

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

Complaint no. : 4569 of 2022  
First date of hearing: 20.09.2022  
Date of decision : 14.07.2023

Ajay Narain Gupta  
R/o: H.No-19, Bahubali Enclave, Karkardooma,  
New Delhi-110092

**Complainant**

Versus

M/s Vatika Limited  
Office: A-002, INXT City Centre, Ground floor, Block  
A, Sector 83, Vatika Indi Next, Gurugram.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)  
Sh. Dhruv Dutt Sharma (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint dated 22.06.2022 has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. N. | Particulars                                 | Details   |
|-------|---|---|
| 1.    | Name and location of the project            | "Vatika India Next" at Sector 81,82A,83,84 and 85, Gurgaon, Haryana.  |
| 2.    | Nature of the project                       | Residential plotted colony  |
| 3.    | Project area                                | 393.358 acres   |
| 4.    | DTCP license no.                            | 113 of 2008 dated 01.06.2008 valid upto 31.05.2018<br>71 of 2010 dated 15.09.2010 valid upto 14.09.2018<br>62 of 2011 dated 02.07.2011 valid upto 76 of 2011 dated 07.09.2011 valid upto 06.09.2017   |
| 5.    | RERA Registered/ not registered             | Not registered  |
| 7.    | Plot no.                                    | 15, block C, FF (Page 22 of complaint)  |
| 8.    | New plot no.                                | 15, FF,H-15 (page 56 of complaint)  |
| 9.    | Date of execution of plot buyer's agreement | 01.04.2013 [Page 19 of complaint]   |
| 10.   | Possession clause                           | <b>15 Schedule for possession of the said residential floor</b><br><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this Agreement.</i> |
| 11.   | Due date of possession                      | 01.04.2016  |
| 12.   | Total sale consideration                    | Rs. 1,44,45,010/-<br>(Page 53 annexure C-2 of complaint)  |
| 13.   | Paid up amount                              | Rs. 98,19,631/-<br>(Page 53 annexure C-2 of complaint)  |

|     |                           |  |
|-----|---------------------------|--|
| 14. | Occupation certificate    | 06.06.2017(Page 69 of reply)                   |
| 15. | Intimation of possession  | 08.06.2018 (page 70 of reply)                  |
| 16. | Notice for cancellation   | 23.07.2021 (annexure C4, page 57 of complaint) |
|     |                           | 05.05.2022 (page 78 of reply)                  |
| 17. | Acceptance of termination | 16.09.2021 (page 58 of complaint)              |
| 18. | Cancellation letter       | 23.05.2022 (page 79 of complaint)              |

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
  - I. That the complainant being a simple person and believing in such false representations, assurances, warranties, and claims under the pretext of the respondent through its authorized representative, booked the unit for the basic sale price of **Rs. 1,35,80,000/-** and total sale consideration of **Rs.1,44,45,010** in the said project on 28.02.2013 and accordingly paid an amount of Rs. 9,11,000/- as the booking amount against the unit.
  - II. That, consequently, a buyer's agreement was executed between the parties on 01.04.2013. Clause 1 of the agreement categorically noted the booking amount paid by the complainants. The same is also evident from the statement of accounts dated 14.04.2016.
  - III. That, thereafter, believing on the representation of respondent, the complainant made payments as per the payment schedule on different occasions towards the sale consideration of the unit. A total sum of Rs. 98,19,631/- was paid against the unit.
  - IV. That at the outset, the intention of the respondent has been *malafide* since the very beginning. It had executed an agreement showering with one-sided and unilateral terms and conditions, all favoring the respondent and leaving the complainant at the peril of the respondent. For the delayed payment on part of the allottee interest @18% p.a. was charged under clause 12. However, for delay in possession on part of the developer, a



compensation of Rs. 5/- per sq. ft. was noted to be given as per clause 20 of the agreement. The complainant was not kept at an equal bargaining position and was made to sign on the dotted lines of the pre-decided and pre-printed terms and conditions of the agreement. After having paid a hefty amount of booking amount, the complainant was left with no option but to execute the one-sided buyer's agreement.

