BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**348 of 2023**
Date of filing complaint:	**09.02.2023**
First date of hearing:	**10.08.2023**
Date of decision :	**12.10.2023**

Deepa Taneja Pradeep Kumar Taneja **Both RR/o:** A-1201, Bestech Park View Spa, Sector 47, Islampur (97), Gurgaon, Haryana 122018.	**Complainants**
Versus	
M/s Vatika Limited **address:** A-002, INXT City Centre, GF, block A, Sector 83, Vatika India Next, Gurugram-122012	**Respondent**
CORAM:	
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Shiv Kumar (Advocate)	Complainants
Sh. Mayank Grover (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Nature of the project	Group housing
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	M/s 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.	603, West End-7 admeasuring 1895 sq.ft.. (Page 51 of complaint)
8.	Date of allotment	19.12.2016
9.	Date of builder buyer agreement	05.06.2018
10.	Due date of possession	15.03.2025
11.	Total sale consideration	Rs. 1,15,88,318/- as per SOA dated 08.08.2017
12.	Amount paid by the complainants	Rs. 23,81,819/- as per SOA dated 08.08.2017
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

a. That, pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the

brochure circulated by them about the timely completion of a premium project, named as "Turning Point (Phase 1)"- a Group Housing colony with impeccable facilities having HRERA registration certificate no 213/2017, which was situated in Sector 88B, Gurugram, with impeccable facilities and believing the same to be correct and true, the complainants considered the purchasing a residential apartment bearing no. 603 ad-measuring 1895 Sq. Ft., West End- 7 in Vatika India Next 2, Sector 88B, Gurugram along with parking based on the carpet area in basement having total sale consideration of Rs. 1,15,88,318/-.

b. That on 19.12.2016, the complainants received an allotment letter from the respondent. Through which the respondent allotted the above said unit. Thereafter, a buyer's agreement was executed between the parties on 05.06.2018.

c. That having lapsed the time, the complainants approached the respondents. However, the respondent again as earlier times deferred the requests on one pretext or other and not acceded the legitimate request repeatedly made by the complainant. Compelling from the circumstances they also on number of time, personally visited the offices of the respondents. However, except hollow assurances, no satisfactory reply was given to them.

d. That contrary to the mandates and assurances given by the respondent, it has committed breach of legal obligations. The complainants again requested the respondent to refund the amount which were deposited by the complainants. However, it

is regretted to state that despite of acknowledgment of the liability, clear assurances and further intimation the opposite parties neither refund the amount nor gave any specific date for the payment of refund till date.

e. That now the respondent again refused to this new project "Vatika Turning Point" also and again offering for transfer the funds in the new project. Thus, the respondents, on the basis of the false, malafide intention and further by using the unfair trade practices with unfair means and tactics caused wrongful losses to the complainants and get wrong full gain to themselves whether the respondent was under the legal obligation to refund the payment under the demand but is is really regretful for the complainants that having passed a long time the respondent failed to discharge their obligations in terms of the business trade practices.

f. That in the views of the above circumstances the complainants have not left with any other alternate but to file the present complaint for the refund of the money of the complainants i.e., Rs. 23,81,819/-.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Direct the respondent to refund the entire amount paid by the complainants to the respondent.

ii. Direct the respondent to pay the litigation cost.

D. Reply by respondent:

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

(a) That the present complaint has been preferred by the complainants before the Authority, Gurugram under section 31 of the Act, 2016 present its scurrilous allegations without any concrete or credible contentions and hence liable to be dismissed as it is filed without any cause of action.

(b) That the contents of the complaint, deliberately failed to mention the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains.

(c) That the complainants have not approached the Authority with clean hands and has suppressed/concealed the relevant facts with the intent to mislead the Authority through the representation of the one-sided facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.

(d) That in around 2016, the complainants, learned about project "Turning Point" and repeatedly approached the respondent to know the details of the said project. The complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

(e) That after having keen interest in the above said project i.e., "Turning Point' launched by the respondent, the complainants upon its own examination and investigation desired to

purchase a unit and on 27.07.2016 booked a unit in the said project.

