

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

Complaint no.	:	7105/2022
Date of filing complaint:		14.11.2022
First date of hearing:		15.03.2023
Date of decision	:	20.09.2023

Sunil Sood & Preeti Sood Resident of: Flat no. 301, Tower E-2, Vatika G21, Gurugram, Haryana.	Complainants
Versus	
1. M/s Vatika. Ltd. Regd. office: Vatika triangle, 4 th Floor, Sushant lok, Phase-I, Block A, Mehrauli-Gurugram road, Gurugram- 122002. 2. M/s India Bulls Housing Finance Ltd. Regd. office: 5 th Floor building no. 27, KG Marg, Connaught Place, New Delhi-110001.	Respondents

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Gaurav Bhardwaj Advocate	Complainants
Shri Harshit Batra Advocate	Respondent no. 1

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottee 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 complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Vatika Turning point Phase I
2.	Project area	18.80 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav Warehousing Pvt Ltd and 9 others
6.	RERA Registered/ not registered	213 of 2017 dated 15.09.2017
7.	Unit no.	Westend-8-302
8.	Unit area admeasuring	936.89 sq. ft.



	(Carpet area)	(Page 30 of the complaint)
9.	Date of execution of Flat buyer agreement between the original allottee and the respondent	20.03.2018 (Page no. 59 of complaint)
10.	Possession clause	7.1 A Schedule for possession of the said Apartment Subject to timely payment of amounts due by the Allottee to the Promoter per agreed payment plan/schedule, as given in Schedule D of the Agreement, the Promoter agrees and understands that timely delivery of possession of the Apartment along with parking to the Allottee(s) and the common areas to the association of Allottee's or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment along with parking as per agreed terms and conditions unless there is delay due to "force majeure", Court/Tribunals/NGT orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the

		Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.
11.	Due date of possession	Cannot be ascertained.
12.	Tripartite agreement (Amongst Preeti Sood, Sunil Sood, Vatika Ltd., and India Bulls)	Date: 30.03.2018 Amount: Rs. 62,48,000/-
13.	Rental Scheme	Rental agreement date: 1. 01.02.2018 to 31.12.2018 2. 01.02.2021 to 31.12.2021
14.	Total consideration sale	Rs. 83,40,980/- (As per page no. 66 of complaint)
15.	Total amount paid	Rs. 37,27,655/- (As per page no. 35 of reply)
16.	Occupation certificate /Completion certificate	Not Obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants are allottees within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016.
4. The respondent no. 1 advertised its new project namely Vatika Turning Point in sector-88B, District Gurgaon. Respondent no. 1 painted a rosy picture of the project in its advertisements making tall claims representing that the project aims at providing a

residential community where homes have been created without compromising on facilities and amenities.

5. Believing the tall claims made by respondent no. 1 in the said advertisement, the complainants paid a visit to respondent no. 1's office wherein they were assured by respondent no. 1 that they would be provided a flat in the said project at an alluring rate and the same would be provided as per the Subvention scheme according to which no Pre-EMI installment has to be paid till possession is handed over and respondent no. 1 will also provide Rental house till possession is handed over as per scheme i.e. no EMI/Rent till possession. Accordingly, deposing faith in the assurances and representations of respondent no. 1, the complainants agreed to book a flat in the said project.
6. Thereafter, on 31-01-2018, the complainants booked the aforesaid unit for a total consideration of Rs.83,40,980/- in the project by paying an amount of Rs.4,00,000/- towards the booking, followed by a payment of Rs. 5,14,014/- on 06-03-2018 in accordance with the demand raised by the respondent no. 1.
7. The complainants had clearly informed respondent no. 1 that they did not have the requisite finances in order to pay the huge amount of Rs.83,40,980/- (apart from the initial booking amount) on the date of booking, to which respondent no. 1 had assured them to provide the flat under the Subvention scheme plan under which the complainants were required to only pay some initial amount out of the total sale consideration and rest of the amount will be disbursed by bank under Subvention scheme and till possession all Pre-EMIs will be borne by respondent no. 1.

