

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

Complaint no. : 1046 of 2023
Date of filing complaint: 14.03.2023
Date of decision: 30.11.2023

1. Vinay Kumar Panday
2. Vandana Panday

Both RR/o: - House no. 763, Sector 10A, Gurugram,
Haryana 122001

Complainants

Versus

Vatika Ltd.

Regd. Office at: - Vatika triangle, 4th floor, Sushant
lok, phase-1, block-a, Mehrauli-Gurugram road,
Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Priyanka Aggarwal (Advocate)

Complainants

Sh. Venkat Rao (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 allottees as per the agreement for sale executed inter se.

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A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	"Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Project area	18.80 acres
3.	Nature of project	Group housing
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of the Licencsee	M/s Vaibhav warehousing Pvt. Ltd & 9 others.
6.	RERA registered/ not registered and validity status	Registered vide no. 213 of 2017 dated 15.09.2017 valid upto 15.03.2025 area admeasuring 93588.71 sq. mtrs.
7.	Unit no.	203, tower west end-3 (page 20 of complaint)
8.	Unit measuring	1640 sq ft. (super area)
9.	Allotment letter	12.12.2018 (page 60 of complaint)
10.	Agreement for sale	07.12.2018 (page 65 of complaint)
11.	Possession clause	5. <i>Subject to timely payment of dues/ demands by the Allottee(s), the Promoter shall abide by the time schedule for</i>

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		<p><i>completing the Project as disclosed at the time of registration of the project with the Authority and towards handing over the Apartment along with parking to the Allottee(s) and the common areas to the association of allotter's or the competent authority as the case may be, as provided under Rule 2(1)(f) of Rules, 2017. The Allottee cannot hold the promoter responsible for delay in completion of the project if the Allottee himself has been in default in making timely payments as per the agreed payment plan per schedule D to this agreement.</i></p>
12.	Due date of possession	15.03.2025
13.	Total sale consideration	Rs. 96,25,720/- (as per SOA page 32 of complaint)
14.	Total amount paid by the complainant	Rs. 44,36,372/- (as per SOA page 34 of reply)

B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainants booked a 3 BHK + apartment admeasuring 1640 sq.ft. in the project "Turning Point", Sector-88, Gurugram in 2018 under subvention scheme offered by the builder. The complainants paid Rs.4,00,000/- at the time of booking for the subject unit and at the time of booking respondent committed assured return of Rs.15000/- per month to be paid till possession of the unit.
4. That the builder buyer agreement was executed on 07.12.2018 between the parties. However, no due date of possession was mentioned in the agreement. Additionally, an allotment letter was issued on 12.12.2018



by the respondent, allotting unit 203 in tower west end-3 to the complainants.

5. That the complainants took a home loan from HDFC bank and, as per understandings between both the parties, builder was required to pay pre emi till loan amount gets fully disbursed and thereafter emi was to be paid by borrower.
6. That the total sale consideration of the subject unit was Rs.96,25,720/- plus taxes where payment was to be made as per the construction progress of the project. The respondent only issued a demand of Rs.44,36,372/-, out of the total sale consideration till 2019. The complainants made a payment of Rs.10,31,790/- and the remaining amount of Rs.34,04,582/- was paid by the bank to the respondent under the subvention scheme.
7. That the respondent committed assured returns for the subject unit at the time of booking. However, the respondent stopped paying assured return after May 2020. Thereafter, the complainants sent an email dated 20.07.2020 to enquire about the payment but did not receive any response from the respondent.
8. Subsequently, the complainants sent an email dated 13.05.2022 to the respondent, about the project being abandoned and monthly rental benefit of Rs.15,000/- due from May 2020. The complainants also requested to refund the entire paid-up amount, along with interest. Despite multiple reminders sent on 18.05.2022, 25.05.2022, 23.06.2022 and 11.07.2022 the respondent only responded on 11.07.2022 and indirectly admitted to the situation and provided two options, shifting the allotment to another project or to refund the entire paid-up amount within 10-12 months. The respondent also acknowledged the monthly

rental benefit of Rs.15,000/- per month. Subsequently, the complainants sent an email dated 31.09.2022 to the respondent, requesting for refund of the total paid-up amount. However, the builder asked the complainants to close their home loan using their own funds before initiating the refund procedure.