- V. That as per clause 15 of the agreement, the respondent promised to deliver the possession of the unit within 36 months from the date of execution of this agreement. So accordingly, the due date for the delivery of possession comes out to be **01.04.2016** but the respondent had failed in fulfilling its obligation as per the agreement and till date, the valid possession has not been handed over to the complainant which is a clear violation of the agreement.
- VI. That the complainant after the investment of the money in the project of the respondent realized that all the assurances and representations made by it are fraudulent. The complainant on investigating came to know that the project of the respondent is at a halt and no tenable progress at the work site was observed which caused grave stress and mental agony to the complainant as the unprofessional work ethics of the respondent had broken the complainant to financial turmoil.
- VII. In pursuance of the same, the complainant tried to contact the respondent time and again to sought clarifications about the stage-wise construction and completion of the project but all went in vain as there was no response received from the side of the respondents.
- VIII. That till date the complainant has paid a sum of Rs. 98,19,631/- which was much more than the construction done at the site at that point in time as per the construction-linked payment plan. The demands were raised by the respondent for the further payments without even reaching to that

particular stage of the construction which depicts the *malafide* and frivolous behavior of the respondents and the breach of the payment plan. Moreover, heavy demands in lieu of interest payments were levied by the respondent. Until 14.04.2016, the heavy interest of Rs. 6,64,714/- was charged over and above the sale price, as evident from the account statement annexed herewith.

- IX. Furthermore, besides these illegal demands, the complainant made all the payments of the amount due, timely on or before the due date. The complainant time and again visited the respondent to clarify on the hefty and illegal amounts charged. Upon every visit, the respondent assured and represented to the complainant that the same would be removed/waived off. However, despite multiple visits of the complainant, the same was never done.
- X. That, moreover, while the complainant was moving from post to pillar in order to get the exorbitantly charged interest waived, not only did the respondent keep ensuring the complainant that the same would be done, and was to no avail, but also, went ahead and changed the unit of the complainant to "H-15". The complainant received an addendum to the buyer's agreement which noted the change in the unit and that the reasons for the same have already been explained. However, the same was never done. The respondent unilaterally and arbitrarily noted that the allottee accepts such change without any protest and demur. However, it is most humbly and vehemently submitted that was never the case.
- XI. That, accordingly, keeping in light of the utter and continuous *malafide* activities of the respondent, not waiving the arbitrary interest charged, unilaterally changing the unit, not providing a fresh statement of account, or delivering the valid offer of possession, the complainant did not find it

wise to transfer a substantial sum of amount and hence had stopped the further payments.

- XII. That the respondent unilaterally canceled the unit and sent notice of termination letter on 23.07.2021 and keeping in light of the fact that the respondent continued to act in utter *malafide* with the continuous charge of the interest at exorbitant rate.
- XIII. That the complainant was also no more interested in further investment in the project, the complainant accepted the termination of the unit and sent an acknowledgment mail in that regard on 16.09.2021. However, it needs to be categorically noted that in continuation of the utter *malafide* of the respondent, illegal, arbitrary, and unlawful charges were deducted upon termination and as such is a violation of section 11(5) of the Act. The complainant requested for refund of the already paid amount after the deduction of earnest money which as per law can be 10 percent of total sale consideration, but the respondent did not revert to the request of the complainant and has not refunded the amount till date.
- XIV. That on the basis of the above, it needs to be categorically noted that the complainant, tired of the *malafide* actions and conduct of the respondent, accepted the termination of the unit and consequently wrote an email dated 16.09.2021. However, the respondent, in its utmost *malafide*, intended to deduct the monies paid by the complainant illegally, which, under no circumstance, whatsoever, be accepted.
- XV. That the earnest money clause incorporated in the floor buyer agreement is unjust and arbitrary and against the Act and regulation no. 5 of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018. The said regulations forbid the builder to forfeit more than 10% of sale consideration.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).
  - a. Direct the respondent to refund the entire amount paid by the complainant along with interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
  - a. That at the outset, the respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.
  - b. That the complaint filed by the complainants before the Authority, besides being misconceived and erroneous, is untenable in the eyes of law. They have misdirected themselves in filing the above captioned complaint before the Authority as the relief being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the Authority.
  - c. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
  - d. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof.
  - e. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sough form are liable

to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.

- f. That the complainant has miserably and wilfully failed to make payments in time or in accordance with the terms of the floor buyer's agreement. The complainant has frustrated the terms and conditions of the floor buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession. It has been categorically agreed between the parties that subject to the complainant having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said residential floor unit within a period of 3 years from the date of execution of the agreement, unless there shall be delay due to force majeure events and failure of allottees to pay in time the price of the said residential floor.
- g. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- a. Decision of the gas authority of India Ltd. to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were



adversely affected and the respondent was forced to reevaluate its construction plans which caused a long delay.

- b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
- c. Re-routing of high-tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.

The above has resulted in delays in construction of the project, for reasons that essentially are beyond the control of respondent.

- h. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs. 1,44,45,010/- the amount actually paid by the complainant is Rs. 98,19,631/-. The respondent, after having applied for grant of occupation certificate in respect of the unit in question, which had thereafter been even issued through memo no. 5966 dated 06.06.2017 had offered possession to the complainant vide letter dated 08.06.2018. The complainant did not make the compete payment due on offer of possession despite several reminders. Despite the number of opportunities the complainant failed to make the payments and the respondent was therefore constrained to cancel the booking of the complainant and the complainant is now left with no right, title, interest etc. in the present unit. The complainant after defaulting in complying with the terms and conditions of the buyer's agreement, now wants to shift the burden on the part of the

respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainant.