8. Respondent no. 1 published an advertisement in the newspaper as well by confirming the booking of the unit with subvention and rental benefit, namely- "No EMI and No Interest Scheme till OC + rental reimbursement till possession".
9. Thereafter, on 26.02.2018 the builder buyer agreement was also executed for the said unit in the project.
10. Respondent no. 1 as per its assurance provided the loan facility to the complainants through India Bulls Housing Finance Limited. The complainants availed of the loan facility by obtaining a loan of Rs. 64,00,000/-. The said loan amount was to be disbursed as per the stages of construction.
11. Till June 2018, the complainants had made a payment of (self Rs 914014/- & through bank loan Rs. 3614298/-) as against the total sale consideration of Rs. 83,40,980/- as and when demanded by the respondent no. 1.
12. The respondent no. 1 at the time of booking and execution of the agreement to sale had assured that the complainants shall be offered a ready-to-move-in home at Vatika INXT to stay until the House of the complainants gets ready for possession. Respondent no. 1 had assured that the rent of the said flat shall also be borne by respondent no. 1 till the possession of the said booked unit in the project, and documents in this regard were also executed by the complainants and respondent no. 1.
13. As part of the rental scheme, the license agreement was executed for 36 months with the Flat owner under which another lease agreement was executed between the complainants and respondent no. 1 for a period of 11 months with effect from

01.02.2018 till 31.12.2018 and subsequently, another lease agreement was executed for a period of 11 months with effect from 01-02-2021 till 31-12-2021. The said leasing arrangement has been made in order to ensure rental payment of assured return to the complainants from respondent no. 1.

14. Thereafter, in September 2019, the complainants visited the site to see the construction status of the project but were stunned to see that no construction was going on at the project site as per the promises made by respondent no. 1.
15. Thereafter, upon repeated requests of the complainants, respondent no. 1 failed to pay Pre EMIs to the bank, and not give rental scheme benefits to the complainants. Respondent no. 1 is neither handing over possession of the booked unit nor executing a fresh license agreement of the unit which was given on lease to the complainants on account of assured rental benefit.
16. At the time of booking of the unit, respondent no. 1 had assured that the project shall be handed over within a period of 3 years from the date of booking but to the contrary, the construction at the project site has not been initiated yet. This clearly indicates misrepresentation on the part of respondent no. 1. It is further to note that the said period of 3 years of handing over of possession can be substantiated by the fact that the Tripartite agreement along with the license agreement of the rented unit was executed for a period of three years.
17. The complainants in order to take possession of the unit approached respondent no. 1 as the license agreement as executed by respondent no. 1 with the complainants came to an end on

- 01.02.2021 but the project was not ready for possession till 01.02.2021. However, respondent no. 1 had entered into a fresh license agreement for the rental accommodation till 31.12.2021.
18. IHFL, who provided the loan has now started threatening the complainants regarding the payment of Pre-EMI as respondent no. 1 has stopped paying the same and violating the terms and conditions of the MOU, tripartite agreement, and agreement to sell. That at the time of booking of the said unit, it has been assured by respondent no. 1 that the Liability qua the payment of the loan shall arise only after taking over possession of the unit as allotted to the complainants but presently respondent no. 1 has stopped making payments on account of Pre-EMI to IHFL.
19. Thereafter, the complainants approached respondent no. 1 in July 2021 to enquire about the handing over of possession of the unit in the project but respondent no. 1 pressurized the complainants to swipe the unit and further said that if the complainants did not swipe the unit from the said project, respondent no. 1 would not make the payment of PEMI to IHFL.
20. IHFL has illegally disbursed the amount in favor of respondent no. 1 without following the payment plan and without considering the stage of construction of the project. IHFL has released the second payment after adjusting the interest amount to respondent no. 1, but the first payment has been released in full rather than after adjusting the interest amount from the original demand. Further, IHFL disbursed the extra amount of INR 836257/- in the loan account of the complainants and adjusted it against interest, when the amount should have been adjusted only from the original

amount. That the money disbursed by IHFL to respondent no. 1 is not as per the actual stage of construction.

C. Relief sought by the complainants:

21. The complainants have sought the following relief(s):
- i. Direct the respondent to refund an amount of Rs. 45,28,312/- paid by the complainants on account of the purchase of said unit.
 - ii. Direct the respondent to make the payment of Rs. 6,27,860/- paid by the complainants till July 2023 on account of pre-EMIs, and direct to pay pre-EMIs till clearance of all loan dues.

D. Reply by the respondent no. 1

22. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's agreement dated 20.03.2018.
23. The present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Adjudicating Officer/Civil Court.
24. The complainants are not "Allottees" but "investors" who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment

in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the complainants.