9. That due to the malafide intentions of the respondent the complainants have accrued huge losses on account of the future plan of home as the planning with which the complainants invested their hard earned money have resulted in subzero results.

C. Relief sought by the complainants:

- (i) Direct the respondent to refund the entire paid-up amount.
(ii) Direct the respondent to pay pre-emi till refund of paid amount along with interest.
(iii) Direct the respondent to pay assured rent amount of Rs.51,000/- till March 2023 and Rs.15,000/-per month till future thereon.
10. On the date of hearing, the authority explained to the respondent/promoters 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: -

11. That the complainants approached the respondent in 2018 with a desire to purchase a flat and booked a flat bearing no. 203 west end-3 admeasuring 1034.09 carpet area. The complainants paid Rs.50,000/- as a booking amount against the due amount of Rs.4,00,000/-. The respondent sent a proposed subvention payment plan vide email dated

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21.08.2018, which was confirmed by the complainant through an email dated 23.08.2018.

12. That the builder buyer agreement was executed on 07.12.2018 for a total sale consideration of Rs.96,25,720/-. Subsequently, the complainants availed a loan from Housing Development Finance Corporation Limited (HDFC Ltd.) and paid an additional amount of Rs.34,04,582/- through a loan against the outstanding dues of the subject unit. Clause 8 of the tripartite agreement states that the amount paid by HDFC Ltd. to the respondent, if any, would be refunded to HDFC Ltd. The pre-EMI payments on behalf of the complainants for the loan were paid to the bank.
13. The assured rental scheme was a part of a benefit scheme ongoing at the time of the booking of the unit by the complainants in the respondent company. The assured rentals were provided until the scheme was banned by the central Act titled Banning of Unregulated Deposits Act, 2019. Any payment made in furtherance of assured rentals, after the said Act came into force, would have put the respondent on trial under civil and criminal proceedings.
14. That as per Clause 5 of the agreement, the respondent was under obligation to handover the possession to the complainants 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 15.03.2025.
15. That following were the reasons that halted the construction and development of the project as under:



S.No.	Particulars
1.	Notification No. L.A.C. (G)-N.T.L.A./2014/3050 dated 24.12.2014 to acquire land in sectors 88A,88B,89A,89B,95A,95B & 99A for purpose of construct and develop sector roads published in newspaper Dainik Jagran on 30.12.2014.
2.	Award No.56 on dated 23.12.2016 passed by the Land Acquisition Collector Sh. Kulbir Singh Dhaka, Urban Estates, Gurugram, Haryana for purpose of development and utilization of land for sector roads in sectors 88A,88B,89A,89B,95A,95B & 99A. (Important Note: We have got license no.91 on 26.10.2013 but till 23.12.2016 land was not acquired by the authority/Govt for purposes of development & utilization of sector roads. Delay for the acquiring process was 3 years two months)
3.	The Road construction and development works in Gurugram are maintained by the HUDA/GMDA but the NHAI has plan the development of Gurugram Pataudi-Rewari Road, NH-352 W under Bharatmala Pariyojana on 11.07.2018
4.	The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr. Road (NH-352 W) near Harsaru Village shall develop &construct by the NHAI
5.	The GMDA has approached the Administrator, HSVP, Gurugram and request to direct HSVP/LAO to hand over encumbrance free possession of land from Dwarka Expressway i.e. junction of 88A/88B to Wazirpur Chowk to GMDA so that possession of land may be handover to NHAI on 08.09.2020.
6.	The DTCP published a notification no.CCP/TOD/2016/343 on 09.02.2016 for erecting transit oriented development (TOD) policy. Vatika Limited has filed an application for approval of revised building plan under (TOD) policy 05.09.2017 and paid amount of Rs. 28,21,000/- in favor of DTCP.
7.	Vatika Limited has filed an another application on 16.08.2021 for migration of 18.80 Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana
8.	Vatika Limited has made a request for withdrawal of application for grant of license for mix land use under (TOD) policy on 03.03.2022 due to change in planning.
9.	The DTCP has accepted a request for withdrawal of application under (TOD) Policy on 17.08.2021 & forfeited the scrutiny fee of Rs. 19,03,000/-



