

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

Complaint no. : 286 of 2019
Date of first hearing : 23.05.2019
Date of decision : 21.08.2019

Mrs. Deepa Yadav
R/o. House no. 587P, First Floor,
Sector 15 Part I, Gurugram (Haryana)

Versus

Complainant.

M/s Vatika Limited.
(through its authorized representative)
Office at: Vatika Triangle, 7th Floor,
Sushant Lok, Phase-I,
Gurugram-122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Rajesh Rao
Shri Venkat Rao

Husband of the complainant
Advocate for the respondent

ORDER

1. A complaint dated 31.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mrs. Deepa Yadav against the promoter M/s Vatika Limited, (through its authorized representative) in respect of plot no.16, Primose, SF, ST. 83E-7, Sec.83E, VIN in the project "Vatika India Next" located at Sector 83, Gurugram on account of violation of

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obligation of the promoter under section 11(4)(a) of the Act
ibid.

2. Since the floor buyer agreement dated 24.09.2009 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Vatika India Next, Sector 83, Gurugram.
2.	Nature of real estate project	Residential
3.	Allotted plot/unit no.	Plot no. 16, Primose, SF, ST.83E-7, Sec.83E, VIN (shifted from HSG-014/Plot no. 16/ST.83E-7/240/SF/83E)
4.	Admeasuring area of the allotted plot no.	1056.33 sq. ft. (Original area 881.41 sq. ft.)
5.	Project area	182 acres
6.	RERA Registered/ not registered	Not registered
7.	DTCP license no.	113 of 2008 dated 01.06.2008 (Pg. 73 of the complaint)
8.	Date of floor buyer agreement	24.09.2009 (Annx P/1)

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9.	Total consideration as per statement of accounts	Rs. 30,39,817.54/- (Annx R-3)
10	Total amount paid by the complainant till date	Rs. 34,50,407/- including taxes(Annx R-3)
11	Intimation of change in independent floor and area	10.07.2013 (Pg. 75 of the complaint)
12	Addendum to floor buyer agreement	04.09.2014 (Pg. 72 of the complaint)
13	Payment plan	Construction linked plan
14	Due date of delivery of possession as per floor buyer agreement	24.09.2012 (clause 10.1: -3 years from the date of execution of agreement)
15	Date of receipt of occupation certificate	21.09.2018 (Annx R-2)
16	Delay of number of months/ years till 21.08.2019	6 years, 10 months and 28 days

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A floor buyer agreement dated 24.09.2009 for the abovementioned plot is available on record. The offer of possession letter dated 10.09.2015 was issued by the respondent without obtaining occupation certificate which is in violation of section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondent through his counsel appeared on 27.03.2019.



The case came up for hearing on 23.05.2019, 17.07.2019 and 21.08.2019. The reply filed by the respondent on 27.02.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of the present complaint are that believing on the assurances and representations given by the representatives of the respondent, on 24.09.2009, a floor buyer agreement was executed between the respondent and original purchasers for sale of the independent dwelling unit no.62 at 2nd floor, Sector 82 & 84 having built up area 881.4 sq. ft. for total sale price of Rs. 24,71,518/-. It is pertinent to mention here that in clause 10.1, it is specifically mentioned that schedule for possession of the said dwelling unit is 3 years from the date of execution of the floor buyer agreement.
7. In clause 10.2, it is specifically mentioned that possession shall be offered after obtaining certificate of occupation and use from the competent authority. As per clause 11.5, in case of failure to deliver possession within 3 years from the date of agreement then compensation @Rs.5/- per sq. ft. of the built up area of the said independent dwelling unit per month for



the period of such delay beyond 3 years shall be paid to the allottee by the respondent.

8. The above-said unit was transferred by way of assignment to the 2nd purchaser and the said assignment was duly endorsed by the respondent in favour of 2nd purchaser, after taking administrative charges of Rs. 88,141/- and other outstanding dues of Rs. 3,57,880/-. Thereafter, Smt. Shelka vide application requested for substitution of Mr. Deepak Arora (3rd purchaser), in place of Ms. Shelka and the said substitution was duly agreed by the respondent on payment of Rs. 5000/- and endorsement to this effect was duly recorded by the respondent.
9. Mr. Deepak Arora (3rd purchaser) sold the said unit to the complainant and the rights in the said unit was transferred in favour of the complainant and endorsement to this effect was duly recorded on 29.8.2014 on payment of administrative charges of Rs. 1,58,450/-. The respondent had to deliver the possession of the said floor to the vendor of the complainant latest by 24.09.2012.
10. The complainant submitted that before the purchase of the above-said unit, the area of the independent floor changed from 881.4 sq. ft. to 1,056.33 sq. ft. as also the number system



