

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

Complaint no. :	7566 of 2022
Date of filing complaint:	16.12.2023
First date of hearing:	12.05.2023
Date of decision :	06.10.2023

1. Shikha Chander 2. Krishan Chander Both RR/o: House no. F-89B, Street No. 17, Kunwar Singh Nagar, Nangloi, West Delhi - 110041	Complainants
Versus	
M/s Vatika Limited Address: 4 th Floor, Vatika Triangle, Sushant Lok, Phase I, Block A, MG Road - 122002, Gurugram	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Abhay Jain	Complainants
Ms. Shikha proxy counsel	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 complainant, 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 up to 25.10.2017
5.	Name of licensee	M/s Vaibhav warehousing Pvt. Ltd & 5 others.
6.	RERA Registered/ not registered	Registered vide no. 213 of 2017 dated 15.09.2017 area admeasuring 93588 sqm. Valid up to 15.03.2023
7.	Unit no.	2405, West End 7. (Page 37 of complaint)
8.	Date of allotment	NA
9.	Date of agreement to sell	26.07.2018 (Page 35 of complaint)
10.	Due date of possession	15.03.2025
11.	Total sale consideration	Rs. 86,53,980/- as per SOA dated 18.04.2023 (page 32 of reply)
12.	Amount paid by the complainant	Rs. 38,21,045/- as per SOA dated 18.04.2023 (page 32 of reply and as per 29 of complaint)

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 no. 1 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. 2405 ad-measuring 936.89 Sq. Ft., West End- 7 in Vatika India Next 2, Sector 88B, Gurugram having total sale consideration of Rs. 85,80,980/-.
- b. That thereafter the builder buyer agreement dated 26.07.2018 was executed between both the parties, wherein the respondent explicitly assigned all the rights and benefits of residential apartment to them. That the respondent had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail pace and the said project is far from completion and the same would not be able to deliver the possession within the stipulated time. It is abundantly clear that the respondent have played a fraud upon the complainants and

has cheated them fraudulently and dishonestly with a false promise to complete the construction of the project within the stipulated period.

- c. That the complainants have paid total amount of Rs. 38,21,045/-for the said flat till September 2018. Thus, the date of possession comes out to be 26.07.2021 when calculated from the 3 years from the date of agreement. The respondent has failed to deliver the possession of the said flat to them by the above said date. The respondent has abandoned the construction of the project and that is why they now seek refund of their deposited amount with interest from various date of receipt.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount paid by the complainants to the respondent.
 - Direct the respondent to pay legal cost of Rs. 1,00,000 to the complainants.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
- That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
 - That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.

- (c) That the complainants have got no focus standi or cause of action to file the present complaint.
- (d) That 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. Therefore, the present complaint deserves to be dismissed on this ground alone.
- (e) That the complainants has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority.
- (f) That the respondent has got its project registered with the Hon'ble Authority. That the Hon'ble Authority vide memo number HRERA-430/2017/1106 dated 15.09.2017 was pleased to register the said project. 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, the respondent 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 ie., 15.09.2017 which comes out to be

15.03.2025 and the same has been enshrined under clause 5 of buyer's agreement.

- (g) That the complaint under reply is filed by complainants on baseless and on 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. That the relevant portion of the said clause is reproduced herein for ready reference, 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)(1) of Rules, 2017, is the essence of the agreement.
- (h) That it is submitted that the respondent is committed to complete the construction of the said project and the respondent will offer the possession of the units to their respective allottees within the agreed time. It is submitted that as per the buyer's agreement dated 26.07.2018 executed between the parties, the total sale consideration of the said unit is Rs. 86,53,980/-. That it is pertinent to note that out of the total sale consideration, they have paid only an amount of Rs 38,21,045.33/-.

(i) That without prejudice to the contentions of the respondent, it is submitted that there is no delay at the end of the respondent. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case. That the respondent has always adhered to the terms and conditions of the buyer's agreement.

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 complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to refund the paid entire amount paid by the complainant.

11. 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 premature 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.

12. 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.
13. 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.

14. 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, non-turned up to join the enquiry and file the requisite information as directed by the authority. Thus, it shows that despite specific directions of the authority as well as of the enquiry officer, the promoter failed to place on record the requisite information as directed vide its order dated 12.08.2022. So, it shows that the project has been abandoned by the promoter. Even a letter dated 30.09.2022, filed by the promoter containing a proposal for de-registration of the project "Turning Point" and settlement with the existing 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 Id. Authority in the present matter and to decide the same in the manner as the Id. Authority will approve under the present proposal.

- v. To pass any other relief in the favour of the applicant company in the interest of justice.
15. 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."

16. It is proved from the facts detailed above and not rebutted by the developer that the project has already been abandoned and there is no progress at the spot. The developer used the monies of the allottee for a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. Though, while filing reply, the developer took a plea that the project is taking up, but which is otherwise false and against the facts on record. So, in such a situation the respondent is directed to refund the paid-up amount i.e., Rs. 38,21,045/- 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:

17. 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:
- The respondent-builder is directed to refund the paid-up amount i.e., Rs. 38,21,045/- received from the allottees deposited by them against their 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.
18. Complaint stands disposed of.
19. File be consigned to the registry.



Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2023

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HARERA
GURUGRAM