

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

**Complaint no.:** 3935 of 2023  
**Date of filing complaint:** 25.08.2023  
**Date of decision:** 14.12.2023

Monika Aggarwal  
**R/o:** B-802, Maceo, sector-91, Gurugram-122505

**Complainant**

Versus

M/s Vatika Limited  
**Registered office:** Vatika Triangle, 4<sup>th</sup> floor, Sushant Lok, phase-1, block-A, Mehrauli-Gurugram road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Abhijeet Gupta (Advocate)

Complainant

Sh. Anurag Mishra (Advocate)

Respondent

**ORDER**

1. The present complaint 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 provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Name and location of the project	"Turning Point, Sector 88 B, village Harsaru, Gurugram, Haryana
2.	Nature of the project	Group housing
3.	Project area	18.80 acres
4.	DTCP license no.	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	M/s Vaibhav warehousing Pvt. Ltd & 9 others.
6.	RERA Registered/ not registered	Lapsed project (De-registered)
7.	Unit no.	302, HSG 026, West end-6 (as per BBA page 24 of complaint)
8.	Unit area	976.50 sq. ft. (carpet area)
9.	Date of builder buyer agreement	18.01.2018 (page 23 of complaint)
10.	Due date of possession	18.01.2021  <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek</i>

		<p><i>the refund of the amount paid by them, along with compensation. Although we are aware of the fact that <b>when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</b></i></p> <p>In view of the above-mentioned reasoning, the date of the buyers agreement dated 18.01.2018 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 18.07.2021. (including grace period of 6 months in lieu of Covid-19)</p>
11.	Total sale consideration	Rs.89,07,760/-  (as per BBA page 25 of the complaint)
12.	Amount paid by the complainants	Rs. 40,05,359/-  (as per SOA dated 14.12.2023 page 19 of reply)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:

- a. That the respondent is a company incorporated under the provisions of Companies Act, 1956 engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain. The complainant, pursuant to the elaborate

advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project, named as "Turning Point (Phase 1)"- group housing colony with impeccable facilities situated in Sector 88B, Gurugram, with impeccable facilities and believing the same to be correct and true considered purchasing a residential apartment bearing no. 302 HSG 026 West End 6 ad-measuring 976.50 sq. ft., in Vatika India Next 2, Sector 88B, Gurugram along with two parking in basement having total sale consideration of Rs.89,07,760/-.

- b. That the respondent assured the complainant of necessary approvals for project development and ownership of the land, stating that the project is registered under HRERA and has obtained all required approvals from the Department of Town and Country Planning, Haryana. Subsequently, a builder buyer agreement dated 18.01.2018 was executed between the parties, wherein the respondent explicitly assigned all rights and benefits of the subject unit to the complainant.
- c. That the complainant paid a total amount of Rs.40,14,276/- out of which Rs.10,22,361/- was paid from their own pocket and Rs.23,44,669/- was disbursed by the financial institution to the respondent. The respondent failed to pay the pre-Emi to the financial institution, and the complainant voluntarily paid the loan amount to the financial institution, clearing the home loan amounting to Rs.29,91,915/-. The respondent assured that in case of construction delays, respondent would pay the pre-Emi to the buyer until the application for occupancy certificate has been applied for.
- d. That while signing the application form to book a unit in the said project, the complainant was informed that possession of the unit would be handed over in January 2021, although that was not documented in

any executed documents. Despite the anticipation that construction would commence after the first loan disbursement, the respondent failed to start construction. The complainant upon visiting the site found no construction work ongoing, leading to believe that the project has been significantly delayed and abandoned by the respondent.

- e. That in August 2023, the complainant decided to withdraw from the project due to the respondent's failure to adhere to the construction plan, leading to doubts about the project's completion within the next four years and seeks for the refund of the entire paid-up amount along with interest from the respondent.

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

4. The complainants have sought following relief(s):
  - i. Direct the respondent to refund the entire amount paid by the complainant to the respondent.

