

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

Date of Decision 07.02.2023

NAME OF THE BUILDER		VATIKA LIMITED		
PROJECT NAME		TURNING POINT		
SR. NO.	COMPLAINT Nos.	Complainant	versus	Respondents
1.	CR/2071/2022	VARDHMAN JAIN AND ANR.	<i>Versus</i>	R:1 VATIKA LIMITED R:2 Piramal Capital & Housing Finance ltd.
2.	CR/2072/2022	VIJAY LAXMI	<i>Versus</i>	VATIKA LIMITED

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

Member  
Member  
Member

**APPEARANCE:**

Sh. Abhijeet Gupta  
Sh Uma Shanker AR of the company  
None

Complainant(s)  
Respondent No.1  
Respondent No.2

**ORDER**

1. This order shall dispose of both the 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 both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest, assured return.
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 buyer's agreement	Total sale consideration Amount Paid up	Relief sought
1.	CR/2071/2022  VARDHMAN JAIN AND ANR. Vs. Vatika Limited & Anr.  D.O. F 10.05.2022	Not Received	2701-West End 1 (Page 25 of complaint)	27.05.2019	23.04.2019  [page no.23 of complaint]	TC-Rs.66,99,375/-  AP- Rs.31,70,824/-	1. Refund. 2. Assured return.
2.	CR/2072/2022  VIJAY LAXMI Vs. Vatika Limited  D.O. F 10.05.2022	Not Received	2601-West End 1 (Page 24 of complaint)	NA	22.11.2019  [page no. 20 of complaint]	TC-Rs.63,61,875 /- AP- Rs.17,73,425/-	1. Refund. 2. 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 units

for not handing over the possession by the due date 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 case bearing **CR/2071/2022, titled as Vardhman Jain and Anr. 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/2071/2022, titled as Vardhman Jain and Anr. 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 15.03.2025
7.	Unit no.	2701, tower-west end-1 (Page no.25 of complaint)
8.	Unit area admeasuring	684.44 sq. ft. (Page no. 25 of complaint)
9.	Date of allotment	27.05.2019
10.	Date of builder buyer agreement	23.04.2019 (page 23 of complaint)
11.	Due date of possession	15.03.2025 (till the validity of registration certificate)
13.	Total sale consideration	Rs.66,99,375/-
14.	Amount paid by the complainant	Rs.31,70,824/-
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

The complainants 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-2701-West End-1-2002 in the project "Turning Point", situated in Sector 88B, Gurgaon, Haryana. Thereafter a buyer's agreement was executed between th parties and wherein the respondent/builder explicitly assigned all the rights and benefits of the allotted unit to the complainants.
9. That then the complainants, under the subvention scheme, approached the respondent no.2 for the grant of loan towards payment of the

- purchase consideration of the unit in the project. The parties entered into a tri-partite agreement dated 24.04.2019, wherein respondent no.2 agreed to pay the loan amount.
10. That subsequently, the booking of the said unit was confirmed to the complainants vide allotment letter dated 27.05.2019. They have paid an amount of Rs. 7,73,930/- and the loan amount disbursed by the respondent no.2 is Rs. 23,96,894/-. Vide welcome letter dated 12.06.2019, respondent no.2 provided the details of the loan sanctioned as per the Tri-partite agreement between the parties. The total loan amount sanctioned was of Rs. 61,64,041/- and the loan tenure was of 240 months with rate of interest of 9% p.a. In pursuant to the buyer's agreement dated 23.04.2019, executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, date of complete etc, the respondent /builder assured that the time was of the essence.
  11. That it is pertinent to note that at the time of signing the application form to book a unit in respondent/builder's project, the complainants were informed that the possession of the unit would be handed over in the month of January 2023 and which was almost from 4 years from the date of signing the buyer's agreement. The subvention period was also of till December 2022.
  12. Moreover, it was also assured and represented that if due to any reason the construction of the booked unit gets delayed, then the developer i.e., undertakes to pay the pre-EMI's only to the buyer. It is also pertinent to mention that payment of the Pre-Emi' was to continue till the application for occupation certificate, has been applied for the booked unit and possession offer is issued to the buyer.

13. That, the complainants anticipated and believed that the respondent/builder would commence the construction of project immediately after the disbursement of first tranche of loan amount on 11.06.2019. However, till date, it has failed to commence the construction of project. When the complainants recently visited the site to check the progress of the construction, they were completely shocked and appalled to see that neither any construction whatsoever had taken place and nor construction work was even ongoing at the site. Based on the construction work at project site, it appears that the project has been miserably delayed and the site has been abandoned by the respondent/builder.
14. That the complainants contacted the respondent/builder on several occasion and were regularly in touch with it. But it was never able to give satisfactory response to the complainant regarding the status of the construction and rental payment as promised due since April 2020. It was utter shock for the complainants that the respondent/builder has on its own, extended the date of the completion to the year 2026-27, being absurd, arbitrary and unjust in nature. Furthermore, due to the absurd terms and conditions imposed by the respondent/builder and the extension of deadline rendered the buyer's agreement executed between the parties, null and void.
15. That thereafter in March 2022, the complainants decided to withdraw from the project as the respondent/builder failed to keep the construction of the project as per the plan. There is no sign and hope of project getting completed and ready for the possession till the next 4 years as came out while interacting with the employees of respondent/builder. It is also important to note that respondent/builder

acknowledged the un-paid rental and was ready pay the same along with the refundable amount.

