.e., respondent no. 2 and that amount was paid to it. So, while refunding the amount deposited by some of the allottee(s) who raised loans against the allotted units, the promoter is directed to clear such of the loan amount up to date with those financial institution(s) and the balance amount be paid to the allottee(s) within a period of 90 days.
72. These directions shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
73. The complaint stand disposed of. True certified copies of this order be placed in the file of each case.
74. Files be consigned to registry.


Sanjeev Kumar Arora
Member


Vijay Kumar Goyal
Member
28.10.2022