



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

Complaint no.	1865 of 2022
Date of complaint	18.05.2022
First date of hearing	24.08.2022
Date of decision	08.11.2023

Manju Singh Parmar & Sanjay Kumar Tanwar Registered address: A-13, BKN Government Polytechnic Narnaul	Complainants
Versus	
1. Vatika Ltd. Registered address at: Vatika Triangle, 4 th Floor, Sushant Lok, ph-1, Block-A, MG Road, Gurugram-122002 2. Vatika One Express City Pvt Ltd. Registered address at: Vatika Triangle, 4 th Floor, Sushant Lok, ph-1, Block-A, MG Road, Gurugram-122002	Respondents

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Sajal Dhawan Advocate	Complainants
Shri Gunjan Kumar Advocate	Respondents

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 29 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 One Express City, Sector 88B, Gurugram.
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38640.48 Sq. Mtrs.
4.	DTCP license no.	94 of 2013 dated 31.01.2013
5.	Name of licensee	Malvina Developers Pvt Ltd and 20 others.
6.	RERA Registered/ not registered	271 of 2017 dated 09.10.2017
7.	Unit no.	Unit no. 2102, Type A, Tower Sky Park 1 (Page no. 19 of Complaint)
8.	Unit area admeasuring (super area)	1590 sq. ft. (Page no. 19 of Complaint)
9.	Date of booking	15.07.2014



		(Page no. 15 of complaint)
10.	Date of allotment letter	20.03.2015 (Page no. 18 of complaint)
11.	Date of execution of builder buyer agreement	Not executed
10.	Possession clause	None
11.	Due date of possession	20.03.2018 <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 allotment letter dated 20.03.2015 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 20.03.2018.
12.	Total sale consideration	Rs. 1,16,84,115/- (Page no. 20 of complaint)
13.	Amount paid by the complainant	Rs. 21,59,310/- (Page no. 20 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. As per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainants fall under the category of "Allottee".
4. As per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, both the respondents fall under the category of "Promoter" and are bound by the duties and obligations mentioned in the said act and are under the territorial jurisdiction of this Hon'ble Regulatory Authority.
5. On 17.07.2014, the complainants remitted Rs 5,26,250/- towards booking the unit vide cheque no. 221703 dated 15.07.2014 drawn on SBI Bank, along with the application form. Respondent no. 2 Vatika One Express City Pvt Ltd. acknowledged the payment and issued payment receipt no. 919533562 dated 17.07.2014. The complainants were not allotted any unit number but instead, a priority reference number was issued to him.
6. On 18.12.2014, respondent no. 1 Vatika Ltd. issued a demand invoice no. VL/2015-2016/One Express City/00000092 for the payment of Rs.15,78,740.75/- on the milestone of "within 6 months from date of



- booking". The complainants remitted the said amount to the respondents on 14.01.2015 for which a payment receipt was issued by respondent No. 2 on 14.01.2015.
7. On 20.03.2015, respondent no. 1 i.e. Vatika Ltd. issued an allotment letter of the said unit to the complainants where the relevant details were handwritten by the respondent.
 8. After taking the last payment in 2015, the respondents stopped issuing any demand letter for payment and also did not call up the complainants to execute the builder-buyer agreement. Hence, no builder-buyer agreement was executed for the said unit.
 9. The complainants went to the office of the respondents many times to enquire about the status of the project but the respondents failed to provide any satisfactory response. The complainants got to know that this project was already being scrapped by both the respondents. The office of the respondents refused to provide the refund of the said unit.
 10. The complainants have already paid a total sum amount of Rs 21,59,310/-. Following is the schedule of payment.

S.NO	DATE	CHEQUE DETAILS	AMOUNT
1.	17.07.2014	221703	Rs. 5,26,250/-
2.	19.01.2015	000004	Rs. 15,78,741/-
3.	13.07.2015	RTGS	Rs. 54,319/-
TOTAL			Rs.21,59,310/-

11. The respondents called up and demanded two installments till the milestone of "within six months from the date of booking" amounting to 20% of the basic sales price and have not demanded any payment thereafter. The complainants have paid every called-up money in full and are not in any default.



