

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

Complaint no. :	3245 of 2021
Date of filing complaint:	17.08.2021
First date of hearing:	06.09.2021
Date of decision :	09.08.2023

Rajeev Singhvi Ritu Singhvi Both RR/o: C-3, 83-84, Orchid Harmony, Apple wood township, near Decathlon, SP Singh Road, Ahmedabad, Gujarat- 380058.	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 Ashok Sangwan	Member
APPEARANCE:	
None	Complainants
Sh. Mayank Grover	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.	
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.	055
8.	Date of booking	13.10.2016
9.	Date of builder buyer agreement	NA
10.	Due date of possession	15.03.2025
11.	Total sale consideration	Rs. 69,98,375/- as per SOA dated 10.08.2022
12.	Total basic sales price	Rs. 59,06,250/- as per SOA dated 10.08.2022
13.	Amount paid by the complainant	Rs. 7,34,590/- as per SOA dated 10.08.2022
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
- a. That the respondent floated a project namely "Turning Point" located at sector 88B, being a part of approximately 300 acres

township of Vatika Express City, Gurgaon. The said project was being promoted with a perspective to attract such homebuyers who were ready to invest in budgeted project having all the modern amenities.

- b. That at the time of floating the said project, the respondent represented that it has acquired the requisite power and authority for carrying out development over the said land with a promise of providing affordable residential apartments without compromising on the amenities and facilities in a timely manner. The respondent issued various advertisements and brochures specifying all the information relating to the said project including the construction of the complex, amenities to be provided and schemes related to the said project etc.
- c. That relying upon the advertisements, brochures, and representations of the respondent along with information and suggestion of the representatives/employees of the respondent, the complainants, Mr. Rajeev Singhvi and Mrs. Ritu Singhvi agreed to book an apartment in the said project.
- d. Accordingly, the complainants booked an apartment in the said project by submitting a booking application cum allotment form along with cheque no. 000267 drawn on HDFC Bank dated 13.10.2016 amounting to Rs. 3,00,000/- towards payment of registration/booking amount for an apartment in the said project. The respondent duly acknowledged the receipt of the aforesaid cheque vide letter dated 13.10.2016 bearing reference no. 16- 10-0274533, and reference id of acknowledgment of receipt VTP-61. Thereafter, vide booking

application form dated 13.10.2016 the complainants were allotted an apartment bearing no. 2BHK/055 admeasuring 1150 per sq.ft.in the project Vatika Turning Point.

- e. That the apartment allotted to the complainants bearing apartment no 2BHK/055 was booked through a broker namely Realty Investment as mentioned in the booking application form, for a total sale consideration (inclusive of EDC/IDC sat the time of booking) of Rs. 7148200/- having basic sale price Rs. 5250/- per sq. ft. of super area i.e., Rs. 6037500/-. A' the time of booking of the said apartment the booking application form was annexed with certain terms and conditions which forms a part of the application form for booking of the said apartment. Clause 15 of the application form states as under- "Subject to other terms of this application form and the agreement including but not limited to clause 14 above and timely payment of the total price and other amounts charges and dues mentioned in the application form, the developer would endeavour to complete the construction of the said apartment within forty eight months from the date of execution of builder buyer agreement between the appiicant and the developer for the said apartment and thereafter the developer would offer the possession of the apartment to the applicant". As per the clause as mentioned above, reiterated from the T & C as provided along with the booking application form, time forms the essence of the particular contract as according to the execution of this application form. According to the advertisements and information provided during the promotions of the project to be developed by the responent it was floated by the

respondent that the project was backed by subvention scheme, for which the banking partners were India bulls & ICICI Bank. It was also mentioned in the brochure that only 10% amount of the total consideration was to be paid at the time of booking and remaining 90% of the sale consideration would be payable at the time of possession along with certain benefits which included Vatika Shield + Appreciation. However, no detailed information was provided by the respondent or any of their executive regarding the benefits that came along with the investment in the said project.

- f. That right after the execution of application form the complainants approached the representatives of the respondent regarding the details on the project pertaining to subvention scheme, Vatika Shield, time of possession, appreciation, payment plan and execution of the builder buyer agreement whereas no detailed information was provided by the respondent regarding the same and the complainants were put through a wringer regarding their investment in the said project. It was not once but on several occasions the complainants objected upon being not provided with the information however the respondents had not response to the same.
- g. As according to the execution of booking application form and as per the payment plan the complainants even though not being provided with the further details of the project and benefits offered, showed their trust in the respondent. On 06.01.2017 upon constant demands of the respondent the

complainants issued a cheque bearing no. 000279 amounting to Rs 434590/- towards the instalment of the said apartment. The said cheque was further acknowledged and duly credited into the accounts of the respondent. The complainants have made a total payment of Rs. 734590/- as can be seen from the account statement issued by the respondent on 21.12.2017. It is important to bring it to the notice of the Authority that the respondent had even after receiving an amount of Rs. 734590/- grossly failed to provide details to the complainants, as being the homebuyer/investor in the said project the complainants have right to sought detailed information on the project. Whereas the respondent failed to perform their obligations.

