

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM**

**Complaint No. : 764 of 2019**

**Date of first hearing: 01.05.2019**

**Date of Decision : 11.09.2019**

Sh. Jagmohan Singh and Mrs. Charu  
R/o F-152, Raheja Atlantis, Sector-31,  
Gurugram-122001

**Complainants**

Versus

M/s Vatika Limited  
Office at: Vatika Triangle, 7<sup>th</sup> Floor, Sushant  
Lok-1, Block-A, Mehrauli-Gurugram Road,  
Gurugram-122002

**Respondent**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Venkat Rao

Advocate for the complainants  
Advocate for the respondent

**ORDER**

This is a complaint filed under section 31 of the Real Estate(Regulation and Development) Act, 2016(hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017(hereinafter referred as the Rules, 2017) by Shri Jagmohan Singh and Ms Charu, complainants against M/s Vatika India Limited in respect of plot No.43, Street No.82, D3-8 Block No D, measuring 360 sq yds in the project "Vatika India Next" on account of violation of obligations of

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the promoter under section 11(4(a) of the Act, 2016. Brief facts of the case are as under:

The complainants were in need of a plot to have an independent house. So, it was suggested to them to get a plot in Vatika India Next project situated in Sector 82-D, Gurgaon, Haryana promoted by the respondent. In the month of November, 2011. Shri Jagmohan Singh- complainant was contacted by the real estate firm M/s Realty Concepts representing himself as the authorized agent of the respondent for booking of a residential plot in its project at Sector 82 Gurgaon. In pursuant to that the complainants visited the project site. After conversation with real estate firm the complainants contacted the marketing office who convinced them to purchase a plot in that project and promised to deliver the possession of the plot to be allotted to them within a period of thirty six months from the date of booking. So, in pursuant to that on 29.09.2011, the complainants booked a residential plot admeasuring 360 sq yds for a total sale consideration of Rs.2,01,38,200/- in the integrated township at Gurgaon by the name of "Vatika India Next" and paid a sum of Rs.9,26,640/- vide an account payee cheque (receipt) Annexure P1. The particulars of the project and payments made by the complainants in lieu of allotment of above mentioned plot are detailed as under:

1.	Name and location of the project	"Vatika India Next" in Sector 81, 82, 82A, 83, 84, 85, Gurugram
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2.	Unit no.	43, street no. 82 D3-8, block no. 'D'
3.	Unit area	360 sq. yards
4.	Date of booking	29.09.2011
5.	Date of allotment letter	02.11.2011
6.	Date of plot buyer's agreement	23.07.2012
7.	Total consideration	Rs. 2,01,38,200/- (as per account statement, page 84 of the complaint)
8.	Total amount paid by the complainant	Rs. 99,95,961/- (as per account statement)
9.	Payment plan	Development linked payment plan
10.	Date of delivery of possession	<b>23.07.2015</b> Clause 10 – 3 years from date of execution of agreement i.e. by 23.07.2015
11.	Delay of number of months/ years	<b>4 years and 1 day</b>
12.	Penalty clause as per plot buyers agreement dated 23.07.2012	Clause 16- Rs. 5/- per sq. ft. per month

2. It is a further the case of the complainants that a Plot Buyer Agreement dated 23.07.2012 was executed between the parties and as per that possession of the plot allotted to them was to be delivered by 23.07.2015. However, despite paying a sum of Rs.99,95,961/- by the complainants to the respondent upto 22.03.2017, it failed to demarcate and deliver the possession of the allotted property despite numerous visits by the complainants .

They were harassed unnecessarily and mentally tortured. Even,

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there was unfair trade practice and breach of contract by the respondent. When despite oral reminders, the respondent failed to deliver the possession of the plot allotted to the complainants, they were left with no other alternative but to file this complaint. So, they prayed for return of the amount already deposited with the respondent besides interest and compensation from the dates of various payments.

3. But the case of the respondent as set out in the written reply dated 02.09.2019 is that though the plot in question was allotted to the complainants and there is execution of plot a buyer agreement between the parties but it was denied that there is any fault of respondent in handing over the possession of that plot. The respondent has taken shelter under clause 13 of the agreement and pleaded that due to the circumstances beyond its control, the possession of the plot in question could not be delivered to the complainants. It was not disputed that the complainants have made payment of Rs. 99,95,961/-but the same were not made in time. Moreover, after the allotment of plot in question to the complainants, there were changes in the master plan as well as lay-out plan of the project by the concerned governmental agencies which led to entire plot cluster map changed. It was also pleaded that the delay in completion of project was due to non-acquisition of sector roads by HUDA, initiation of GAIL corridor passing through the project and non-shifting of high tension lines passing from the project by the DHBVN. It was further pleaded that Vatika India Next is a large township of the respondent and it has given

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possession of more than 5,000 unit in the past few years which includes plots, villas, independent floors. Group housing flats and commercial units. So, due to extraneous reasons beyond the control of the respondent, it was not possible to carry out all necessary works for the completion in some parts of the project. Lastly, it was pleaded that to prevent loss to the complainants, an offer was made by the respondent to allot some other plot in the same sector with same specifications but that offer was not acceptable to them.

4. To decide the rival contentions raised by the parties, following issues arose for consideration

- i) Whether the respondent/developer violated the terms and conditions of BBA/plot buyer agreement?
- ii) Whether there was any reasonable justification for delay to offer the possession of the allotted plot?
- iii) Whether the complainants are entitled for refund of paid money?