25. The complainants approached respondent No. 1 and expressed interest in booking an apartment in the residential group housing colony developed by respondent No. 1 known as "Turning Point" situated in sector 88B, Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent inquiries with regard to the project, and only after being fully satisfied with all aspects, that they took an independent and informed decision, uninfluenced in any manner by respondent No. 1, to book the unit in question.
26. Thereafter the complainants, vide an application form dated 31.01.2018 applied to respondent No. 1 for provisional allotment of the unit. Pursuant thereto, a unit bearing no HSG-026-West End-8-302, measuring 1460 sq. ft. was allotted to the complainants. That the complainants consciously and willfully opted for a construction-linked payment plan for remittance of sale consideration for the unit in question and further represented to respondent No. 1 that they shall remit every installment on time as per the payment schedule.
27. Thereafter, a buyer's agreement dated 20.03.2018 was executed between the complainants and the respondent No. 1.
28. As per clause 7.1 of the agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained.

29. Respondent no. 1 has its project registered with the Hon'ble Authority. That the present complaint filed by the complainants is premature. There is no cause of action arising in favor of the complainants. It is submitted that as per clause 5 of the Agreement, Respondent No. 1 is under an obligation to complete the said project in consonance with the validity period of registration of the project, i.e., 90 months from the date, it was issued i.e., 15.09.2017 which comes out to be 15.03.2025 and the same has been enshrined under clause 5 of Buyer's agreement.
30. Section 18 read with Section 19 of RERA Act, 2016, and Rule 15 read with Rule 16 of H-RERA Rules 2017 provide for the right of the allottee to demand possession along with interest and compensation only on failure of the promoter to offer possession in accordance with the agreement to sale duly completed by the date specified therein. The construction of the said project is well within the time and will be completed within the agreed time. Hence, the present complaint is premature.
31. The complaint under reply is filed by complainants on baseless and absurd grounds. It is clearly mentioned under clause 7.1(A) of the agreement that timely payment of amounts due by the complainants as per the agreed payment schedule is the essence of the agreement.
32. The construction of the said project is going on at a very good pace and respondent no. 1 will offer the possession of the units to the respective allottees within the agreed time. As per the Buyer's agreement dated 20.03.2018 executed between the parties, the total sale consideration of the said unit is Rs. 83,40,980/-. Out of the

total sale consideration, the complainants have paid only an amount of Rs. 37,27,655.01/-.

33. The provisions of the Act relied upon by the complainants for seeking assured returns and interest cannot be called in to aid in derogation and ignorance of the clauses of the buyer's agreement and as per the prevailing laws. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the clauses of the application form.
34. It is submitted that the construction of the project was affected on account of unforeseen circumstances beyond the control of respondent no. 1 such as orders of Hon'ble SC, NGT, directions of EPCA, Haryana Pollution Control Board, Commissioner Municipal Corporation, Gurugram, and Covid-19. Further, the project was affected by the construction of NH 352 W.
35. That a period of 582 days was consumed on account of circumstances beyond the power and control of respondent no. 1, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure.
36. The due date for handing over the possession of the said unit has not expired and respondent no. 1 is in the process of handing over the possession of the unit within the agreed timeline. Section 18 comes into the picture only when the promoter fails to deliver the possession within the agreed timeline but here, the said due date has not been reached to date and respondent no. 1 has been constructing the said project as per the timelines given to the

allottees and will definitely give the possession of the said unit to the complainants as per the terms of the agreement.

37. The contentions alleged by them in regard to the Pre-Emi facility have no foundation in the buyer's agreement and hence do not sustain in the eyes of the law.
38. The complainants were well aware of the assured rentals which had already been provided to them. That a Master License agreement was executed between respondent no. 1 and Ms. Salini Mehta for sub-leasing a unit (Unit No. 301 at Gurgaon21) to the complainants as a benefit to the allotment. The said agreement was executed for a period of 36 months from 01.02.2018. That pursuant thereto, a Lease agreement dated 05.02.2018 was executed between the complainants and respondent no. 1 whereby a unit for their accommodation was leased out to them and it has been mutually decided that respondent No. 1 has agreed to lease out the said unit for a period of 11 months w.e.f. 01.02.2018 to 31.12.2018 as per the benefit scheme availed by the complainants. It is submitted that respondent no. 1 has always abided by the terms and conditions of the said agreement.
39. Thereafter, the tripartite agreement dated 30.03.2018 was executed between the complainants and respondent no. 2. The complainants availed a loan amounting to Rs. 62,48,000/- from respondent no. 2 for making the payment towards the unit booked in the project of respondent no. 1. The complainants were offered with subvention scheme under which respondent no. 1 undertook the liability to pay the Pre-Emi in regard to the loan taken by the complainants up to the subvention period mentioned under the

tripartite agreement. It is pertinent to note that as per clause 4 of the tripartite agreement, respondent No. 1 assumes the liability on account of interest payable by the complainants to respondent no. 2 for a period of 42 months from the first date of disbursement of the loan facility, i.e., up to 30.03.2022. Respondent no. 1 has duly performed its obligations by duly paying the said Pre-Emi's to respondent no. 2.