- h. That the complainants wrote an email dated 12.04.2017 to the respondent regarding the details on the project pertaining to subvention scheme, Vatika Shield, time of possession, appreciation. The payment plan and execution of the builder buyer agreement whereas no detailed information was provided by the respondent.
- i. That on 04.12.2017 the complainants as being in receipt of the builder buyer agreement against the booking application dated 13.10.2016.
- j. That on 21.12.2017 the complainants received a behindhand email from the respondent with regards to the email dated 12.04.2017 sent by the complainants wherein it was then stated by the respondent that the project would be completed by the year 2024, further upon the context of subvention scheme it was mentioned that the same would be updated in the

agreement only after the agreement is executed on the end of the complainants and sent back to the Respondent which clearly reflects the ill-wills of the respondent, by not providing any conclusive response to the complainants being innocent homebuyers and then forcing them to sign an onerous agreement and binding them into such one-sided clauses.

- k. Subsequently on 26" December 2017, in response to the respondent's email the complainant no.1 wrote an afresh email to the respondent mentioning about their discrepancies in the agreement and their indirect and fraudulent acts towards the innocent homebuyers, the complainants being one of the aggrieved homebuyers. Vide the said email the complainants sought information on the area of the apartment, as the respondent has been on different occasions have mentioned different area for the said apartment which created doubts and questions in the heads of the complainant as different documents reflected different amount of area being sold to the complainants. In the account statement as issued by the respondent the area for the said flat was designated at 1125 sq. ft. while the brochure as issued and provided by the respondent mentioned the area for 2BHK apartment to be 1150 sq. ft, and the agreement mentioned the area as 658 sq. ft. which was only 59% of the actual area sold to the complainants. As on date, the complainants have not been provided with the definite area for the apartment allotted to them which in itself a default on the part of the respondent. This act shows that the respondents in order to wriggle out money from the innocent homebuyers have mis led the details at the time of booking of the said

apartment and then have mentioned different details in the buyer's agreement. Furthermore, the complainants also objected that at the time of booking of the said apartment and as per clause 15 of the terms and conditions of the booking application form the delivery of possession of the apartment allocated to the complainants herein was promised to be within 48 months from the date of execution of buyer's agreement. However, vide email dated 21.12.2017 the respondents mentioned that the apartment would be delivered by 2024, without any rhyme and reason, neither was any notice regarding the same provided to the complainants nor any reason has been given for the same. Merely stating that the apartment would be delivered by 2024 is nothing but gross misuse of the powers by the respondent. This also reflects that the respondent misrepresented the details regarding the project and investment at the time of offering booking to the homebuyers. The complainants again mentioned about the buy-back scheme as the same was left without providing definite retaliation by the respondents.

1. That the questions regarding subvention scheme were again raised by the complainants as the copies regarding project approvals from the bank i.e., India Bulls were not provided by the respondent. The acts and the responses by the respondent were not only non-conclusive but ambiguous, vague and cryptic, the complainants became very sceptical about investing any further amount in the project as neither was the area of the apartment properly defined, nor was the payment plan appropriate, no information regarding project approvals by the

banks provided and the respondent also extended the date of delivery of possession without any rhyme and reason, furthermore it was communicated by the respondent that there were certain approvals and registrations remaining to be obtained from Authority.

- m. That while completely disregarding and ignoring the grievances and inquires of complainants asked again vide email dated 26.12.2017, the respondent sent an email dated 03.02.2018 to the complainants wherein they asked the complainants to execute the buyer's agreement and send the same back to them lastly by 10.02.2018 along with the execution charges of Rs. 23,600/- to the respondent. Prior to this another email was received from the respondent to pay an amount of Rs. 14,40,000/- without an explanation, whereas in the present project only 10% of the amount was to be paid and the remaining 90% of the amount was to be paid at the time of possession. In response the above-mentioned email, the complainants wrote an email to the respondent dated 05.02.2018 asking about the payment of Rs. 14,40,000/- to be made in what context, also mentioning about the email dated 12.04.2017 seeking clarifications on subvention scheme, buy back scheme, super area to carpet area, change in the date of delivery of possession, copies of project approvals by the bank and documents submitted with RERA. The complainants had written several emails prior to the present email however the same were left unanswered, as a result of which the complainants distinctly mentioned their willingness to not further continue with the booking of the said apartment and

execution of buyer's agreement seeking refund for the amount already paid along with interest within 15 days of the email.