10.	Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favor of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B.
11.	No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W
12.	Re-routing of high tension wires lines passing through the lands resulting in inevitable change in layout plans.
13.	Various Orders passed by the Hon'ble Supreme Court, NGT, Environment Pollution Control Authority regarding ban on construction activities every year for a period of 50-75days in the best months for construction
14.	Due to outbreak of Covid 19 pandemic, there was a complete lockdown on two instances, 1. In 2020 GOI nearly for 6 months which was extended for another 3 months. 2. In 2021, for two months at the outbreak of Delta Virus

16. 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 and other such reasons, which miserably affected the construction and development of the project as per the proposed plans and layout plans, which were unavoidable and beyond the control of the respondent.
17. That the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, granted registration certificate bearing registered no. 213 of 2017 dated 15.09.2017 for the project for a period of 90 months till 15.03.2025.
18. That the respondent upon failure to continue with the development work of the project as per the proposed plan and layout plan due to various abovementioned reasons, filed a proposal bearing "In Re: Regd. no. 213 of 2017 dated 15.09.2017, for de-registration of the project "Turning Point", and settlement mechanism with existing allottees before the Authority on 30.09.2022. The above said proposal for de-

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registration of the project was filed in the interest of the allottees of the project as the project could not be delivered due to various above mentioned, reasons which were beyond the control of the respondent.

19. That the complainant's request for a refund is based on the condition that possession of the unit was not handed over. But, as per settled law, assured rentals cannot be provided if the allottees are seeking for a refund. So, the relief of assured return is not maintainable.
20. The complainants have made false and frivolous allegations against the respondent, suppressing facts and raising baseless, vague, and incorrect grounds. None of the reliefs prayed for by the complainants are sustainable before this Hon'ble Authority in the interest of justice.
21. All other averments made in the complaint were denied in toto.
22. Copies of all the relevant documents have been filed and placed on the 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

23. 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

24. 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

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District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

25. 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.

26. 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.

F. Findings on the objection raised by the respondent.

F.I Objection regarding force majeure conditions:

27. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard

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are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.

28. The due date of the possession in present case as per clause 5 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 complainants.

G.I Direct the respondent to refund the entire paid-up amount.

G.II Direct the respondent to pay pre-emi till refund of paid amount along with interest.

G.III Direct the respondent to pay assured rent amount of Rs.51,000/- till March 2023 and Rs.15,000/-per month till future thereon.

29. The abovementioned reliefs are been dealt together.

30. 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 5 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.

31. 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.

32. 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.

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33. 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.

34. 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 ***complaint bearing no. 173 of 2021 and 27 others titled as Ashish Kumar Aggarwal vs Vatika Ltd.*** 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."

35. 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 allottees for

a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. So, in such situation complainants are entitled for refund of the paid-up amount i.e., Rs. 44,36,372/- to the developer with interest at the prescribed rate of interest i.e., 10.75% p.a.

36. It has been pointed out on behalf of respondent/builder that it was paying assured returns against the allotted units up to certain dates. So, while allowing refund of the paid-up amount in their favour, a direction be given for adjustment of that amount from the total amount. Thus, while paying back the paid-up amount to the complainants, assured returns paid to the complainants by the respondent if any, would be adjusted.
37. 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] the respondent shall clear the loan amount raised by the complainants against the allotted unit upto the date with the financial institution and the balance amount shall be paid to the allottee within a period of 90 days from the date of order.

Directions of the authority


38. 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 is directed to refund the paid-up amount i.e. Rs.44,36,372/- received from the complainants 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 timeline as prescribed under rule 16 of the Rules,2017.

- ii. The respondent-builder to adjust the amount paid if any towards the assured return against the allotted unit.
 - iii. Out of the total amount so assessed, the amount paid by the bank/payee be refunded to concerned financial institution/bank and remaining amount be refunded to the complainants.
39. The complaints stand disposed of.
40. File be consigned to Registry.

Dated: 30.11.2023


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram