

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

Date of Decision 22.09.2023

NAME OF THE BUILDER		VATIKA LIMITED		
PROJECT NAME		TURNING POINT		
SR. NO	COMPLAINT NO.	Complainant		Respondent
1.	CR/6258/2022	Gobind Mittal and 2 others	V/s	R:1 Vatika limited
2.	CR/6182/2022	Keshav Kamal Garg and 2 others	V/s	R:1 Vatika limited
3.	CR/6278/2022	Chirag Sharma 1 other	V/s	R:1 Vatika limited R:2 Piramal Capital & Housing Finance Ltd
4.	CR/6417/2022	Vikas Mehta and 1 other	V/S	R:1 Vatika limited R:2 Piramal Capital & Housing Finance Ltd

CORAM:

Shri Sanjeev Kumar Arora

Member
APPEARANCE:

Mr. Abhijeet Gupta

Complainant(s)

Shri. Venket Rao, Pankaj Chandola

Respondent

HARERA
ORDER

1. This order shall dispose of all the 4 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities

and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely "Turning Point" (Group Housing Colony), Sector 88B, Gurugram (Haryana) being developed by the same respondent-promoter i.e., Vatika Ltd. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest and rentals.
- The details of the complaints, reply to status, unit no., date of allotment, date of agreement, total sale consideration, amount paid up & relief sought are given in the table below:

Vatika Limited							
Project Name		Turning Point (Group Housing Colony)					
Sr. No	Complaint No./Title/Date of filing	Reply status	Unit no.	Allotment letter	Date of execution of builder buyer's agreement	Total sale consideration Amount Paid up	Relief sought
1.	CR/6258/2022 Gobind Mittal and others Vs. Vatika Limited D.O. F 13.09.2022	Received	105, tower- West End 8 (Page 24 of complaint)	NA	10.09.2018 [page no.23 of complaint]	TC-Rs.86,95,590/- AP- Rs.39,07,360/-	Refund and monthly rentals
2.	CR/6182/2022 Keshav Kamal Garg and 2 others Vs. Vatika Limited D.O. F 13.09.2022	Received	501, HSG-026 tower- West End 1 (Page 46 of complaint)	17.07.2018 (Page 14 of complaint)	16.10.2018 [page no.21 of complaint]	TC-Rs.85,52,590/- AP- Rs.16,09,410/-	Refund and monthly rentals
3.	CR/6278/2022 Chirag Sharma Vs. Vatika Limited & Anr.	Received	2102 (Page 17 of complaint)	NA	16.11.2018 [page no.25 of complaint]	TC- Rs. 85,52,590 AP- Rs. 38,83,912/-	Refund and monthly rentals

	D.O. F 13.09.2022						
4.	CR/6417/2022 Vikas Mehta and Khusboo Jain Vs. Vatika Limited and anr. D.O. F 27.09.2022	Received	1802, tower- West End 1 (Page 25 of complaint)	NA	27.11.2018 (Page 23 of complaint)	TC-Rs.85,06,830/- AP- Rs.40,47,618/-	Refund and monthly rentals

4. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant against the promoter M/s Vatika Limited on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligations. In some of the complaints, issues other than refund in addition or independent issues have been raised and consequential reliefs have been sought.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing **CR/6258/2022, titled as Gobind Mittal, Sunita Mittal and Bharat Bhusan versus Vatika Ltd** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

7. 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:

CR/6258/2022, titled as Gobind Mittal, Sunita Mittal and Bharat Bhusan versus Vatika Ltd

S. No.	Heads	Description
1.	Name and location of the project	Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	18.80 acres
4.	DTCP license no.	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	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.	105, tower-West End 8 (Page 24 of complaint)
8.	Unit area admeasuring	899.22 sq. ft.
9.	Date of allotment	NA
10.	Date of builder buyer agreement	10.09.2018 (page 23 of complaint)
11.	Due date of possession	15.03.2025 (Taken from previous cases of same project)
13.	Total sale consideration	Rs.86,95,590/- [page 16 of complaint]
14.	Amount paid by the complainant	Rs.39,07,360/- [page 16 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

The complainant submitted as under: -

8. That, in pursuant to the elaborate advertisements, assurances, representations and promises made by respondent no. 1 in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, our clients considered booking a unit i.e. HSG-026-west End 8-105 in the project "Turning Point" at the respondent Sector 88B, Harsaru, Gurgaon, Haryana with a total consideration based on the carpet area is of Rs. 86,95,590/-.
9. That thereafter the Builder Buyer Agreement dated 10.09.2018 was executed between both the parties, The Complainants has paid total amount of Rs. 38,77,704/- and the total loan amount disbursed by the India Bulls Housing Finance Limited is Rs. 29,08,278/- That the total Loan Amount Sanctioned by India Bulls Housing Finance Limited was of Rs. 54,00,000/-. That, in pursuant to the Builder-Buyer Agreement (BBA) dated 10.09.2018, executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, Date of completion etc. Vide Clause 5 of the Builder-Buyer Agreement, the Respondent assured that the time is of the essence. Moreover, it was also assured and represented that if due to any reason the construction of the booked unit gets delayed, then the developer i.e. Respondent, undertakes to pay the PRE-EMI's only to the buyer. It is also pertinent to mention that payment of the PRE-EMI's shall continue till the application for Occupancy Certificate including the actual possession, has been applied for booked Flat/Unit is issued to the buyer.
10. That it is pertinent to note that at the time of signing the Application Form to book a Unit in Respondent Project, the Complainants were

informed that the possession of the Unit will be handed over in the month of September '2021, which is almost from 3 years from the date of signing the Builder-Buyer Agreement. However, the Respondent never gave anything in writing about the possession date in any of the documents executed between Respondent and Complainants, despite several times enquired by the Complainants. That, Complainants anticipated and believed that the Respondent would commence the construction of project immediately after the disbursement of first tranche of loan amount on 12.10.2018. However, till date, Respondent has failed to commence the construction of project. When the Complainants recently visited the site to check on the progress of the construction, they were completely shocked and appalled to see that no construction whatsoever had taken place and no construction work was even ongoing at the site. Based on the construction work at Project site, it appears that the Project has been miserably delayed and it appears that site has been abandoned by the Respondent.

11. That the Complainants contacted the Respondent on several occasions and was regularly in touch with the Respondent. The Respondent was never able to give satisfactory response to the Complainant regarding the status of the construction and rental payment as promised which was due since April 2020. It was utter shock for the Complainants that the Respondent has on its own, extended the date of the completion to the year 2026-27, which is absurd, arbitrary and unjust in nature. Furthermore, due to the absurd terms and conditions imposed by the Respondent and this

extension of deadline has rendered the Builder-Buyer Agreement executed by and amongst the Complainants and Respondent, null and void. That it is stated that the Complainant who had taken a Loan of Rs. 54,00,000/- from India Bulls Housing Finance Limited decided to foreclose the same, owing to the fact that there was no construction at the project site and the builder was not giving any justification for delay in construction. It is pertinent to mention that the Complainant has also paid the Sum of Rs. 8, 12,215 as PRE EMIs which infact was liability of the Respondent

12. That thereafter in September 2022, Complainants decided to withdraw from the project as the Respondent failed to keep the construction of the project as per the construction plan and there is no sign and hope of Project getting completed and ready for the possession till the next 4 years as came out while interacting with the employees of Respondent . It is also important to note that Respondent acknowledged the un-paid rental and was ready pay the same along with the refundable amount. The Respondent came up with a plan for refund to the Complainants in which all the liabilities were forced on the Complainants as if they have committed any fault as per the Agreement. It is pertinent to note that it is Respondent No. 1, who in the first instance failed to perform the contractual obligations under the Builder Buyer Agreement and fulfill the terms and conditions. Complainants vide E-mails disagreed with the Refund amount as it was one sided and not as per the Builder Buyer Agreement. That as per the Clause 7.5 of the Agreement, the Respondent is bound to Compensate the Complainants on failure on the part of Respondent , in accordance with the terms and conditions.

That, the Complainant was further aghast and shocked, when it came to its notice that Respondent & Respondent No 2 have illegally and intentionally colluded in an illegal act to disburse and collect huge amount of money from the Complainant even when the construction of project has not started. The statement of account issued by Respondent are misleading and intentionally obfuscating the facts.

13. That, by the act and conduct of the Respondent , it's been unambiguously lucid that the Respondent from the very beginning had malafide intention to cheat and defraud the Complainants. That, even at the time of the execution of the Builder-Buyer Agreement the Respondent had represented to the Complainant that they are in possession of the necessary approvals from the DTCP, Haryana to commence with the construction work of the Residential Project. However, till date no construction whatsoever has taken place at the site. Only, some excavation work has been done at the site and since then the site & the project have been abandoned by the Respondent . It is also submitted that it appears to be that the Respondent does not have necessary approvals from the DTCP for the present project and this amounts to fraud being committed towards the Complainant herein.

14. That the Hon'ble Authority vide its order dated 12.08.2022, in the case titled as "Ayush Vardhan Aggarwal V. Vatika Limited" ordered an enquiry into the project and appointed an enquiry officer to determine the status of the project. The enquiry officer in his preliminary report has submitted that the project has been abandoned and there is no construction whatsoever at the project

site. That, the Respondents are not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the Complainants by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.

15. That the Respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The Complainant has suffered on account of deficiency in service by the Respondent and as such the Respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
16. That the Complainants herein are constrained and left with no option but to cancel the allotment of the said Unit i.e. 105 ad-measuring 899.22 Sq. Ft., at HSG - 026- West End-8 in Vatika India Next 2, Sector 88B, Gurugram Further, the Complainants are seeking and entitled to full refund of the amount including but not limited to all the payments made in lieu of the said unit/flat, as per the terms and conditions of the Builder-buyer agreement executed by the Respondent and even otherwise are entitled to the same. Further, the Complainants herein reserve their right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Hon'ble Authority. That the present Complaint sets out the various deficiencies in services, unfair and/or

restrictive trade practices adopted by the Respondent. The modus operandi adopted by the Respondent, from the Respondent's point of view may be unique and innovative but from the Allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the Allottees by raising illegal demands without giving any heed to the construction linked payment plan attached to the Builder Buyer's Agreement and Tri-Partite Agreement. The Complainant after losing all the hope from the Respondents Company, after being mentally tortured and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance. That, the Complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other Authority.

C. Relief sought by the complainant:

17. The complainant has sought following relief(s):

- (i) Direct the respondent to refund the total amount paid by the complainant with interest at the prescribed rate of interest from the date of payment.
- (ii) Direct the respondent to pay rental amount till the disposal of the present complaint.

18. 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

The respondent has contested the complaint on the following grounds:

19. That the present complaint is an abuse of the process of this authority and is not maintainable. The complainant is trying to suppress material facts relevant to the matter. They are raising false, misleading, frivolous, baseless and unsubstantiated allegations against it with malicious intent and sole purpose of extracting unlawful gains from it.
20. It is further provided that the complainant made several visits to the office of respondent to know whereabouts of the project "Turning Point". Thus, the complainant enquired about the veracity of the project and was satisfied with every approval deemed necessary for the purpose of the development of the subject project of respondent. He had immense and deep interest in the project developed by it and booked a unit. After much pursuance on 10.09.2018, a buyer's agreement was executed between the parties in the said project for a total sale consideration of Rs. 86,95,590/-.
21. It is submitted that since starting the respondent was committed to complete the project and has always tried the level best to adhere with the terms as provided in the agreement and complete the project as per the milestone. However, the same was obstructed either due to non-payment of the instalment by various allottee(s) including the complainants and due to hindrances in between which were purely beyond the control of the respondent.
22. It is submitted that the complaint is premature. There is no cause of action arising in favour of the complainants. As per clause 5 of the

agreement the possession of the unit in the question was proposed to be completed as per the date provided at the time of the registration of the project. It is to note, that as per the registration certificate the project in question is proposed to be completed within 90 months from the date of registration i.e., 15.09.2017. It is submitted that present project is a registered project under RERA as per which the construction of the phase of the project should be completed by 15.03.2025. Therefore, the present complaint is premature.

23. That the complainants are trying to mislead the Authority by concealing facts which are detrimental to this complaint at hand. However, it is submitted that the concerned project is registered with HRERA, Gurugram and the Authority has granted registration no. 213 of 2017; dated 15.09.2017. In accordance with the registration certificate granted by the Authority, the due date of completion of the project should be on or before 15.03.2025, and the same was duly communicated to the complainant. As per clause 5 of the agreement the possession of the unit in the question was proposed to be completed as per the date provided at the time of the registration of the project. It is to note, that as per the registration certificate the project in question is proposed to be completed within 90 months from the date of registration i.e., 15.09.2017. Therefore, the due date of the possession of the unit in question comes out to be 15.03.2025.
24. Therefore, there arises no occasion of delayed possession and thus this complaint at hand is devoid of any cause of action. The only valid inference that can be drawn out of the futile attempt of the complainant by filing this complaint is that the complainants is an investor and seeks speculative gains. With huge slump in the Real

Estate sector the complainant now seeks to exit the concerned project and claim the amount invested by him. Therefore, this complaint is liable to be dismissed at the very outset.

25. It is submitted that present project is a registered project under RERA as per which the construction of the phase of the project should be completed by 1503.2015 Therefore, the complaint is premature and is *prima-facie* liable to be dismissed.
26. It is submitted that the complaint filed by complainant is on baseless and absurd ground. It is pertinent to note, that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the DTCP, Haryana, Chandigarh and any subsequent amendment in the unit plans as may be made from time to time by the company & approved by the TCP, Haryana, Chandigarh from time to time.
27. That the respondent is committed to complete the development of the project and deliver the units to the allottees as per the terms and conditions of the buyer's agreement. It is pertinent to apprise of the Authority that the development work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretched its adverse effect in various industrial, construction, business area. Even in the year 2019 the respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

28. In past few years the construction activities have also been hit by repeated bans by the courts/tribunals/Authorities to curb pollution in Delhi-NCR region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activities in NCR during night hours from 26.10.2019 to 30.10.2019 which was later on converted into complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
29. The hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. Those bans forced the migrant labour to return to their native towns/states/villages creating an acute shortage of labour in the NCR region. Due to the said shortage the construction activities could not resume at full throttle even after the lifting of ban by the Apex Court.
30. Even before the normalcy could resume, the world was hit by the covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period would not be added while computing the delay.
31. That the current covid-19 pandemic resulted in serious challenges to the project with no available labour, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide

notification dated March 24,2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25,2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date, the same continued in some or the other form to curb the pandemic. Various State Governments, including the government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020. It is to be noted that various state Governments, including the Government of Haryana imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial and construction activities.

32. That despite, after above stated measures taken and obstructions, the nation was yet again hit by the second wave of covid-19 pandemic and gain all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. The period during from 12.04.2021 to

24.07.2021, each and every activity including the construction activities were banned in the state.

33. It is a matter of fact, that the complainant has merely paid a partial amount of money and still a substantial amount towards the agreed sale consideration is due to him. In spite of being aware that the payment was to be made as per the stage wise development the complainant has only paid an amount of Rs. 39,07,360/-.
34. That it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainant has not approached the Authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and is attempting to hide his true intentions.
35. All other averments made in the complaint were denied in toto.
36. 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 (written) made by the parties.

E. Jurisdiction of the authority

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

37. 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, the authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

38. 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)(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.

39. 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding entitlement of refund on ground of complainants being investors.

40. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, is not entitled to the protection of the

Act and to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states 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 it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid to the promoter towards 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;"

41. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred 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 a 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) LTS. And Anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F. II Objection raised by the respondent regarding force majeure condition:

42. 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.

43. 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.

Relief sought by the complainant: The complainant has sought the following relief(s):

i. Direct the respondent to refund the total amount paid by the complainant with interest at the prescribed rate of interest from the date of payment.

44. 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 measuring 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 various 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 pre-mature 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.

45. During the proceedings held on 12.08.2022, in those cases, 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 the above-mentioned promoters in order to restrict the promoter from further withdrawal from the accounts till further order.
46. It was also observed that work at the site was 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 would report about the compliance of the obligations by the promoter regarding the project and more specifically having regard to 70% of the total amount collected from the allottees 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.
47. 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 was 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 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 allottees 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.
48. 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

49. 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 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.

50. However, while paying sale consideration against the allotted units, the allottee raised loans from the financial institution under the subvention facilities. While refunding the amount deposited by the allottee(s) who has raised loans against the allotted units, the promoter shall clear such of the loan amounts up to date with that financial institution and the balance amount shall be paid to the allottee within a period of 90 days from the date of order.
51. W.r.t relief no. 2, neither of the parties have pressed upon it during proceeding. So, no direction in this regard can be given.

H. Directions of the authority

52. 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-builder is directed to refund the paid-up amount received from the allottee deposited by him against the 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 timelines as prescribed under rule 16 of the Rules, 2017.
 - ii. While paying against the allotted unit, the allottee raised loan from the financial institution and that amount was to be paid back to it. So, while refunding the amount deposited by allottee who raised loans against the allotted unit, the promoter is

directed to clear such of the loan amount up to date with that financial intuition and the balance amount be paid to the allottee within a period of 90 days.

53. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
54. The complaints stand disposed of. True certified copies of this order be placed in the case files of each matter.
55. Files be consigned to registry.



Sanjeev Kumar Arora
Sanjeev Kumar Arora

Member
22.09.2023

Haryana Real Estate Regulatory Authority, Gurugram

HARERA
GURUGRAM