

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

**Complaint no. :** 320 of 2022  
**First date of hearing:** 08.04.2022  
**Date of decision :** 22.12.2023

**Priti Taneja**

**R/o:** - House no. 1101, Tower-4, Vipul Belmonte,  
Sector-53, Gurugram-122003

**Complainant**

**Versus**

M/s Vatika Limited

(Through its Managing Director and other  
Directors)

**Office:** Unit no.-A-002, Ground Floor, Vatika INXT  
City Centre NH-8, Near Toll Plaza, Sector-83,  
Gurugram

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Ms Surbhi Garg

Sh. PankajChandola

**Counsel for Complainant**

**Counsel for Respondent**

**ORDER**

1. The present complaint dated 21.02.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Vatika City Market"
2.	Allotment letter	16.02.2009
3.	Unit no.	GF-10 admeasuring 398.05 sq. ft. and GF-11 309.46 sq. ft.
	Changed unit vide assignment letter dated 29.10.2012	GF-1K and GF-1L
4.	Date of execution of buyer's agreement	17.03.2009 16.02.2009
5.	Completion of the project	The developer assured that the construction of the project shall be completed in all respect on or before September 30 <sup>th</sup> 2009. The unit would be ready for occupation within 30 days of such completion. However, in case of any time overrun in this regard, the developer shall continue to pay the committed return as mentioned in clause 2 above until the completion of the project.
6.	Subsequent allottee	29.10.2012 (page 62 of complaint)



7.	Due date of possession	27.11.2012
8.	Total sale consideration	Rs. 17,51,420/- Rs. 13,61,624/-
9.	Conveyance deed	08.02.2021
10.	Lease deed	07.10.2011

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- a. That the complainant is respectable and law-abiding citizen and the complainant is allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016.
- b. That the respondent advertised about its new Convenience Shopping Centre in "VATIKA CITY MARKET" situated at sector- 49 in Gurugram, Haryana. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing world class amenities in the commercial project.
- c. That the Erstwhile owner named Ravi Sharma and Upma Sharma booked two commercial space in the said Project by making payment of Rs. 1,00,000/- each vide cheque bearing no. 270782 and 255334 dated 12.12.2008 in the said project.
- d. That the respondent against the said booking allotted two units bearing no. GF-10 and GF-11 having carpet area measuring 398.05 sq. ft and 309.46 sq. ft. respectively in a total sale consideration of Rs. 17,51,420/- and 13,61,624/- respectively.
- e. That the builder buyer agreements were also executed between the Erstwhile owner and the respondent for the said two units bearing no.



GF-10 and GF-11 having carpet area admeasuring 398.05 sq. ft. and 309.46 sq. ft. respectively in the said project.

- f. That the complainant purchased the said units bearing no. GF-10 and GF-11 from the erstwhile owners and the Respondent also assigned the rights of the said units in favour of the complainant.
- g. That the complainant received a letter from the Respondent regarding changing of numbering system of the said project. The unit bearing no. GF-10 changed to GF-1K and GF-11 changed to GF-1L by the respondent.
- h. That the respondent on 07.10.2011 entered into a leasing arrangement with the Tenant named M/s Le Millenia Supermart on its behalf. The complainant after purchasing the said unit from the erstwhile buyer requested the respondent to execute a fresh lease deed with the lessor as complainant and lessee as the tenant but the respondent clearly refused to do the same by saying that the conveyance deed has not been executed and as such the name of the complainant shall not be substituted in the name of the Lessor. It has been agreed between the complainant and the respondent that the respondent undertook to put the said two units bearing no. GF-10 and GF-11 having carpet area admeasuring 398.05 Sq.Ft and 309.46 Sq Ft. respectively on lease and after registration of the lease deed till conveyance deed, the respondent shall pay the rent to the complainant and after executing the conveyance deed, the complainant would enter into a leasing arrangement with the tenant directly and the respondent shall not be having any right in leasing the said units.
- i. That the complainant got the conveyance deed executed on 08.02.2021 for the said two units bearing no. GF-10 and GF-11 having carpet area



admeasuring 398.05 sq. ft and 309.46 sq ft. respectively for transferring the ownership qua the said units in his favour from the respondent. By virtue of the said conveyance deed, the respondent granted, transferred, conveyed, and assigned by way of sale, all its rights, title and interest in respect of the said units in favour of the complainant.