5. I have heard the learned counsel for both the parties and perused the file.

6. Some of the admitted facts of the case are that on 29.09.2011, the complainants booked a residential plot measuring 360 sq yds for a total sale consideration of Rs.2,01,38,200/- in integrated township, NH-8 by the name of Vatika India Next by paying a sum of Rs.9,26,640/- vide account payee cheque(receipt) Ex P1, In pursuant of that vide letter dated 02.11.2011(copy) Annexure P-II, letter of allotment of the above mentioned plot was issued in favour

of the complainants by the respondent. It is also a fact that on

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15.11.2011 and 26.12.2012 respectively, the complainants deposited with the respondent a sum of Rs.20,04,480/<sup>and Rs.2031120/-</sup> vide Annexures A-3/P-4 respectively. A Plot Buyer Agreement(copy) Annexure-5 was executed between the parties on 23.07.2012 and as per the same, the possession of the plot allotted to the complainants by the respondent was to be delivered by 29.09.2014 and lastly by 23.07.2015. It is also not disputed that on 13.02.2013, 13.08.2016 and 22.03.2017 respectively, the complainants paid different amounts to the respondent vide receipts(copies) Annexure P-7, P-8 and P.10 respectively. So in this way a sum of Rs.99,95,961/- i.e. 49% of the total consideration was deposited by the complainants with the respondent as is evident from the statement of account(copy) P-11. A dispute arose between the parties when the respondent failed to offer to deliver possession of the above mentioned plot to the complainants despite their visiting its office and making a number representations. However, no positive response was received from the respondent. A reference in this regard has been made to the document Annexure P-9. Then, it is evident from a perusal of documents Annexures P-12/P-13 that the allotted plot was not show in the master lay-out plan sanctioned by the DTP in the months of October, 2013 and July, 2014 respectively. The only plea taken on behalf of the respondent is that the plot in dispute could not be developed due to change in the master lay out plan and a number of factors beyond its control. It has also taken shelter under clause 13 of Plot Buyer Agreement(copy) Annexure P-5. Then, it was also pleaded that an

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alternative plot was shown to the complainants but they refused to accept the same. So, in such a situation, the respondent is not at fault and cannot be allowed to suffer. But the pleas advanced in this regard on behalf of the respondent are devoid of merit. It is not disputed that the respondent has already received 49% of the amount being the cost of the plot allotted to the complainant upto 23.03.2017 and possession of the plot so allotted was to be delivered at the most by 23.07.2015. The complainants to seek refund of the amount deposited by the complainants with the respondent was filed on 25.02.2019 after waiting for more than 3½ years. Can the respondent be given so much liberty and the complainants have to wait indefinitely for getting possession of the plot so allotted and particularly when they have already paid about 50% of the cost of the plot. There is delay of more than three years in handing over the possession of the allotted plot to the complainants. So, in such a situation, the respondent cannot force the complainants to take possession of another plot and wait indefinitely. Thus, inordinate delay of more than 3½ years in handing over the possession of the plot amounts to deficiency in service. In case of *Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors(2018) 5 SCC 442*, it was held by the hon'ble apex court of the land that a person cannot be made to wait indefinitely for possession of the plot allotted to him and is entitled to seek refund of the amount paid by him alongwith compensation.

7. A plea has been taken on behalf of the respondent that there is clause 13 of Plot Buyer Agreement and which bars taking of

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action by the complaints<sup>ants</sup> against the respondent. But the plea advanced in this regard is untenable. A similar question arose for consideration before the hon'ble apex court of the land in case ***Central Inland Water Transport Corporation Limited and Ors Vs Brojo Nath Ganguly and Ors. and others (1986) 3SCC 156*** and wherein it was observed that under:

*"..... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties, who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can, visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction...."*

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**.....These cases can neither be enumerated nor fully illustrated. This court must judge each case on its own facts and circumstances”.**

8. It was also observed in case *Pioneer Urban Land & Infrastructure Ltd Vs Govindan Raghvan in Civil Appeal No.12238 of 2018* decided on 02.04.2019 by the Hon'ble apex court of the land that the terms of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted lines, on a contract framed by the builder. The contractual terms of agreement dated 23.07.2012 are ex- facie one-sided, unfair and unreasonable. The incorporation of such one-sided clause as mentioned above in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats/plots by the builder. So, in such a situation, the respondent/promoter can not seek to bind the complainants with such one-sided contractual terms. Hence, issue no (i) & (ii) are answered accordingly.

9. Thus, in view of my discussion above and taking into consideration all the material facts brought on record by both the parties, issue No. (iii) is held in favour of complainants, **Consequently**, the following directions are hereby issued to the respondent:

(i) To refund the entire amount of Rs.99,95,961/-  
(Rupees Ninety nine lakh, ninety five thousand and  
nine hundred and sixty one only) alongwith interest at

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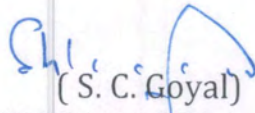
the prescribed rate of interest i.e. 10.35p.a. from the date of each payment till the date on which the full refund alongwith compensation in the form of interest in terms of this order is made to the complainants.

(ii) The respondent shall pay Rs.2,00,000/- as compensation to the complainants for mental agony and harassment undergone by them.

(iii) The Respondent shall also pay to the complainants Rs.10,000/- as costs of litigation.

10. The payments in terms of this order shall be made by the respondent to the complainants within a period of 90 days from today.

11. Hence, in view of my discussions detailed above, the complaint stands disposed of.

  
(S. C. Goyal)  
ADJUCATING OFFICER: HARERA

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Judgement uploaded on 20.09.2019