- i. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers and further invested towards the completion of the project. A builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. One particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. The problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is also relevant to note that the slow pace of work affects the interest of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. The irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer in proceeding towards timely completion of the project.

7. Copies of all the relevant documents have been files and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties

**E. Jurisdiction of the authority**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real

Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11**

.....

**(4) The promoter shall-**

*(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.*

11. 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 complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" 2021-2022(1)RCR(C), 357 and followed in case of *Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of*

**India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021**  
wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant.**

**F. I Direct the respondent to refund the paid amount along with interest.**

14. The complainant submitted that he booked a unit in respondent's project namely "Vatika India Next" for total sale consideration of Rs. 1,44,45,010/- against which he has already paid an amount of Rs. 98,19,631/- constituting 68.98% of consideration. It has bought on record that on 01.04.2013, a buyer's agreement was executed between the parties. The contention of the complainant is that there has been an inordinate delay in the construction of the project. The complainant has also contended that the copy of occupation certificate was never supplied to the complainant by the respondent and

further, the respondent has unilaterally changed the unit of the complainant for which he never agreed to.

15. The contention of the respondent is that OC has already received on 06.06.2017 and the complaint is not maintainable as OC was received prior to coming into existence of RERA Act, 2016. Further stated that the statement of complainant regarding change of unit is denied. However, it confirmed that an addendum was signed by the allottee on 28.08.2015 and that contains only change in numbering of the unit whereas the location of the unit remains same. It further stated that the offer of possession of the unit was made on 08.06.2018 and after that the notice for termination of the unit was sent on 23.07.2021 and finally the unit of the complainant was cancelled on 23.05.2022.
16. The counsel for the respondent further states that as per letter dated 23.07.2021, it raised demand of Rs. 1,13,94,785/- from the allottee which he never paid and vide email dated 16.09.2021 (page 58 of complaint) the complainant himself has accepted the termination of the unit and as "complainant was no more interest in further investment in the project, the complainant accepted the termination of the unit and agreed to adhere the cancellation process of deduction of 10% earnest money as per guiding statute.
17. On consideration of the documents available on record and submission by both the parties, the authority is of the view that the due date of possession as per buyer's agreement as mentioned in the table above is 01.04.2016. The respondent obtained the occupation certificate for the said project on 06.06.2017 and offered possession of the subject unit to the complainant on 08.06.2018. Thereafter the respondent had sent notice for termination on 23.07.2021 and raised demands of outstanding due but the complainant failed to make payment and sent an email dated 16.09.2021 and stated that

he was no more interest in further investment in the project and agreed to adhere the cancellation process of deduction of 10% earnest money.

18. Further it is pertinent to mention that despite being offered possession of the subject unit, the complainant filed present complaint on 22.06.2022 for refund of amount paid along with interest before the authority. The complainant has pleaded that the possession is delayed, and the construction is still incomplete. The plea of the complainant, however, is devoid of merit. At the cost of repetition, it is highlighted that the occupation certificate has already been granted by the concerned authority and thus, it is unfair to say that the project is still incomplete.
19. The authority is of view that as per section 19 (6) and (7) of Act of 2016, the allottee is under obligation to make timely payment as per payment plan towards consideration of the allotted unit. The complainant continued with his default and making payment even after reminder letter, which led to cancellation of his unit. The authority is of considered view that the complainant himself has clarified his willingness to withdraw from the project vide email dated 16.09.2021 i.e., after offer of possession. Thus, it is a clear case of surrender of unit.
20. The authority is thus of the view that forfeiture of earnest money is necessary to make good to the losses of the respondent who has completed the project and even offered possession of the unit. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India,*

*the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

21. Thus, keeping in view of aforesaid circumstances and the law of the land, the complainant vide email dated 16.09.2021 himself surrendered the subject unit but the respondent paid no heed to the request of the complainant despite the fact that it has already served a pre-termination before such request of the complainant. Further, the respondents was not justified in retaining whole of the paid-up amount on cancellation. It could have retained 10% of the basic sale consideration of the unit and was required to return the remaining amount on cancellation. Since that was not done, the respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money within 90 days from the date of this order along with an interest @10.70 % p.a. on the refundable amount from the date of surrender i.e., 16.09.2021 till the date of its actual realization.

**G. Directions of the Authority**

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount after deduction of 10% earnest money along with prescribed rate of interest i.e., 10.70% per annum from the date of acceptance of termination i.e., 16.09.2021 till the actual date of realization of the amount.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2023



**HARERA**  
**GURUGRAM**