12. All the payments have gone into the account of respondent no. 2 i.e. Vatika One Xpress City Pvt Ltd. and also the payment receipts have been issued by respondent no. 2 i.e. Vatika One Express City Pvt Ltd. but all the other documents have been issued by respondent no. 1 i.e. Vatika Limited.
13. The complainants having paid 20% of the actual amount of the said unit, and capable and willing to pay the rest amount, the respondents have failed to develop the residential unit.
14. The respondents have committed fraud and cheating with the complainants by booking their unit in a project that they did not have any intention to even make.

C. Relief sought by the complainants:

15. 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:

16. The complainants approached the respondents repeatedly to know the details of its project "Vatika One Express City". The complainants further inquired about the specification and veracity of the project and were satisfied with the development of the project. The complainants having been satisfied with the project being developed by the respondents and the investment growth prospect, decided to purchase the said plot. Thus, the complainants are merely an investor and do not fall under the definition of "allottee".
17. On 02.03.2015, respondent No. 1, vide invitation for allotment letter, invited the complainants to come ahead to take the allotment of the



unit. Respondent No. 1 vide allotment letter dated 20.03.2015, allotted a unit in the name of the complainants, being situated in the said project.

18. The unit in question was allotted in favor of the complainants for a total sale consideration of Rs. 1,16,84,115/- against which the complainants had merely paid an amount of Rs. 21,59,310/- and yet a substantial amount is due and payable in respect to the said unit.

19. Since starting, the respondent has been committed to completing the project and has invested each and every amount received from the complainants towards the agreed sale consideration. The project was decelerated due to the unexpected introduction of a new National Highway NH 352 W proposed to run through the project of the respondent. The following factors led to its delay:

- I. The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for the construction and development of NH 352 W to the National Highway Authority of India (NHAI). This shows that still the construction of NH 352 W is under process resulting in unwanted delay in the completion of the project.
- II. Further, initially, when HUDA had acquired the sector road and started its construction, an area of 4 to 5 meters was uplifted. Before the start of the acquisition and construction process, the respondent No. I had already laid down the services according to the earlier sector road levels, however, due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only resulted in deferment of construction of project but also attract costing to the respondent No. 1.



- III. Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.
- IV. Direct impact on project due to Policy of NILP and TOD issued on 09.02.2016.

E. Jurisdiction of the authority:

20. 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 Objection regarding complainants being investors.

21. The respondents have taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondents 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 respondents are 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 the facts of the case, it is revealed that the complainants are buyers and they have paid a total price of Rs. 21,59,310/- 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" in relation to 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;"

22. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them 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. and anr.** has also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoters that the allottees being investors are not entitled to protection of this act also stands rejected.

F.II Objections regarding force Majeure

23. The respondent-promoters have raised the contention that the construction of the tower in which the unit of the complainants is situated has been delayed due to the force majeure circumstance of the introduction of new National Highway no. 352 W. The plea of the respondents regarding National Highway 352 W, and all the pleas advanced in this regard are devoid of merit. The respondents should



have foreseen such constructions and taken into account such exigencies before initiating the construction of the project and making bookings.

G. Entitlement of the complainant for refund:

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

24. The complainants were allotted unit no. 2102, Type A, Tower Sky Park 1 in the project "Vatika One Express City", Sector 88B, Gurugram, Haryana of the respondents/builders for a total consideration of Rs. 1,16,84,115/-. 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 allotment letter dated 20.03.2015 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 20.03.2018.

25. It has come on record that against the total sale consideration of Rs. 1,16,84,115/-, the complainants have paid a sum of Rs. 21,59,310/- 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. 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".

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

27. There has been an inordinate delay in the project which cannot be condoned. Thus in such a situation, the complainant 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.
28. Keeping in view the fact that the allottee/complainant 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.
29. 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 complainant is 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:

30. 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.

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- i. The respondents/promoters are directed to refund the amount i.e., Rs. 21,59,310/- 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.

31. Complaint stands disposed of.

32. File be consigned to the registry.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.11.2023

HARERA
GURUGRAM