

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

Complaint no. :	3928 of 2021
Date of filing complaint:	14.10.2021
First date of hearing:	29.11.2021
Date of decision :	21.03.2023

Jayendra Nath Chakraborty R/o: Flat no. 510, 1 <sup>st</sup> floor, Orchid Island, Sector 51, Gurugram	<b>Complainant</b>
Versus	
M/s Vatika Limited address: Vatika Triangle, 4 <sup>th</sup> Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri. Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person with Sh. A.R. Sharma advocate	<b>Complainant</b>
Sh Pankaj Chandola (Advocate)	<b>Respondent</b>

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of



the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No	Heads	Information
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.	1601, HSG-026-West End-7
8.	Unit area admeasuring	685.23 sq. ft. (super area)
9.	Date of builder buyer agreement	18.01.2018
10.	Due date of possession	15.03.2025 (till the validity of registration certificate)
11.	Total sale consideration	Rs. 65,23,375/- [as per SOA dated 11.08.2022]
12.	Amount paid by the complainant	Rs. 29,02,952/- [as per SOA dated 11.08.2022]
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
- a. The complainant booked a unit bearing no. HSG-026-West End 07-1601 in the month of October 2017. The total cost of the unit was Rs. 64,67,125/- (excluding GST). An initial booking amount of Rs. 3,36,000/- was paid to the builder. Within 30 days of the booking an additional amount of Rs. 3,83,838/- was paid by the complainant.
  - b. It was on 18.01.2018 that an agreement for sale was executed between the parties. The project is registered by the promoter under the provisions of the Act with the Authority at Chandigarh on 15.09.2017 under registration no.213/2017. The complainant took a loan of Rs. 66,50,000/- from ICICI Bank on subvention scheme for a period of 20 years at 8.65% rate of interest. The project was committed for possession in the year 2021 by the builder. Once the registration of the agreement of sale was complete, a letter was received from Vatika dated 25.05.2018 which reminded the payment instalment of an amount of Rs. 21,59,514/- with the start of excavation to be paid immediately within a span of 7 days of receipt of the letter or 7 days from the date of letter whichever earlier otherwise, the builder would cancel the allotted flat and forfeit the earnest money and other non-refundable changes as provided in the buyer's agreement. Following this letter, the complainant immediately contacted the ICICI bank so that the above-mentioned amount could be released to the builder after the proper signing of the tripartite agreement. The tripartite agreement was signed twice but the bank misplaced it. Finally -



the agreement was signed on 29.08.2018. The first letter from the builder to ICICI bank intimating the sale of the property was sent on 29.08.2018. It was also mentioned in the same letter t-

- c. That the builder has taken all the necessary permissions and approvals from the competent authorities for the construction of the property, and it was according to the approved plans.
- d. The instalment amount of Rs. 15,50,207/- was paid on 14.09.2018. Pre-EMI interest of amount of Rs. 6,09,307/- was also received from the builder on 14.09.2018. Since 2018, the allottee has been tracking the progress of the project but to the astonishment, it was found the project to be lying idle after the excavation work. The project was promised to be delivered by 2021 but in the past two years after the payment was made, no progress has been made.
- e. The allottee tried to contact the builder by email as well as by visiting the Vatika office at Gurgaon but no concrete assurance was provided on behalf of the builder. After the onset of covid-19 pandemic, the builder left no opportunity in blaming everything on covid-19 but as an allottee, each and every time he sought justification for the delay of the project from 2018 to Mach 2020 till Covid-19 affected India.
- f. The complainant was received an email from the builder in which it mentioned that owing to the delay in the project, the customers are being given an option to shift the project to another project of Vatika where the construction was in an advanced stage. The projects mentioned were Xpressions by Vatika, Seven Elements, Sovereign Next by M/s Vatika builders.

The complainant visited those projects in Gurgaon and even met a Vatika Executive. On discussion, it was imminent that these alternative projects were out of his existing budget and shifting to these properties required taking additional loan from the bank. Moreover, no bank was funding Xpressions in September 2020. But of course, the complainant made clear that if he was being offered any alternative property at the same rate as turning point without adding extra burden on our pocket, then he was ready to shift. But, to his utter surprise the representative explained that not a single unit in any of the property of Vatika across Gurgaon exist in which he could be shifted at exiting loan structure.

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

4. The complainant has sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by the complainant.
- ii. Since, the builder has immensely delayed the project, the entire advance amount including the RERA registration fees should be refunded to the petitioner's bank account as well as the complete bank loan which was disbursed by ICICI bank for the construction of the project should be returned by M/s Vatika and the petitioner should be made free of any loan charges.