(f) That the respondent on 21.11.2016, invited the complainants for offer of allotment of unit and on 19.12.2016, the respondent vide allotment letter, allotted unit no. 603, west east-7 admeasuring 1895 sq.ft. with a condition that the allotment is tentative and may be altered due to alteration of unit numbering scheme.

(g) That the builder buyer agreement dated 05.06.2018 was executed between the parties for the unit bearing no. 603, Tower West End-7, having carpet area 1895 sq. ft. for a total sale consideration of Rs. 1,15,88,318/- in favour of the complainants in the aforesaid project against which they paid an amount of Rs. 23,81,819/-

(h) That as per clause 5 of the agreement the respondent was under an obligation to handover the possession to the complainants as per the timelines as disclosed at the time of registration of the project. As per the project registration no. 213 of 2017 the respondent was to complete the project within 90 months from the date of grant of RERA registration i.e., 15.09.2017 as per which the due date of possession comes out to be 15.03.2025.

(i) It is pertinent to bring to the knowledge of this authority that as per the agreement so signed and acknowledged by the respondent provided and estimated time period of 90 months for completing of the construction for the project i.e., **"Turning point"**, and the same could not be proceeded further and was

stopped in the mid-way due to various hindrances in construction of the project and which were unavoidable and purely beyond the control of it. Further, it is pertinent to mention that the project could not be completed and developed on time due to various hindrance such as government notifications from time to time and force majeure conditions, various orders passed by NGT, breakdown of Covid-19 pandemic, laying of GAIL pipe line, acquisition of sector road land parcels in the township and other such reasons stated above and which miserably affected the construction and development of the above said project as per the proposed plans and layout plans, which were unavoidable and beyond the control of it.

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

(k) That the complainants have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the Authority, for the

reasons stated above. It is submitted that none of the reliefs as prayed for by the complainants are sustainable before the Authority and in the interest of justice.

(l) Hence, the present complaint under reply is liable to be tagged along with the deregistration proposal filed before the Authority and the same may not be disposed of till the time the same comes to finality.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Finding on the objection raised by the respondent.

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

11. It is contended on behalf of the respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT hon'ble Supreme court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI, re-routing of high tension lines passing through the land of the project, impact on the

project due to policy of NIPL and TOD issued on 09.02.2016 and outbreak of covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden. Thirdly, due to covid-19 there may be a delay but the same has been set off by the govt. as well as authority while granting extension in registration of the projects, the validity of which expired from March 2020 for a period of 6 months.

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

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

13. On the basis of license no. 91 of 2013 dated 26.10.2013 issued by DTCP, Haryana, a residential group housing colony by the name of "Turning Point" was to be developed by the respondent/builder over land 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.

14. During the proceedings held on 12.08.2022, the authority observed & directed as under:

    a. Interim RERA Panchkula issued a registration certificate for the above project being developed by M/s Vatika Limited in the form REP-III prescribed in the Haryana Real Estate (Regulation and Development) Rules, 2017 vide registration no. 213 of 2017 on 15.09.2017 valid up to 15.09.2025 under section 5 of the Act ibid. But in spite of lapse of more than 4 years since grant of registration, It was alleged by the counsel of complainant that there is no physical work progress at site except for some digging work and appears to be abandoned project. No quarterly progress report is being filed by the

promoter giving the status of work progress required under section 11 of the Act, 2016.

b. The license no. 91 of 2013 granted by DTCP has expired on 26.10.2017 and the same is not yet renewed/revived, while BBA has been signed declaring the validity of license. It becomes amply clear that the promoter is not only defaulting/omitting in discharge of its obligations under the Real Estate (Regulation and Development) Act, 2016 but at the same time, violating the provisions of the Haryana Development and Regulation of Urban Area, Act 1975 also.

c. The authority directed the respondent to furnish the details of bank account along with the statements of all the accounts associated with these promoters.