- n. That being aggrieved by the acts of the respondent, the complainants wrote an email dated 26.02.2018 to the respondent which was also copied to RERA Haryana and Realty Investmart i.e., the brokers of the complainants. Wherein the complainants again raised their concern regarding refund of the amount deposited along with interest due to the neglectful, malafide and ignorant acts of the respondent.
- o. That continuous disregard, neglect and misrepresentations by the respondent made the complainants approach their investment brokers i.e., Realty Investmart to sought clarifications on the project which were not provided by the respondent. On 02.05.2018. Mr. Manish Patni of Realty Invest mart wrote an email to some representative of the respondent sought clarifications on the concerns raised earlier and also intimated them about complainants deciding to seek refund along with interest for the apartment booked.
- p. That on 05.06.2018, the complainants received an email from the commercial head of the respondent, wherein the information sought by Mr. Manish Patni was again left unanswered. A few of the things being answered by the respondent were not reliable or detailed enough so as to be trusted upon. As a result of which complainants in response to the said email wrote an email dated 06.06.2018 asking a few more questions before taking the final call to continue investment in the project or to opt out.

- q. That the complainants wrote an email dated 17.07.2018 to India Bulls and enquired about few questions as the complainants want to be secured about their investment in the project as the respondent has amended the project, possession date of the project, buy back scheme, etc and India Bulls being the project financier of the respondent is aware of the prevailing conditions.
- r. That upon being in receipt with the letter dated 20.06.2019, the complainant wrote an email dated 28.06.2019 to the respondent regarding forfeiture of money paid by the complainants against the booking of the said apartment, in case they fail to pay the dues of Rs. 22,21,000/- for which no explanation was given neither was any payment plan for the same issued. Further it was made distinctively clear by the complainants that they wish to opt out of the as the details mentioned by the respondent were completely different at the time of booking of the said apartment. The complainants also raised their grievance on being not provided with reply to their emails raised time and again, resulting into their efforts and money being completely in vain.
- s. That the complainants were informed about the lack of necessary license/approval/permission for the first time only in 2017. The respondent did not possess the necessary license/approval/permission to develop the project the Turning Point since the very beginning and malafidely convinced the complainants to purchase the said apartment by giving false and misleading representations. It is also pertinent

to highlight that the construction for the said project has not even commenced as on date as can be seen from the pictures available on the website of the respondent.

- t. That the complainants on 18.07.2019 received an email from the respondent that the cancellation and refund request has been forwarded to the concerned department. Till date there has been no response of the respondent regarding the refund of the amount. This clearly shows the malafide intention to defraud the innocent home buyers. The complainants also sent multiple reminders to the respondent dated 05.08.2019, 11.09.2019, 09.12.2019 regarding the refund of money but neither no response was received from the respondent, nor no action was taken on the query of the complainants. Subsequently while gathering information regarding the said project, it came to the notice of the complainants that the respondent has not only fooled their allottees but have also been non-compliant with the procedures of RERA.
- u. That the complainant wrote an email to the respondent for the refund of money as the project is shut and financier has also gone under bankruptcy but till date no response is received from the respondent. These acts of the respondent clearly show that they have not only failed to provide a reliable service to the complainant but have also been neglecting the compliance of the Authority on every pretext even after getting several notices. Gross negligence on the part of the respondent has caused loss of time, money, effort and trust to the complainants. Even after several communications, emails, personal visits the

respondent disregarded the concern of the complainants and kept on demanding the execution of one-sided and incomplete agreement by the complainants. The respondent in their email mentions that the agreement was created as according to the model format prescribed by RERA. However, as per the rules of Act it is mandatory for the Developer to mention the time of possession in the agreement as it forms the integral part, and the respondent has intentionally ignored to add the said clause in the agreement and violated the terms of the Act.

- v. That the acts of the respondent are not narrowed to being negligent but are also fraudulent as the complainants are till date not aware of the area of their apartment., neither do they have any clue regarding what have been done with their money invested as there is no construction and development in the project as can be seen from the images attached with this complaint, nor is there any update upon the development as to what and when is to be done. The respondent has grossly failed in providing the services to the complainants and have deceived them by misrepresenting the details, registration and fooling the innocent homebuyers by blocking their money. The acts of the respondent have created agony, and mental stress to the complainants as they have no idea about the money invested by them specially when in the present time when people are facing huge financial crisis.
- w. That the complainant purchased the said apartment for residential purposes as the said apartment was being developed with the concept of budgeted yet with all modern

amenities and decided to invest in the project not being aware of the fact that the complainants were investing in a fraudulent company which lured customers at the initial stage by providing misleading information to the buyers. Therefore, enticed by respondent's false promises in a time of need, the complainants inadvertently agreed to purchase the apartment in the said project.

