

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

Date of Decision 21.04.2023

NAME OF THE BUILDER		VATIKA LIMITED			
PROJECT NAME		TURNING POINT			
SR. NO	COMPLAINT NO.	Complainant		Respondent	
1.	CR/220/2022	Rahul Chhagani & Deepthi Bassi	V/s	R:1 R:2	Vatika limited Piramal Capital & Housing Finance Ltd.
2.	CR/222/2022	Shakti Singh & Suman Devi	V/s	R:1 R:2	Vatika limited Piramal Capital & Housing Finance Ltd.
3.	CR/239/2022	Sandeep Vashisth	V/s	R:1 R:2	Vatika limited ICICI Bank Ltd.

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Mr. Abhijeet Gupta
Shri. Venket Rao, Pankaj Chandola

Complainant(s)
Respondent

HARERA
GURUGRAM
ORDER

1. This order shall dispose of all the 3 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 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 issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest.
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/220/2022 Rahul Chhagani & Deepti Bassi. Vs. Vatika Limited & Anr. D.O. F 19.01.2022	Received	1602, tower- West End 1 (Page 39 of complaint)	NA	15.02.2019 [page no.34 of complaint]	TC-Rs.86,77,240/- AP- Rs.39,11,004/-	Refund.
2.	CR/222/2022 Shakti Singh & Suman Devi. Vs. Vatika Limited & Anr. D.O. F 19.01.2022	Received	501, HSG-026 tower- West End 1 (Page 46 of complaint)	NA	07.12.2018 [page no.44 of complaint]	TC-Rs.65,54,625/- AP- Rs.29,42,152/-	Refund.
3.	CR/239/2022 Sandeep Vashisth. Vs. Vatika Limited & Anr. D.O. F 19.01.2022	Received	3201, HSG-026 tower- West End 7 (Page40 of complaint)	22.02.2018	03.04.2018 [page no.34 of complaint]	TC- Rs. 61,22,250/- AP- Rs. 27,89,968/-	Refund.

4. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant 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 in addition 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/allottee are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing **CR/220/2022, titled as *Rahul Chhagani & Deepti Bassi 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/220/2022, titled as *Rahul Chhagani & Deepti Bassi versus Vatika Ltd & Anr.*

S. No.	Heads	Description
1.	Name and location of the project	Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	18.80 acres



4.	DTCP license no.	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav warehousing Pvt. Ltd & 9 others
6.	RERA Registered/ not registered	Registered vide no. 213 of 2017 dated 15.09.2017 area admeasuring 93588 sqm. Valid upto 15.03.2023
7.	Unit no.	1602, tower-West End 1(Page 39 of complaint)
8.	Unit area admeasuring	898.03 sq. ft.
9.	Date of allotment	NA
10.	Date of builder buyer agreement	15.02.2019 (page 337 of complaint)
11.	Due date of possession	15.03.2025
12.	Tripartite agreement	28.03.019
13.	Total sale consideration	Rs.86,77,240/- [as per SOA, page 29 of reply]
14.	Basic sale price	Rs. 74,81,250 [as per SOA, page 29 of reply]
14.	Amount paid by the complainant	Rs. Rs.39,11,004//-[as per SOA, page 38 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 no. 1 in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, our clients considered booking a unit i.e. HSG-026-west End 1-1602 in the project "Turning Point" at the respondent Sector 88B, Harsaru, Gurgaon, Haryana with a total consideration based on the carpet area is of Rs. 86,77,240/-. It was represented and assured by the respondent no. 1, as per the brochure that the project including the flat of the complainants would be



completed by December, 2019 along with possession of the flat. Pursuant to the elaborate advertisements and promises that were made by the respondent no.1 in the brochure that the project would be premium with impeccable facilities and amenities and would be completed by December, 2019, the complainants herein considered booking a unit in the said project. That furthermore, vide the abovementioned brochure the respondent no.1 also provided the scheme of Vatika Shield, whereby the respondent no.1 has warranted to finished the construction of the subject matter project with a period of 3 (three) years and even offers an exit option to the allottees/complainants that in case they wish to exit after 3 years, then the respondent no.1 shall return the total amount paid. The respondent no.1 also offer schemes of no rent & no Emi vide the above-mentioned brochure.

9. That, relying upon the respondent's representations and being assured that the respondent no. 1 would abide by their commitments, the complainants in good faith booked a unit in the project. The unit booked by the complainants was under subvention scheme i.e. the respondent no. 1 would bear the cost of Pre-EMI towards the respondent no.2 till the application of occupation certificate.
10. That, pursuant to the booking of the unit, the respondent was allotted Unit i.e. **HSG-026-west End 1-1602** of the respective project. Pursuant to the booking and allotment of the unit, a builder-buyer agreement **dated 15.02.2019** was executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule etc. Under the said builder buyer agreement, the respondent promised, assured, represented and committed to the complainants that this residential project would be completed and will be handed over to the buyer within the above-mentioned stipulated period of time.

11. Pursuant to the elaborate advertisements and promises that were made by the respondent no.1 , they further lured and enticed the complainants to book a unit in the project by offering a scheme of 'no EMI till possession' wherein the respondent no.1 assured the complainants that in the event they availed financial assistance specifically from the respondent no.2, then the respondent no.1 would undertake to make payment of the Pre-EMI amount till possession of the unit as under the subvention scheme.
12. That, in order to further persuade the complainants to book a unit in the project, respondent no. 1 offered a scheme of 'no rent-no EMI' till actual possession. Further, it is not out of place to mention herein that the respondent no. 1 fraudulently and dishonestly also induced and deceived the complainant by offering a benefit scheme of assured rent of Rs. 14,500/- p.m. till the actual possession is handed over to the complainants herein. However, it is submitted that the respondent no. 1 herein has not been paying the assured rent to the complainants herein since April 2020. Thereafter, the complainants received an email dated 02.04.2019 wherein, the respondent no. 1 confirmed to complainants that the assured rental scheme has been confirmed. Moreover, it also mentioned that the complainants will be provided with assured rental of Rs. 14,500 which is scheduled to be disbursed on 15th date of every month starting from March, 2019.
13. That it is pertinent to mention that the Unit booked by the complainants was under subvention scheme under which the respondent no. 1 would bear the cost of Pre-EMI till the application of occupation certificate. Pursuant to the unit booked under subvention scheme, a Tri-partite subvention agreement dated 20.03.2019 has been executed between the complainants, the respondent no. 1 and respondent no. 2 in which the complainants have mandated and authorized the respondent no. 2 to pay the loan amount

directly to the respondent no. 1 and they cannot be held responsible by any stretch of imagination.

14. That as per the assurances given by the respondent no. 1 in terms of the agreement, the terms were devised in such a manner that the respondent no. 1 should be liable to pay the interest and EMI of the respondent no. 2 till the occupation certificate has been applied by the respondent no. 1 and the same was in knowledge of the respondent no. 2. The respondent no. 2 was fully aware of the facts and circumstances of the said mechanism and after due diligence granted the loan to the complainant. Thus, the liability to pay the EMI and interest to the respondent no. 2 was solely the obligation of the respondent no. 1 to the complete exclusion of the complainant. Apart from the tripartite agreement already annexed herewith, it is pertinent to point out that the respondent no.1 also promised the complainants that the respondent no.1 should solely bear the cost of the Pre-EMI till application of the occupation certificate till possession.
15. That the respondent no.1 has stopped paying the assured monthly rental amount of Rs. 14,500 due every month from 19 March, 2020 onwards to the complainants. It is pertinent to mention that, further no payments were made for the same and also no substitute arrangements were made for complainants after March, 2020. The complainants sent number of reminder mails regarding payment of assured rental however, no satisfactory reply was provided by the respondent no. 1.
16. That, the complainants have paid an amount of Rs. 39,11,004/- till date. The complainants anticipated and believed that the money collected by you and received from the complainants would be utilized in a manner that was commensurate to the stage of construction and further that the complainants would be provided with timely updates regarding the construction work at site. Yet, the complainants herein had to constantly

follow up and chase the respondent no. 1 to inquire about the status of the project, but no satisfactory response or concrete update was provided.

17. That, the complainants were shocked and appalled when visited the project site, as they saw no construction was going on whatsoever and thereby giving the impression that the respondent no. 1 has abandoned the project completely. Even as per their own website, only excavation work is there, and the construction work has not been started yet.
18. That, it is unambiguously lucid that No Force Majeure was involved and the project has been at a standstill since several years, therefore the respondent no.1 cannot take a plea that the construction was halted due to the Covid-19 pandemic. It is submitted that the complainants have already made a total payment of Rs. 39,11,004/-, to the respondent no.1 towards the residential unit booked by them. Despite paying such a huge sum towards the residential unit, the respondent no.1 has failed to stand by the terms and condition of the builder-buyer agreement and the promises, assurances, representations etc., which they made to the complainants at the time of the booking the abovesaid unit.
19. That the complainants herein are constrained and left with no option but to cancel the allotment bearing no HSG-026-west End 1-1602, in the project "Turning Point" at the Gurgaon Sector 88B, Gurgaon, Haryana. Further, the Complainants 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/flat, as per the terms and conditions of the agreement executed by the respondent no. 1 and even otherwise are entitled to the same. Further, the complainants herein reserve their right(s) to add/ supplement/ amend/ change/ alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Hon'ble Tribunal.

C. Relief sought by the complainant:

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

(i) Direct the respondent to refund the total amount paid by the complainant with interest at the prescribed rate of interest from the date of payment.

21. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds:

22. That the present complaint is an abuse of the process of this 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 sole purpose of extracting unlawful gains from it.

23. It is further provided that the complainant made several visits to the office of respondent to know whereabouts of the project "Turning Point". Thus, the complainant enquired about the veracity of the project and was satisfied with every approval deemed necessary for the purpose of the development of the subject project of respondent. He had immense and deep interest in the project developed by it and booked a unit bearing no. HSG-026-WESTEND-1-1602, having admeasuring carpet area 1898 sq.ft. situated at Sector 88B, Gurgaon, Haryana. The complainant vide application form dated 24.12.2018 applied for residential apartment in the subject project of it and paid Rs.2,00,000/-. After much pursuance on 25.02.2019, a buyer's agreement was executed between the parties and unit bearing no. HSG-026-

WESTEND-1-1602, having admeasuring carpet area 1898 sq.ft. in the said project for a total sale consideration of Rs. 86,77,240/-.