**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:
  - a) That the "TURNING POINT" is a residential group housing project being developed by the respondent on the licensed land admeasuring 18.80 acres situated at Sector 88B, Gurugram. The respondent has obtained license no.91 of 2013 and approval of building plan and other approvals for the said project on 26.10.2013 and the construction was started in terms thereof.
  - b) That, after establishment of the Haryana Real Estate Regulatory Authority the respondent applied for registration of the said project and the Authority registered the said project vide registration No. 213

of 2017 dated 15.09.2017. Despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of the said project was undertaken by the respondent in right earnest and the same proceeded in full swing.

- c) That the complainant booked a unit bearing no. 302 HSG-026-West end-6 admeasuring 976.50 sq. ft. and agreement to sale was executed between parties on 18.01.2018. As per clause 7 of the agreement to sale the construction of the project was contemplated to be completed with subject to force majeure circumstances mentioned in clause 9 which provided for extension of time.
- d) That the present complaint is pre-mature as it is the admitted position of the complainant that the respondent is required to handover the possession of the said unit by Jan 2021 and therefore filing a pre-mature complaint is not maintainable.
- e) That the complainant has only made payment of Rs.40,05,359/- towards the booking of the said unit which is around 45% of the total sale consideration and had made no further payment after the year 2018. The complainant defaulted in making the payment as per the terms of the said agreement including other buyers who opted for construction linked plan which also contributed to the delay in the construction activity and affecting the completion of the project.
- f) That beside the major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 has also affected the pace of the development of the project. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wages labourers. The effect of such demonetization was that the labours were

not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non-availability of adequate funds with the banks had further escalated this problem many folds.

- g) That prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access/ approach roads, key distances, looked at the vicinities, physical characteristic of the project etc. and then filed an application for allotment with the respondent which factum is also recorded in the builder buyer agreement executed with each of the complainants. The respondent also caused site visits for the prospective buyers who had made requests for visiting the project site before making application for allotment. The Complainant have visited the project site and was aware of the fact that the project had no direct access road and the respondent was working on the getting a remedy for the same.
- h) That the respondent has not charged any service tax illegal, all payments were charged in accordance with the rules, policies, laws prevailing from time to time and deposited to the govt. account. The entire money so recovered from the complainant have been duly deposited to the service tax department and whenever the concerned department will release the money, the same will be returned to the complainant. As per the judgement of CESTAT, Allahabad 2016(7)TMI52) in the matter titled as commissioner of central excise, Lucknow Vs Eldeco Housing & industries Pvt. Ltd it was observed that the money which is deposited with the department in lieu of the service tax, the same has to be directly returned to the buyers by the concerned department.

- i) That almost all the buyers of the project had agreed for a payment schedule i.e. "construction link payment plan". The pace of construction and timely delivery of apartments in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. The buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. The flat buyers in the said group housing project have wilfully defaulted in the payment schedule which is the main cause of the delay in the construction activity and affecting the completion of the project. This wilful default by the flat buyers is due to the fact that most of them have purchased the flats as an investment in the said project. The real estate market was doing well in the year 2014. In the year 2015-2016 onwards, the real estate market started facing slowdown, the flat buyers started defaulting in payment of instalments. The complainants are well aware of the above mentioned facts and are the reasons behind the delay in completion of the project.
- j) That the delay is on account of reasons beyond the control of the respondent and there is no breach on the part of respondent. The time stipulated for completion under the allotment / agreement is not the essence and respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond the control and not attributable to respondent. The complainant with regard to delay in completion of construction of the possession is misconceived.
- k) That in addition to the major default in non-payment of instalments by the majority of buyers, the demonetization of currency notes of INR 500



and INR 1000, announced by the Government of India which has impacted the pace of the project's development and non payment to labours. The capping on withdrawal and non-availability of adequate funds with the banks further exacerbated this problem.

