

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 6491 of 2019
Date of decision : 22.08.2023

Ravinder Walia and
Babloo Singh Walia
ADDRESS: H.no. 4104, DLF Ph 4, Gurugram

Complainants

Versus

M/S. Vatika Limited
ADDRESS: Vatika Triangle, 4th floor, Sushant
Lok Phase-I, Block A, Mehrauli Gurgaon Road,
Gurugram-122002

Respondent

APPEARANCE:

For Complainants:

Ms. Surbhi Garg Advocate

For Respondent:

Mr. Venket Rao Advocate

HARERA
GURUGRAM
ORDER

1. This is a complaint filed by Ravinder Walia and Babloo Singh Walia under section 31,35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 against M/s Vatika Limited.



2. As per complainants, on 15.04.2014, they booked a residential floor bearing plot no. 82E-2, ground floor, admeasuring 1725 sq. ft. by paying an amount of Rs. 3,00,000/-. It is situated in project namely "Vatika Premium Floors" being developed by respondent, located in a residential colony named, "Vatika India Next", sector 82, Gurgaon. Total sale consideration was agreed as Rs.51,11,246.25/-. Till November 2014, they made a payment of an amount of Rs. 31,12,385/- which is almost 21% of the total sale consideration. No agreement (BBA) was executed by respondent. Thereafter, they (complainants) approached the respondent vide emails dated 23.03.2015 and 24.03.2015 with request to execute the agreement. They inquired about the status of the project also. Without executing an agreement, the respondent sent demand letter email dated 23.03.2015.

3. They (complainants) visited office of the respondent and requested to execute agreement(BBA). They also raised objections towards the payment demand as raised by the respondent, without executing any agreement. An amount of Rs. 23,33,429.44/- was again paid by them (complainants) on 15.04.2015.

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4. Almost after about 1.5 years from the date of booking, a BBA(agreement) was executed between the parties on 11.09.2015. As per said agreement, the possession of subject floor was to be handedover within a period of 4 years from the date of execution of the agreement. It is pertinent to mention that they (complainants) had paid an amount of Rs. 54,44,669/- till 2015, showed utmost faith in the respondent company and kept on making payments as and when demanded by latter.
5. However, on 14.06.2016 they received a re-allotment letter from the respondent in which, they were informed that there had been a revision in master layout plan, their unit did not exist anymore and they will be re allotted another unit. They (complainants) visited the office of the respondent and requested them to refund their amount, to which vide email dated 01.02.2018, the respondent stated that they will receive the possession of their unit soon. Thereafter, the complainants visited the construction site and were stunned to see that no construction work was going on there.
6. They (complainants) were left with no option but to file RTI application before ACP headquarters. They also sent an email dated 25.03.2019 to Commissioner of Police. They (complainants) then approached the Authority, by filing a



complaint bearing no. 2281 of 2018, seeking refund of their hard-earned money. On 29.01.2019, the Authority directed the respondent to refund the entire amount paid by them, along with interest.

7. Citing all this, complainants have sought following reliefs:
- To order the respondent to pay compensation of Rs. 5,00,000/- on account of loss/injury as well as mental agony suffered by the complainants.
 - To order the respondent to pay ligation cost of Rs. 40,000/-.
 - to pass such other order as Adjudicating Officer may deem fit and proper, in the facts and circumstances of the present case.

Respondent contested the complaint by filling written reply. It is averred by the respondent :-

8. That the complainants were given two copies of agreement. They were requested to sign and return the same in 15 days. A reminder was sent to them with request to sign the agreement on 19.08.2015. Thereafter, the agreement was executed between the parties on 11.09.2015.
9. It is further stated by respondent that as per clause 15 of the agreement, the unit was to be delivered within 4 years from the date of execution of the agreement, hence the due date of

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possession comes out to be 11.09.2019. However, the complainants approached the authority before the due date of possession.

10. The complainants vide allotment letter dated 11.09.2015 were allotted a floor bearing no. 82 ST, Ground floor sector 82 admeasuring 1725 sq. Ft. and due to revision in master layout plan of the township " Vatika India Next" , the complainants were re allotted floor bearing no. 6/ST, ground floor, Sector 82 Gurgaon . However, they refused to accept the alternate allotment for reasons best to known to them. It is pertinent to mention that in clause 13 of the agreement it is clearly mentioned that the present layout plan may be changed/ modified/ amended, and the new layout plan will supersede the old one.

11. That the complainants have already received amount paid by them along with interest i.e. Rs. 75,73,568/- in view of order passed by the Authority dated 11.09.2019. Contending all this, respondent prayed for dismissal of complaint.

I heard learned counsels representing both of the parties and went through record on file.

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12. It is not in dispute that complainant booked a residential unit in the project Vatika Premium floors, being developed by the respondent. The respondent did not execute agreement (BBA) till 11.09.2015. The complainants paid Rs.31,12,385/- till November 2014 and Rs.23,33,429.44/- on 15.04.2015. Although it is pleaded on behalf of respondent that, same sent draft of BBA but complainant did not sign it. All this is refuted by learned counsel for complainants. The respondent failed to show any evidence to prove its contention that same sent any draft as BBA to complainants or same did not sign it.
13. Admittedly as per BBA, possession of subject floor was to be handed over within 4 years of date of its execution i.e. 11.09.2015 but possession was not handed over. The complainants were constrained to file complaint before the Authority seeking refund of the amount and said complaint has been allowed by the Authority.
14. It is objection of respondent that when complainants have already been allowed refund of the amount, same (complainants) are not entitled to claim compensation. I find no substance in this plea. As per Section 18 and 19 of the Act of 2016, the complainants / allottees have both of remedies i.e. to claim refund of the amount and also



compensation, in case promoter fails to complete the unit and to handover possession within agreed time.

15. It is not in dispute that the respondent sent a letter to complainants informing them for re-allotment of floor, on the ground that Master Layout plan of the township was changed. According to complainants, the respondent had dispute about the title of land of the project and hence, same was compelled to change the Master plan and all this was not informed to them. The respondent did not refute aforesaid plea. Explicitly, however, same denied the claim of complainant as false. Bald denial, without explanation was not enough on the part of the respondent.

16. Considering the facts as discussed above, it is well established that the respondent misrepresented about its title upon the land of the project. Same did not disclose dispute about its title and claimed that Master site plan was duly sanctioned. Either site plan was not duly sanctioned or the respondent did not inform the allottees/ complainants about change of building plan. As per section 19(1) of the act of 2016, allottees had right to obtain information in this regard. At the same time, section 14 of the Act of 2016, obliges the promoter to adhere to sanctioned plan and project specifications. The respondent is thus liable to compensate the allottees/ complainants. There is a well



known maxim, " Ubi jus ebi remedium ", meaning thereby, "where there is right, there is remedy".

17. Apparently, all this caused mental agony and suffering to the complainants. The latter's have claimed Rs.5,00,000/- as compensation in this regard. Apart form mental agony/ suffering, the complainants were forced to pay Rs.54,44,669/- till 2015 and respondent did not bother to execute even BBA, despite receipt of so much amount. The respondent used the money of the complainant for it's own benefit, without executing BBA, which the respondent was obliged to execute at initial stage, by taking not more than 10% of sale consideration. Keeping in view of all this, in my opinion, Rs.5,00,000/- is not unreasonable amount of compensation. Same is thus allowed to the complainants to be paid by the respondent.

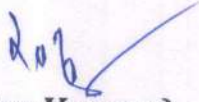
18. Although complainants did not put on file any evidence about litigation fee or other legal expenses paid/ incurred by them in this case, it is apparent that same were represented by an advocate during trial of this case. Considering all this, complainants are allowed Rs.40,000/- as cost of litigation.

19. Complaint stand disposed of. Respondent is directed to pay amounts of compensation as described above, within 30 days of this order, otherwise same will be liable to pay said

amounts along with interest @10.5% p.a. till realisation of amounts.

20. Announce in open court today.
21. File be consigned to records.




(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

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