16. The respondent/builder came up with a plan for refund to the complainants in which all the liabilities were forced on them as if they have committed any fault as per the agreement. It is pertinent to note that it is respondent/builder, who in the first instance failed to perform the contractual obligations under the builder buyer agreement and fulfill the terms and conditions. The complainants vide email disagreed with the refund amount as it was one sided and not as per the builder buyer agreement. As per the clause 7.5 of the agreement, the respondent/builder was bound to compensate the complainants on failure on its part of respondent no. 1 in accordance with the terms and conditions.
17. That, the complainants were further aghast and shocked, when it came to its notice that respondent no. 1 & 2 have illegally and intentionally colluded in an illegal act to disburse and collect huge amount of money from them even when the construction of project has not started. The statement of account issued by respondent/builder is misleading and intentionally obfuscating the facts.
18. That, even at the time of the execution of the buyer's agreement the respondent/builder had represented to the complainants that they are 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 at the site and since then the site & the project have been abandoned by the respondent/builder as it does not have necessary approvals from the DTCP from the present

project and this amounts to fraud being committed towards the complainants.

19. That, it is pertinent to mention that the respondent/builder has not complied with section 4(2)(d) of the Act 2016 for which several notices have been sent by this Authority dated 18.11.2019, 24.12.2019, 25.01.2020, 23.01.2020, 20.07.2020 & 03.09.2020 respectively. Moreover, it is also pertinent to mention that a fine of Rs. 25,000/- per day for per day till the date the default continued, with effect from 31.12.2019 was imposed on the respondent/builder by this Authority for non-compliance. A show-cause notice was also issued to the respondent in which promoter was required to comply with the directions of the Authority within one month from the date of receipt of that notice otherwise show cause as to why their registration certificate should not be revoked under section 7 of the Act 2016 and rule 7 of the Rules, 2017.
20. That, the respondents are not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the complainants by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
21. That the respondent/builder had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail pace and the said project is far from completion and the same would not be able to deliver the possession within the stipulated time. It is abundantly clear that the respondent/builder has played a fraud upon the complainants and cheated them fraudulently and dishonestly with a false promise to complete the construction of the project with the stipulated period.



22. That the respondent/builder is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of rules, 2017. The complainants have suffered on account of deficiency in service and as such the respondent/builder is fully liable to cure the deficiency as per the Act, 2016 and rule, 2017.
23. That the complainants are constrained and left with no option but to cancel the allotment of the allotted unit. Further, they are seeking and 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 buyer's agreement executed by the respondent/builder and even otherwise are entitled to the same.
24. The complainants after losing all the hope from the respondents, after being mentally tortured and also losing considerable amount, are constrained to approach the Authority for redressal of their grievance.

**C. Relief sought by the complainants:**

25. The complainants have sought following relief(s):
- (i) To cancel the booking of the residential unit booked by the complainants & refund of the total amount paid till dated i.e., Rs. 31,70,824/- with interest as per the Act,2016.
  - (ii) Direct the respondent/builder to pay the rental amount of Rs. 10,800/- from April 2020 till the disposal of the complaint.
  - (iii) Direct the respondent no. 2 to not take any coercive action against the complainants.

**D. Reply by the respondent**

26. That the contents of the complaint herein, deliberately failed to mention the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant is raising

- false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains.
27. That the complainants have not approached the Authority with clean hands and has suppressed/concealed the relevant facts with the intent to mislead the Authority through the representation of the one-sided facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
28. That the respondent herein launched a Group Housing Project titled as **"Turning Points"**, situated and located at Sector-88B, Gurugram, Haryana. In around 2019, the complainants herein, learned about project and repeatedly approached the answering respondent to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
29. That after having keen interest in the above said project launched by the respondent i.e., **"Turning Point"**, the complainants upon its own judgment and investigation desired to purchase a unit and booked it on 20.01.2019.
30. That the builder buyer agreement dated 23.04.2019 was executed between the parties for the unit bearing no. 2701, admeasuring Super area 1125 Sq. Ft for a total sale consideration of Rs. 66,99,375/-. As per clause 5 of the agreement, the due date for handing over of possession to the complainant was within 90 days from the date of registration i.e., 15.09.2017. Hence, the date of possession of the unit comes out to be 15.03.2025. The complainants had merely paid an amount of Rs. 30,24,920/- against the total sale consideration.

31. It is pertinent to bring into the knowledge of the Authority that as per the agreement so signed and acknowledged by the respondent provided and estimated time period of 90 months for completing of the construction for the project i.e., "**Turning Point**" from the date of RERA registration. However, the same could not be proceeded further and it was constrained stop the development work in the mid-way due to various hindrances in construction of the project, which were unavoidable and purely beyond its control.
32. That the respondent is committed to complete the development of the project and deliver the units to the allottees as per the terms and conditions of the buyer's agreement. It is pertinent to apprise of the Authority that the development work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretched its adverse effect in various industrial, construction, business area. Even in the year 2019 the respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
33. In 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 from 26.10.2019 to 30.10.2019 which was later on converted into complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

34. 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. Those bans 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 Apex Court.
35. 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 would not be added while computing the delay.
36. 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 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 continued 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 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. It is to be noted that various state Governments, including the Government of Haryana imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial and construction activities.

37. That despite, after above stated measures taken and 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. The period during from 12.04.2021 to 24.07.2021, each and every activity including the construction activities were banned in the state.
38. It is further pertinent to mention that the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, granted registration certificate bearing registered no. 213 of 2017 dated 15.09.2017 in the above said project of the respondent for a period of 90 months, i.e., till 15.03.2025. The respondent after failure to complete the project as per the proposed plan and layout plan due to the reasons as stated above elaborately, filed a proposal bearing "In Re: Regd. No. 213 of 2017 dated 15.09.2017, for de-registration of the **Project "Turning Point"**, and settlement mechanism with existing allottees before the registry of the Authority on 30.09.2022.
39. That the intention of the respondent is bonafide and the above said proposal for de-registration of the project is filed in the interest of the

allottees of the project as the project could not be delivered due to various reasons beyond the control of the respondent as stated above and are not repeated herein for the sake of brevity and convenience.

40. 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 Authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and is attempting to hide his true intentions.
41. All other averments made in the complaint were denied in toto.
42. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the complainants.

#### **E. Jurisdiction of the authority**

43. 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**

44. 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**

45. 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.*

46. 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 relief sought by the complainant(s).**

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

- i. To cancel the booking of the residential unit booked by the complainants & refund of the total amount paid till dated i.e., Rs. 31,70,824/- with interest as per the Act,2016.
- ii. Direct the respondent no. 1 to pay the rental amount of Rs. 10,800/- from April 2020 till the disposal of the complaint.

47. Relief no. 1, 2 are interconnected and so, the same are being dealt with together.
48. 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 different persons on vide 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 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, some of the allottees of that project approached the authority by way of *complaint bearing no. 173 of 2021 and 27 others titled as Ashish Kumar Aggarwal vs Vatika Ltd.* 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 in those complaints was otherwise and who took a plea that the complaints being pre-mature were not maintainable. Secondly, the project had not been abandoned and there was delay in completion of the same 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.



49. 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".
- e. 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.

50. It was also observed that work at the site was 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 would 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.

51. 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 was 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.

52. 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 was observed that the project namely "Turning Point" was not being developed and had been abandoned by the promoter. Even he applied for de-registration of the project registered vide certificate no. 213 of 2017 dated 15.09.2017 and was 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 was observed that the project has been abandoned. Thus, the allottees in those cases were held entitled to refund of the amount paid by them to the promoter against the allotment of the unit 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 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.*

53. It is proved from the facts detailed above that the project has already been abandoned and there is no progress at the spot. The developer used the monies of the allottee for a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. So, in such situation besides refund of the paid-up amount given by the complainant to the developer with interest at the prescribed rate of interest i.e., 10.60% P.A., he may file complaint separately seeking compensation before the adjudicating officer having powers under section 71 of the Act of 2016.
54. It has been pointed out on behalf of respondent/builder that it was paying assured returns against the allotted units to 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.
55. However, while paying sale consideration of the allotted units, the allottee raised loan from the financial institution namely "**Piramal Capital & Housing Finance Ltd.** and the same was deposited with the promoter. While refunding the amount deposited by the allottee who has raised loan against the allotted unit, the promoter would clear such of the loan amount up to date with that financial institution and the balance amount shall be paid to the allottees within a period of 90 days from the date of order.
56. The Authority hereby directs the promoter to return the amount received with interest at the rate of 10.60% (the State Bank of India highest marginal cost of lending rate (MCLR) application 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

57. Hence, the authority hereby passes this order and issues the following directions under section 27 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 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 10.60% 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 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 unit, the allottee raised loan from the financial institution and that amount was to be paid back to it. So, while refunding the amount deposited by allottee who raised loan against the allotted unit, the promoter is directed to clear such of the loan amount up to date with that financial intuition and the balance amount be paid to the allottee within a period of 90 days.

58. These directions shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.


59. The complaints stand disposed of. True certified copies of this order be placed in the file of each case.

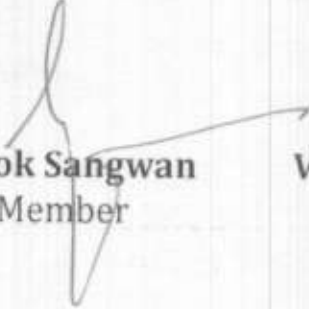



**HARERA**  
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60. Files be consigned to registry.

  
**Sanjeev Kumar Arora**  
Member

  
**Ashok Sangwan**  
Member

  
**Vijay Kumar Goyal**  
Member

07.02.2023

Haryana Real Estate Regulatory Authority



**HARERA**  
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