d. In order to safeguard the interest of the allottees and keeping in view the above facts, the authority exercising its power under section 36 of the Act, directs the promoter's M/S Vatika limited to stop operations from bank accounts of the above project namely "Turning Point".

e. Therefore, the banks are directed to freeze the accounts associated with

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

15. It was also observed that work at the site is standstill for many years. So, the authority decided to appoint Shr. Ramesh Kumar DSP (Retd.) as an enquiry officer to enquire into the affairs of the promoter regarding the project. It was also directed that the enquiry officer shall report about the compliance of the obligations by the promoter with regard the project and more specifically having regard to 70% of the total amount collected from the allottee(s) of the project minus the proportionate land cost and construction cost whether deposited in the separate RERA account as per the requirements of the Act of 2016 and Rules 2017. He was further directed to submit a report on the above-mentioned issues besides giving a direction to the promoter to make available books of accounts and other relevant documents required for enquiry to the enquiry officer in the office of the authority. The company secretary and the chief financial officer as well as the officer responsible for day-to-day affairs of the project were also directed to appear before the enquiry officer. They were further directed to

bring along with them the record of allotment and status of the project.

16. In pursuance to above-mentioned directions passed by the authority and conveyed to the promoter, the enquiry officer submitted a report on 18.10.2022. It is evident from a perusal of the report that there is no construction of the project except some excavation work and pucca labour quarters built at the site. Some raw material such as steel, dust, other material and a diesel set were lying there. It was also submitted that despite issuance of a number of notices w.e.f. 17.08.2022 to 18.10.2022 to Mr. Surender Singh director of the project, noneturned 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, its shows that the project has been abandoned by the promoter. Even a letter dated 30.09.2022, filed by the promoter containing a proposal for de-registration of the project "Turning Point" and settlement with the existing allottee(s) therein has been received by the authority and wherein following prayer has been made by it:

i. Allow the present proposal/application

ii. Pass an order to de-register the project "turning Point" registered vide registration certificate bearing no. 213 of 2017 dated 15.09.2017.

iii. Allow the proposal for settlement of allottees proposed in the present application

iv. To pass an order to club all the pending complaints/claims with respect to the project "turning Point" before the ld. Authority in the present matter and to decide the same in the manner as the ld. Authority will approve under the present proposal.

v. To pass any other relief in the favour of the applicant company in the interest of justice.

17. Thus, in view of the proposal given by the promoter to the authority on 30.09.2022 and corroborated by the report of enquiry officer dated 18.10.2022, it was observed that the project namely "Turning Point" was not being developed and had been abandoned by the promoter. Even he applied for de-registration of the project registered vide certificate no. 213 of 2017 dated 15.09.2017 and was filing a proposal for settlement with the allottees in the project by way of re-allotment or by refund of monies paid by them. So, in view of the stand taken by the developer while submitting proposal with authority on 30.09.2022 and the report of the Enquiry Officer, it was observed that the project has been abandoned. Thus, the allottees in those cases were held entitled to refund of the amount paid by them to the promoter against the allotment of the unit as prescribed under section 18(1)(b) of the Act, 2016 providing for refund of the paid-up amount with interest at the prescribed rate from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017. A reference to section 18(1)(b) of the Act is necessary providing as under:

> *18. If the promoter fails to complete or is unable to give possession of an apartment, plot or building,*
> *(a) .....*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or* ***for any other reason,***
>
> *he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such*

rate as may be prescribed in this behalf including compensation in the manner as provided under this Act."

18. It is proved from the facts detailed above and not rebutted by the developer that the project has already been abandoned and there is no progress at the spot. The developer used the monies of the allottees 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 i.e., Rs. 23,81,819/-given by the complainants to the developer with interest at the prescribed rate of interest i.e., 10.75% P.A., he may file complaint separately seeking compensation before the adjudicating officer having powers under section 71 of the Act of 2016.

H. Directions of the Authority:

19. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent-builder is directed to refund the paid-up amount i.e., Rs. 23,81,819/- received from the allottees 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. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to the registry.

Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.10.2023