- l) That the demonetization of currency notes of INR 500 and INR 1000, announced by the Government of India significantly impacted the pace of a construction project resulting to labour crisis ensued when the workers and labours at the construction sites, who were paid in cash due to their daily wage employment and subsequently stopped working for the project which led to a significant shortage of labours. Subsequently, the NHAI planned the development of Gurugram-Pataudi-Rewari Road under Bharatmala Pariyojana on 11.07.2018 and re-routing of high tension wires lines passing through the lands resulted in inevitable changes in layout plans. Further among various measures NGT, EPCA, HSPCB, and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2016 to December 2019. These partial and unplanned bans become a factor for delay in construction of the project. In addition, the Government imposed various restrictions on the construction sites. The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction project.
- m) Furthermore, the COVID-19 pandemic and the subsequent lockdown imposed by the Government of India from 22nd March 2020 led to a mass exodus of construction workers to their home towns, causing severe manpower shortages and productivity impact. The on-going migration of labours and the fear of subsequent COVID waves have further hindered their return to work sites. The factors were beyond the

control of the respondent and have resulted in significant construction delays.

- n) That due to the losses suffered by the respondent in the project, the respondent had no choice but to apply for the de-registration of the said project. The respondent with bona fide intention has filed for de-registration is in the interest of the allottees of the project.
- o) That the complaint is filed on false and frivolous allegations and none of the reliefs prayed for by the complainants are sustainable before this authority.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

## **E. II Subject matter jurisdiction**

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

### ***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

### ***Section 34-Functions of the Authority:***

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

## **F. Objection raised by the respondent.**

### **F.I Objection raised by the respondent regarding force majeure.**

11. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC to stop construction, notification of the Municipal corporations Gurugram etc. The plea of the respondent regarding various orders of the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by SC banning construction in the NCR region were for a very short period of time and thus, cannot be

said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

Further, in the view of the plea raised by the respondent for the delay in construction due to Covid-19. ***As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The due date of the possession of the aforesaid project in which the subject unit is being allotted to the complainants comes out i.e. 18.01.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 18.07.2021

**G. Findings on the relief sought by the complainant:**

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

12. The complainant was allotted unit no. 302, HSG 026, West end-6 in the project "Turning Point", Sector 88B, Gurugram, Haryana of the respondent/builder for a total consideration of Rs.89,07,760/- as per the builder buyer agreement executed between the parties on 18.01.2018. However, no completion/handover date was mentioned in the buyer's agreement, hence no due date of possession could be ascertained. Therefore in view of the judgement in ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018,*** where the Hon'ble Apex Court observed that "a person cannot be made to

*wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.* In view of the above-mentioned reasoning, the date of the allotment letter dated 18.01.2018 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 18.01.2021. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.01.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 18.07.2021.

13. It has come on record that against the total sale consideration of Rs.89,07,760/- the complainant has paid a sum of Rs.40,05,359/- as per the statement of accounts dated 14.12.2023 to the respondent. However, the complainant contended that the unit was not offered to him despite this and no occupation certificate has yet been obtained, further, the aforesaid project has been lapsed. Hence, in case allottee wish to withdraw from the project, the promoter is liable on demand to return the

amount received by the complainant with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. (supra)* reiterated in the case of *M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)* wherein it was observed as under: -

*"The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed".*

14. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016 or the rules and regulations made thereunder or to the allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to

withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondents/promoter in respect of the unit with interest at such rate as may be prescribed.

15. There has been an inordinate delay in the project which cannot be condoned. Thus in such a situation, the complainant cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.
16. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding a return of the amount received by the promoter in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.
17. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to a refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 8.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions of the Authority:**

18. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent-builder is directed to refund the paid-up amount i.e., Rs.40,05,359/- received from the allottee against his allotted unit along with interest at the prescribed rate of 10.75% per annum from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to the registry.

Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 14.12.2023**