- x. That it is not out of place to again mention that as per clause 15 of the said buyer' agreement, the respondent was to hand over the possession within the stipulated period of 48 months from the date of execution of buyer' agreement. The respondent has by providing deceptive information, indirectly delaying the execution of the buyer' agreement. Furthermore, the complainants were not intimated about the date of commencement of development work by the respondent, which has exactly not even commenced till date. The conduct of the respondent makes it clear that it did not possess the requisite authority to develop the said project as per the original plan and despite of this, the respondent falsely represented otherwise with the malicious intent to make unjust financial gains and wriggle out the hard-earned money from the complainants and other homebuyers. When the respondent could not deliver as per its promises, it resorted to not replying to the emails of the complainants. The complainants have suffered mental agony and financial losses due to the conduct of the respondent. The complainants should not suffer any further due to the default attributable to the respondent and the amount invested by them should be refunded along with interest @18%.

- y. That the respondent misled the complainants and lured them to purchase the apartment by promising the features mentioned in the beginning of the complaint. Further, the respondent has defrauded the complainants and induced the complainants to part with their hard-earned money by making false and misleading representations, thereby unjustly enriched itself to the prejudice of the complainants.
- z. That despite repeated reminders and requests, the respondent have not supplied the complainants with the details providing to the RERA regarding the said project, details regarding the area of the said apartment, buy back scheme, subvention plan and other details as inquired by the complainant till date.
- aa. It is most humbly prayed that action as per Act, 2016 and the rules made thereunder, namely the Rules, 2017 be initiated and the complaint be decided in favour of the complainants along with cost of harassment, unfair trade practices and legal cost as per the law be awarded to the complainants.
- 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 damages to the tune of Rs. 5,00,000/- for mental harassment & 50,000/- for 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 complainant 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 complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains.
- (c) That the complainant 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 complainant, learned about project "Turning Point" and repeatedly approached the respondent to know the details of the said project. The complainant 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 complainant upon its own examination and investigation desired to purchase a unit in the year 2016, and approached the

respondent and on 13.10.2016 booked a unit in the said project.

- (f) That the respondent further allotted a unit bearing no. 2301, Tower West End-8, HSG-026 having carpet area 1125 sq. ft. for a total sale consideration of Rs, 69,98,375/- in favour of the complainants in the aforesaid project. the complainant has only paid an amount of Rs. 7,34,590/-
- (g) Though the agreement was not executed between the parties, but as per RERA registration of the project, the respondent was under an obligation to handover the possession to the complainant 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.
- (h) 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, 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.

- (i) 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.
- (j) That the complainant has 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.
- (k) 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 complainant 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 been considered 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 complainant:

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

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 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.

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, 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.
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 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 situation besides refund of the paid-up amount i.e., Rs. 7,34,590/-given by the complainant 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.

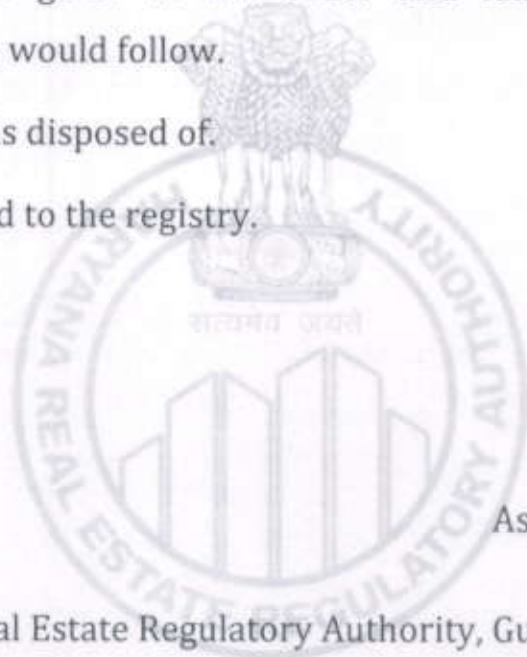
G.II Compensation & Litigation charges

19. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:

20. 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. 7,34,590/- received from the allottee 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.
21. Complaint stands disposed of.
 22. File be consigned to the registry.



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2023

HARERA
GURUGRAM