of the above-said floor was also changed from: HSG-014-floor no.2-plot no.14-ST.83E-7-Sector-83E to plot no. 16, Primrose, SF, ST.83E-7, Sec.83F, VIN and intimation to this effect was sent to Mrs. Shelka (2nd purchaser) vide letter dated 10.7.2013. And also addendum to floor buyer agreement dated 24.09.2009 was also executed on 04.09.2014 between the company and Mr. Deepak Arora (3rd purchaser) in this regard.

11. The complainant submitted that vide letter dated 7.8.2015, the complainant was informed about the commencing of the process of handing over the above-said unit and it was intimated that prior to taking over the unit, the complainant has to pay the total dues of Rs.714243.39/-. It was also intimated that the unit has to be taken over by the due date intimated in the "offer of possession", failing which holding charges @ Rs. 5/- per Sq. ft. per month for the entire period of delay shall be charged. It was also intimated that in terms of agreement, maintenance agency is being appointed for providing maintenance and related services to the complex and the owners of the unit are required to pay the maintenance charges as applicable/billed by the maintenance agency. Maintenance Agreement will be signed at the time of possession.

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12. The complainant submitted that vide letter dated 10.9.2015, possession of the above-said unit was offered to the complainant and it was said to the complainant that the offer of possession is valid only upto 7.10.2015, after which, penalty/holding charges will be applicable in terms of the agreement in case possession is not taken over.
13. It was alleged by the complainant that the possession was offered to the complainant without obtaining occupation certificate and completion certificate by the respondent. It was further alleged by the complainant that respondent has failed to give any reply over the said issues raised by the complainant. So, the complainant did not take the possession of the unit despite paying complete dues. But Vatika Ltd had not having completion certificates and same may be confirmed from Senior Town Planner, Gurugram Circle, Gurugram letter memo no STP(G)/2016/23 dated 29.01.2016 of addressed to the Director General, Town & Country Planning, Haryana, SCO NO. 71-75, Sector-17C, Chandigarh regarding forwarding of request of Vatika Ltd along with other requisites for grant of part completion certificate of few licensees including the license no 113 of 2008 dated 01.06.2008. (Procured through RTI application).



14. That the complainant visited the respondent's office and requested to withdraw the offer of possession as without completion certificate, possession cannot be offered and also objected to unjustified demand like holding charges and maintenance charges.
15. That vide letter dated 22.5.2018, the respondent informed that we are waiving off the holding charges (Rs. 200890/-) and you need to pay off 100% maintenance charges (Rs. 57857/-) to close the possession. The dues are calculated until 31st May, 2018.
16. It is further pertinent to mention here that as per laws, possession can be delivered only after completion and occupation certificates which are absent in the present case. Without these certificates, the offer of possession/possession is illegal. Resultantly, the offer of possession letter dated 10.9.2015 or 7.8.2015 issued by the respondent is illegal and void ab initio and can not affect the right, title and interest of the complainant in any manner. As a result, the respondent is not entitled for any interest or holding charges as mentioned by him in the offer of possession letter dated 10.9.2015 or 7.8.2015.

17. As per clause 10.1, it is specifically mentioned that schedule for possession of the said dwelling unit is 3 years from the date of execution of the floor buyer agreement. In clause 10.2, it is specifically mentioned that possession shall be offered after obtaining certificate of occupation and use from the competent authority. Likewise, as per clause 11.5, in case of failure to deliver possession within 3 years from the date of agreement then compensation @ Rs.5/- per sq. ft. of the built up area of the said independent dwelling unit per month for the period of such delay beyond 3 years shall be paid to the allottee by the respondent.
18. The complainant submitted that she is entitled for interest, as per section 18 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, for the delayed period in handing over the actual possession of the flat.

Issues to be determined: -

- i) Whether the respondent is liable to offer a valid possession letter to complainant after withdrawing/cancelling the offer of possession dated 10.9.2015 immediately as same was offered in the

- absence of completion and occupation certificates which is mandatory before the offer of possession?
- ii) Whether the complainant is entitled for delayed possession charges at the prescribed rate of interest as per section 18 (1) proviso of the Act?
 - iii) Whether the respondent is liable to withdraw unjustified demand like holding charges and maintenance charges in the absence of completion and occupation certificates which is mandatory before the offer of possession?
 - iv) Whether the complainant is entitled to possession in the facts and circumstances of the present case?