40. Respondent no. 1 in lieu of its commitments executed a lease agreement dated 24.03.2021 was executed between the complainants and respondent no. 1 whereby it has been mutually decided that respondent no. 1 has agreed to lease out the unit for a period of 11 months w.e.f. 01.02.2021 to 31.12.2021 as per the benefit scheme availed by the complainants.
41. The plea of the complainants in regard to the assured rental scheme has no foundation in any agreement or communication between the parties. Respondent no. 1 offered the assured rental scheme in lieu of good gesture and goodwill.
42. Complainants with mala fide intention have failed to remit total sale consideration and themselves defaulted in remitting installments, hence, it does not lie in the mouth of the complainants to claim delayed possession charges.
43. The present claim is barred by limitation. Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after over 4 years of passing of limitation.

E. Jurisdiction of the authority:

44. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. 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

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 the entire Gurugram District for all purposes 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

45. So, given 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.1 Objection regarding the entitlement of DPC on the grounds of the complainant being an investor.

46. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to: protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that a preamble is an introduction of a statute and states the main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon Careful perusal of all the terms and conditions of the space buyer's agreement, it is revealed that the complainant is a buyer and he has paid a total price of Rs. 27,99,009/- to the promoter towards the 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" about 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;"

47. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the space buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred to 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 the status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt Ltd. Vs. Sarvapriya Leasing (P) Ltd. Anr. has also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of a promoter that the allottee being an investor is not entitled to protection of this act also stands rejected.

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

48. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC, HC, NGT, EPCA to stop construction, notification of the district administration Gurugram, labor shortage, Covid 19, etc. The plea of the respondent regarding various orders of the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a

delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainant.

G.1 Direct the respondent to refund the amount paid by the complainants on account of the purchase of said unit.

G.2 Direct the respondent to make the payment to the complainants on account of pre-EMIs paid by the complainants till July 2023, and direct to pay pre-EMIs till clearance of all loan dues.

49. G1 and G2 being connected reliefs are taken up together.

50. 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, and that too for various sale considerations. 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 the 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 Ashish Kumar Aggarwal vs Vatika Ltd.*

seeking a 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 took a plea that the complaints being pre-mature were not maintainable. Secondly, the project had not been abandoned and there was a delay in completion of the same due to reasons beyond its control. Thirdly, the allotment was made under the subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

51. 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.

52. 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 inquiry to the inquiry officer in the office of the authority. The company secretary and the chief financial officer as well as the officer responsible for the day-to-day affairs of the project were also directed to appear before the inquiry officer. They were further directed to bring along with them the record of allotment and status of the project.
53. In pursuance to the above-mentioned directions passed by the authority and conveyed to the promoter, the inquiry 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 for some excavation work and pucca labor quarters built at the site. Some raw materials such as steel, dust, other material, and a diesel set were lying there. It was also submitted that despite the 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 inquiry 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 inquiry 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 the 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. The 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.
54. Thus, in view of the proposal given by the promoter to the authority on 30.09.2022 and corroborated by the report of the inquiry 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 it 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 the 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."

55. 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 a 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 a situation besides a refund of the paid-up amount i.e., Rs. 37,27,655/- given by the complainants to the developer with interest at the prescribed rate of interest i.e., 10.75% P.A., they may file a complaint separately seeking compensation before the adjudicating officer having powers under section 71 of the Act of 2016.

56. However, while paying sale consideration against the allotted unit, the allottee raised a loan 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 the loan amounts 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 issued by the Authority:

57. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter 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. 37,27,655 /- received from the allottee deposited by him against his allotted unit along with interest at the prescribed rate of 10.75% 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. Out of the amount so assessed, the amount paid by the bank/financial institution be first refunded in the account of the bank. Thereafter, the balance if any shall be refunded to the complainant along with the prescribed rate of interest.
- iii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.
58. Complaint stands disposed of.
59. File be consigned to the Registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.09.2023

HARERA
GURUGRAM