24. It is submitted that since starting the respondent was committed to complete the project and has always tried the level best to adhere with the terms as provided in the agreement and complete the project as per the milestone. However, the same was obstructed either due to non-payment of the instalment by various allottee(s) including the complainants and due to hindrances in between which were purely beyond the control of the respondent.
25. It is submitted that the complaint is premature. There is no cause of action arising in favour of the complainants. As per clause 5 of the agreement the possession of the unit in the question was proposed to be completed as per the date provided at the time of the registration of the project. It is to note, that as per the registration certificate the project in question is proposed to be completed within 90 months from the date of registration i.e., 15.09.2017. It is submitted that present project is a registered project under RERA as per which the construction of the phase of the project should be completed by 15.03.2025. Therefore, the present complaint is premature.
26. That the complainants are trying to mislead the Authority by concealing facts which are detrimental to this complaint at hand. However, it is submitted that the concerned project is registered with HRERA, Gurugram and the Authority has granted registration no. 213 of 2017; dated 15.09.2017. In accordance with the registration certificate granted by the Authority, the due date of completion of the project should be on or before 15.03.2025, and the same was duly communicated to the complainant. As per clause 5 of the agreement the possession of the unit in the question was proposed to be completed as per the date provided at the time of the registration of the project. It is to note, that as per the registration certificate the project in

question is proposed to be completed within 90 months from the date of registration i.e., 15.09.2017. Therefore, the due date of the possession of the unit in question comes out to be 15.03.2025.

27. Therefore, there arises no occasion of delayed possession and thus this complaint at hand is devoid of any cause of action. The only valid inference that can be drawn out of the futile attempt of the complainant by filing this complaint is that the complainant is an investor and seeks speculative gains. With huge slump in the Real Estate sector the complainant now seeks to exit the concerned project and claim the amount invested by him. Therefore, this complaint is liable to be dismissed at the very outset.
28. It is submitted that present project is a registered project under RERA as per which the construction of the phase of the project should be completed by 15.03.2015. Therefore, the complaint is premature and is *prima-facie* liable to be dismissed..
29. It is submitted that the complaint filed by complainant is on baseless and absurd ground. It is pertinent to note, that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the DTCP, Haryana, Chandigarh and any subsequent amendment in the unit plans as may be made from time to time by the company & approved by the TCP, Haryana, Chandigarh from time to time.
30. 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.

31. 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.
32. 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.
33. 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.



34. 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.
35. That despite, after above stated measures taken and obstructions, the nation was yet again hit by the second wave of covid-19 pandemic and gain 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.

36. It is a matter of fact, that the complainant has merely paid a partial amount of money and still a substantial amount towards the agreed sale consideration is due to him. In spite of being aware that the payment was to be made as per the stage wise development the complainant has only paid an amount of Rs. 39,11,004/- and yet an amount of Rs. 47,66,236/- is to them.
37. 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.
38. All other averments made in the complaint were denied in toto.
39. 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) made by the parties.

E. Jurisdiction of the authority

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

40. 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

41. 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.

42. 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 complainants being investors.

43. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, is not entitled to the protection of the Act and 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 consumer 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 it 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 complainant is a buyer and 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;"

44. 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 complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him 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. 0006000000010557 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 allottee being investor is not entitled to protection of this Act also stands rejected.

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

45. 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.
46. 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 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.

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

i. Direct the respondent to refund the total amount paid by the complainant with interest at the prescribed rate of interest from the date of payment.

47. 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.

48. During the proceedings held on 12.08.2022, in those cases, 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.

49. 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.

50. 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.

51. 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*

52. 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.
53. However, while paying sale consideration against the allotted units, the allottee raised loans from the financial institution under the subvention facilities. While refunding the amount deposited by the allottee(s) who has raised loans against the allotted units, the promoter shall clear such of the loan amounts upto 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

54. 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):
- The respondent-builder is directed to refund the paid-up amount received from the allottee deposited by him against the allotted unit along with interest at the prescribed rate of 10.70% per annum from the



HARERA
GURUGRAM

Complaint No. 220 of 2022 & 2 other
Complaints

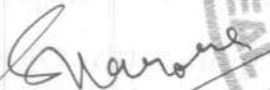
date of each payment till the date of actual realization within the timelines as prescribed under rule 16 of the Rules, 2017.

ii. While paying against the allotted unit, the allottee raised loan from the financial institution and that amount was to be paid back to it. So, while refunding the amount deposited by allottee who raised loans 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.

47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

48. The complaints stand disposed of. True certified copies of this order be placed in the case files of each matter.

49. Files be consigned to registry.


Sanjeev Kumar Arora
Member

v.l - 3
Vijay Kumar Goyal
Member
21.04.2023

Haryana Real Estate Regulatory Authority

HARERA
GURUGRAM