**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:

- (a) That the complainant had not approached the authority with clean hands and had suppressed/concealed the relevant facts



- (b) with the intent to mislead this authority through the representation of the one-sided facts. It is submitted that the complaint under reply is devoid of merit and the same should be dismissed with cost.
- (c) That in around 2017, the complainant learnt about project and repeatedly approached the respondent to know the details of the said project. He further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project. After having keen interest in the above said project launched by it i.e., "Turning point", the complainant upon its own examination and investigation desired to purchase a unit and approached it on 05.10.2017 and booked a unit bearing no. 1601, tower west end-7 HSG-026, admeasuring super area 1125 sq. ft for a total sale consideration of Rs. 65,23,375/-.
- (d) Though the agreement was not executed between the parties, but as per RERA registration of the project, the respondent was under an obligation to handover the possession to the complainant as per the timelines as disclosed at the time of registration of the project. As per the project registration no. 213 of 2017 the respondent was to complete the project within 90 months from the date of grant of RERA registration i.e., 15.09.2017 as per which the due date of possession comes out to be 15.03.2025.
- (e) It is pertinent to bring to the knowledge of this 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**", and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project and which were unavoidable and purely beyond the control of it. Further, it is pertinent to mention that the project could not be completed and developed on time due to various hindrance such as government notifications from time to time and force majeure conditions, breakdown of Covid-19 pandemic, laying of GAIL pipe line, acquisition of sector road land parcels in the township and other such reasons stated above and which miserably affected the construction and development of the above said project as per the proposed plans and layout plans, which were unavoidable and beyond the control of it.

- (f) That the respondent after failure to complete the project as per the proposed plan and layout plan due to the aforesaid reasons elaborately, filed a proposal bearing "In Re: Regd. No. 213 of 2017 dated 15.09.2017, for the De-Registration of the **Project "Turning point"**, and settlement with existing allottees before the registry of this authority on 30.09.2022. The intention of the respondent is *bonafide* and the above said proposal for de-registration of the project was filed in the interest of the allottees of the project as it could not be delivered due to various reasons beyond the control of the respondent as stated above.
- (g) The complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the authority.

*dr*

The complaint is an utter abuse of the process of law, and hence deserves to be dismissed. The complainant may be directed by this authority to approach it as and when the application for proposal for de-registration of the project "Tranquil Heights" filed by it comes to finality by this authority. Hence, this complaint deserves to be dismissed.

6. 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 made by the parties. The written submissions made by both the parties along with documents have also been perused by the Authority.

**E. Jurisdiction of the authority:**

7. 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**

8. 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, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

10. 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.

**G. Finding on the objection raised by the respondent.**

**G.I Objection raised by the respondent regarding force majeure condition.**

11. It is contended on behalf of the 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 not 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.

12. The due date of possession in the present case as per clause 7.1 is 15.03.2025, So, any situation or circumstances which could have an effect on the due date should have been considered 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:**

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

13. 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 measuring 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 premature 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.

14. 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
  - f. the above-mentioned promoters in order to restrict the promoter from further withdrawal from the accounts till further order.
15. 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.

16. 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.

17. 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."*

18. It is proved from the facts detailed above and not rebutted by the developer 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. Though, while filing reply, the developer took a plea that the project is taking up, but which is otherwise false and against the facts on record. 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., 10.70% P.A., he may file complaint separately seeking compensation before the adjudicating officer having powers under section 71 of the Act of 2016.
19. However, while paying sale consideration of the allotted unit, the allottee raised loan from the financial institution namely "ICICI Bank" and the same were deposited with the promoter. While refunding the amount deposited by the allottee, the promoter shall clear such of the loan amount up to date with that financial institution and the balance amount shall be paid to the allottee within a period of 90 days from the date of order.


**H. Directions of the Authority:**

20. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the




functions entrusted to the Authority under Section 34(f) of the Act of 2016:


- i. The respondent-builder is directed to refund the paid-up amount i.e., Rs. 29,02,952/- received from the allottee deposited by him against his allotted unit along with interest at the prescribed rate of 10.70% 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. While paying against the allotted unit, the allottee raised loan from the financial institution and that amount was paid to it. So, while refunding the amount deposited by the allottee against the allotted unit, the promoter is directed to clear such of the loan amount up to date with that financial institution and the balance amount be paid to the allottee within a period of 90 days.
21. Complaint stands disposed of.
22. File be consigned to the registry.



Sanjeev Kumar Arora  
Member



Ashok Sangwan  
Member



Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 21.03.2023**