Reliefs sought:-

19. The complainant is seeking following reliefs from the respondent: -

- a) To offer a valid possession letter to complainant after withdrawing/cancelling the offer of possession dated 10.9.2015 immediately as same was offered in the absence of completion and occupation certificates which is mandatory before the offer of possession.
- b) To pay interest, as per section 18 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, for the delayed period in handing over the actual possession of the flat.

- c) To withdraw unjustified demand like holding charges and maintenance charges in the absence of completion and occupation certificates which is mandatory before the offer of possession.
- d) To deliver possession immediately after receiving the completion and occupation certificates which is mandatory before the offer of possession.

Respondent's reply: -

20. The respondent submitted that the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
21. The respondent submitted that the complainant has not approached this authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.
22. It is submitted that the complaint is devoid of merits and should be dismissed with costs.
23. It is contended by the respondent that the complainant is trying to shift its onus of failure on the respondent as it is the complainant who failed to comply his part of obligation and

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miserably failed to take possession and pay the over dues payment as per the affidavit and agreement.

24. It is denied that the respondent was not having completion and occupation certificate. It is submitted that as per the buyer's agreement endorsement and affidavit, deadline of the handing over of the possession was on or before September, 2018, as the construction/development of the unit was completed in time and accordingly possession was offered to the complainant. It is pertinent to mention here that the respondent obtained the occupation certificate in respect of Residential building on Plot no.16, Street No.2.1, Vatika India Next, Sector-83, Gurugram.

25. It is submitted that the respondent issued offer of possession letter dated 10.09.2015 or 07.08.2015 as per the agreement duly agreed by the complainant. However, it is submitted that the complainant failed to take possession of the unit allotted even after occupation certificate was obtained.

Determination of issues: -

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under: -

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26. In respect of **issue no. i, ii, iii and iv** raised by the complainant, it is evident from the perusal of records that as per clause 10.1 of the floor buyer's agreement dated 24.09.2009, possession of the allotted unit was to be delivered within a period of 36 months from the date of execution of floor buyer agreement, which on calculation comes out to be 24.09.2012. However, the possession was offered by the respondent vide letter dated 10.09.2015 i.e. after a delay of 2 years, 11 months and 17 days and on perusal of record it is observed by the authority that the occupation certificate was obtained by the respondent on 21.09.2018 (**Annexure R2**), hence, the offer of possession letter dated 10.09.2015 is not valid in the eyes of law.
27. Since the respondent has not offered the possession of the plot/unit in question till date, hence, the complainant is entitled for delay possession charges at the prescribed rate of interest of 10.45% per annum for every month of delay in terms of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the Authority: -

28. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the



promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage. 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.

29. Project is not registered with the Authority. Since the project is not registered, the Authority has decided to take suo moto cognizance and direct the registration branch to initiate necessary action against the respondent for not getting the project registered.
30. Arguments heard. As per clause 10.1 of the floor buyer agreement dated 24.09.2009 for unit no. plot no.16, Primose, SF, ST. 83E-7, Sec.83E, VIN in the project "Vatika India Next" located at Sector 83, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of agreement i.e. by 24.09.2012. A copy of occupation certificate received by the respondent on



21.09.2018 which has been placed on record as Annexure R-2 but the offer of possession has not been made to the complainant. As such the complainant is entitled for delayed possession charges at the prevalent prescribed rate of interest.

Decision and directions of the Authority:-

31. Keeping in view the facts and circumstances of the case, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following direction to the parties: -

- The respondent is directed to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum for every month of delay from due date of delivery of possession i.e. 24.09.2012 till actual date of offer of possession as per the provisions of section 18 (1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- The interest so accrued from due date of delivery of possession i.e. 24.09.2012 till date of order be paid within 90 days and thereafter monthly interest at the prescribed rate of 10.45% per annum be paid on or before 10th of each subsequent English calendar month.

- Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% per annum by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- The promoter shall not charge anything from the complainant which is not the part of the agreement.

32. The order is pronounced.

33. Case file be consigned to the registry.

34. Copy of this order be endorsed to the registration branch.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 21.08.2019

ROLI SRIVASTAVA

LEGAL ASSISTANT

AUTHENTICATED

GURBACHAN KAUR
LEGAL OFFICER