



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

| | |
|------------------------------|--------------------|
| Complaint no. | 772 of 2023 |
| Date of complaint | 03.03.2023 |
| First date of hearing | 16.08.2023 |
| Date of decision | 15.11.2023 |

| | |
|---|---------------------|
| Rajinder Singh Rana & Priya Prerak Registered address: S-601, Sispal Vihar, AWHO Society, Sector-49, Sohna Road, Gurugram-122018, Haryana. | Complainants |
| Versus | |
| M/s Vatika Ltd. Registered address at: Vatika Triangle, 4 th Floor, Sushant Lok, ph-1, Block-A, MG Road, Gurugram-122002 | Respondent |

| | |
|------------------------------------|---------------|
| CORAM: | |
| Shri Ashok Sangwan | Member |
| APPEARANCE: | |
| Shri Yogesh Kumar Chhabra Advocate | Complainants |
| Shri Pankaj Chandola Advocate | Respondent |

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 provision 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, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

| S. N. | Particulars | Details |
|-------|----------------------------------|---|
| 1. | Name and location of the project | Vatika Turning Point Phase I, Sector 88B Gurugram. |
| 2. | Nature of the project | Group Housing Colony |
| 3. | Project area | 93588.71 Sq. Mtrs. |
| 4. | DTCP license no. | 91 of 2013 dated 26.10.2013 |
| 5. | Name of licensee | Vaibhav Warehousing Pvt. Ltd., Feldon Developers Pvt. Ltd., Sh Sahil Grover, Sh. Chanderbhan Grover and 5 others. |
| 6. | RERA Registered/ not registered | Lapsed project (De-registered) |
| 7. | Unit no. | HSG-026, West end-5-403 (Page no. 16 of Reply) |
| 8. | Unit area admeasuring | 1034 sq. ft. |



| | (Carpet area) | (Page no. 16 of Reply) |
|-----|---|--|
| 9. | Date of execution of builder buyer agreement. Date of allotment Date of booking | Not executed Not mentioned 31.07.2017 |
| 10. | Possession clause | None |
| 11. | Due date of possession | 31.07.2020 <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. In view of the above-mentioned reasoning, the date of the booking letter dated 31.07.2017 ought to be taken as |

| | | |
|-----|--------------------------------|--|
| | | the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 31.07.2020. |
| 12. | Total sale consideration | Rs. 87,27,275/- (Page no. 15 of Reply) |
| 13. | Amount paid by the complainant | Rs. 30,62,291/- (Page no. 15 of Reply) |
| 14. | Occupation certificate | Not obtained |
| 15. | Offer of possession | Not offered |

B. Facts of the complaint:

3. The complainants trusting upon respondent through advertisement in newspaper/electronic media has booked an apartment bearing no. 403, measuring carpet area of approx. 1034.09 Sq. ft., in HSG-026-West-5 in project namely at "VATIKA TURNING POINT" Situated at: Sector-88-B in Gurugram, Haryana. The complainants also booked a car parking spot and opted for construction linked payment plan.
4. After a long Gap from the date of booking i.e. 31.07.2017 (After 9 months), the respondent provided the agreement to sell in April-2018 for signing, on which complainants raised various objection via E-Mail dated 25.06.2018 and also refused to sign because the respondent did not mention the schedule of possession.
5. The complainants visited the office of the respondent on various occasions and had requested their concerned officials multiple times to





disclose the exact status of the completion of the construction of the said project but the respondent didn't given any proper information about the possession period for the said flat. A Legal Notice Dated 03.01.2023 has been sent to the respondent but no response received as on date of filing of this complaint.

6. That no construction has taken place in this project as on date of filing of present complaint. In fact it was revealed to the complainants that the respondent had deceived them by demanding money ahead of the stage of construction achieved at the site.

C. Relief sought by the complainants:

7. The complainant has sought the following relief(s):
 - i. Direct the respondent to refund the entire amount paid along with the prescribed rate of interest.

D. Reply by respondents:

8. 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 were satisfied with every proposal deemed necessary for the development of the project.
9. The complainants upon their own examination and investigation booked a flat in the said project and further made a payment of Rs. 4,00,000/- towards the booking amount.
10. On 01.11.2017, the respondent sent a letter for execution of builder buyer agreement for the unit bearing no. 403, West End-5, admeasuring 1655 sq. ft. by enclosing two copies of agreement. The respondent in the

✓



said letter, intimated the complainants to sign the agreement and return it to respondent within 30 days for execution, which the complainants failed to do.

11. On 13.11.2017, the respondent raised an invoice for payment of instalment, for an amount of Rs. 10,11,710/-.
12. The complainants kept on delaying the signing of the agreement on one pretext or other, the respondent then, sent a reminder letter dated 12.06.2018, for signing and execution of agreement for the unit, which was again deliberately disregarded by the complainants. The respondent after the non-receipt of agreement within 30, sent a final reminder letter dated 18.07.2018, for the execution of agreement, and also intimated that the respondent on non-receipt of the agreement within 30 days, shall be forced to cancel the booking. The complainants even after sending reminders, refused to send the signed copies of the agreement.
13. As per Clause 5 of the agreement, the respondent was under obligation to handover the possession to the complainants as per the timelines as disclosed at the time of registration of the project. As per 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.
14. The Following were the reasons that halted the construction and development of the Project as under:

| S.No. | Particulars |
|-------|-------------|
|-------|-------------|



| | |
|----|---|
| 1. | Notification No. L.A.C. (G)-N.T.L.A./2014/3050 dated 24.12.2014 to acquire land in sectors 88A,88B,89A,89B,95A,95B & 99A for purpose of construct and develop sector roads published in newspaper Dainik Jagran on 30.12.2014. |
| 2. | Award No.56 on dated 23.12.2016 passed by the Land Acquisition Collector Sh. Kulbir Singh Dhaka, Urban Estates, Gurugram, Haryana for purpose of development and utilization of land for sector roads in sectors 88A,88B,89A,89B,95A,95B & 99A. (Important Note: We have got license no.91 on 26.10.2013 but till 23.12.2016 land was not acquired by the authority/Govt for purposes of development & utilization of sector roads. Delay for the acquiring process was 3 years two months) |
| 3. | The Road construction and development works in Gurugram are maintained by the HUDA/GMDA but the NHAI has plan the development of Gurugram Pataudi-Rewari Road, NH-352 W under Bharatmala Pariyojana on 11.07.2018 |
| 4. | The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr. Road (NH-352 W) near Harsaru Village shall develop &construct by the NHAI |
| 5. | The GMDA has approached the Administrator, HSVP, Gurugram and request to direct HSVP/LAO to hand over encumbrance free possession of land from Dwarka Expressway i.e. junction of |

| | |
|-----|--|
| | 88A/88B to Wazirpur Chowk to GMDA so that possession of land may be handover to NHAI on 08.09.2020. |
| 6. | The DTCP published a notification no.CCP/TOD/2016/343 on 09.02.2016 for erecting transit oriented development (TOD) policy. Vatika Limited has filed an application for approval of revised building plan under (TOD) policy 05.09.2017 and paid amount of Rs. 28,21,000/- in favor of DTCP. |
| 7. | Vatika Limited has filed an another application on 16.08.2021 for migration of 18.80 Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana |
| 8. | Vatika Limited has made a request for withdrawal of application for grant of license for mix land use under (TOD) policy on 03.03.2022 due to change in planning. |
| 9. | The DTCP has accepted a request for withdrawal of application under (TOD) Policy on 17.08.2021 & forfeited the scrutiny fee of Rs. 19,03,000/- |
| 10. | Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favor of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B. |



| | |
|-----|---|
| 11. | No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W |
| 12. | Re-routing of high tension wires lines passing through the lands resulting in inevitable change in layout plans. |
| 13. | Various Orders passed by the Hon'ble Supreme Court, NGT, Environment Pollution Control Authority regarding ban on construction activities every year for a period of 50-75days in the best months for construction |
| 14. | Due to outbreak of Covid 19 pandemic, there was a complete lockdown on two instances, 1. In 2020 GOI nearly for 6 months which was extended for another 3 months. 2. In 2021, for two months at the outbreak of Delta Virus |

15. The respondent upon failure to continue the development work of the project as per the proposed plan and layout plan due to the reasons stated above and elaborately filed a proposal bearing "In Re: Regd. No. 213 of 2017 dated 15.09.2017, for De-Registration of the Project "Turning Point", and Settlement mechanism with existing allottees before the Registry of this Ld. Authority on 30.09.2022.

16. 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 the project could not be delivered due to various reasons beyond the control of the respondent.

E. Jurisdiction of the authority:

17. The plea of the respondents regarding lack of jurisdiction of Authority is 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.



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 respondents:

F.I Objections regarding force Majeure

18. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC to stop construction, notification of the Municipal corporations Gurugram, 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 by SC 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. 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. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the amount deposited by the complainants along with interest at the prescribed rate.

19. The complainants were allotted unit no. HSG-026, West end-5-403 in the project "Turning Point", Sector 88B, Gurugram, Haryana of the



respondent/builder for a total consideration of Rs. 97,43,265/-. However, no agreement to sell was executed between the parties, hence no due date of possession could be ascertained. Therefore in view of the judgement in **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**, where the Hon'ble Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.* In view of the above-mentioned reasoning, the date of the Booking dated 31.07.2017 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 31.07.2020.

20. It has come on record that against the total sale consideration of Rs. 97,43,265/-, the complainants have paid a sum of Rs. 24,32,850/- to the respondent. However, the complainants contended that the unit was not offered to them despite this and no occupation certificate has yet been obtained, further, the aforesaid project has lapsed, and application for de-registration has been filed with the Authority. Hence, in case allottees wish to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This



view was taken by the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. (supra) reiterated in the case of M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)*** wherein it was observed as under: -

"The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed".

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016 or the rules and regulations made thereunder or to the allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by

2



respondents/promoter in respect of the unit with interest at such rate as may be prescribed.

22. There has been an inordinate delay in the project which cannot be condoned. Thus in such a situation, the complainants cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.
23. Keeping in view the fact that the allottees/complainants wishes to withdraw from the project and is demanding a return of the amount received by the promoter in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.
24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to a refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 8.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority:

25. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.



- i. The respondent/promoter is directed to refund the amount i.e., Rs. 24,32,850/- received by it from the complainants/allottees along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii. 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.

26. Complaint stands disposed of.

27. File be consigned to the registry.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.11.2023

HARERA
GURUGRAM