- j. That at the time of execution of the lease agreements, it was clearly specified that in case of transfer of ownership by the respondent, the tenant would be liable to pay the monthly rent from the date of conveyance deed to the complainant and the name of the said complainant would be substituted in the place of respondent in the lease agreement but even after execution of the conveyance deed, the respondent has clearly failed to withdraw its tenancy right qua the said units.
- k. That the respondent despite several false assurance clearly failed to cancel the current lease agreement dated 01.11.2020 with the tenant nor got the name of the complainant substituted in the place of the landlord/lessor in the said lease agreement. At present M/s Needs Supermart Private Limited is in possession of the said unit of the complainant.
- l. It is further to note that a Rent of Rs. 1,55,172/- and Rs. 1,20,632/- including GST remain unpaid along with arrears of GST from the respondent.
- m. That the complainant in the month of September 2021 approached the respondent and demanded the pending rent but to the utter shock of the complainant, the respondent clearly refused to make the said payment by saying they have not received any amount on account of rent from the tenant i.e. M/s Needs Supermart Private Limited. The



complainant subsequently approached the M/s Needs Supermart Private limited and demanded the rent after showing the conveyance deed as executed between complainant and respondent but to the officials of the M/s Needs Supermart Pvt. Ltd. clearly refused to make payment by saying that the lease agreement has been executed with respondent as such the complainant has no right to ask for the pending rent.

- n. That the complainant after being aggrieved by the illegal, arbitrary and malafide acts of the respondent, served a notice dated 06.09.2021 and a legal notice dated 06.12.2021 seeking recovery of the outstanding rent but the said Notices remain unanswered on part of the respondent and tenant M/s Needs Supermart Pvt. Ltd. and the same act of the respondent clearly establishes its malafide intentions to cause wrongful loss to the complainant.
- o. That the respondent presently despite having conveyed the title of the said unit to the complainant clearly failed to cancel the existing lease agreement dated 01.11.2020 with the tenant; furthermore, neither the respondent nor the tenant paying the monthly rent to the complainant. It is pertinent to mention here that the complainant has purchased the said unit with the hope that some amount on account of rent would be received to the complainant but to its contrary, the respondent trapped the complainant in its web of lies.
- p. The complainant is entitled to enter into a fresh leasing arrangement with the tenant and further the respondent is under obligation to cancel the present lease agreement dated 01.11.2020 for the two units bearing no. GF-10 and GF-11 having carpet area admeasuring 398.05 sq. ft and 309.46 sq ft. respectively in the said project of the respondent.

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

4. The complainant has sought following relief(s).
  - a. Direct the respondent to make the payment of Rs. 1,55,172/- and Rs. 1,20,632/- including GST on account of pending rent for two units bearing no. GF-10 and GF-11 having carpet area admeasuring 398.05 Sq. Ft and 309.46 Sq. Ft. respectively in the said project along with Interest.
  - b. Direct the respondent to cancel the present lease agreement dated 01.11.2020 as executed between the respondent and tenant and further to ensure the fresh execution of lease agreement between the complainant and tenant for two units bearing no. GF-10 and GF-11 having carpet area admeasuring 398.05 sq. ft. and 309.46 sq. ft. respectively.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
  - a. That the complainants herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is raising false, frivolous, misleading, and baseless allegations against the respondent with intent to make unlawful gains.
  - b. That the complainants have not approached the authority with clean hands and has suppressed relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.

- c. It is imperative to mention herein that the complainant as much as in capacity of the investor has booked 2 (two) commercial space(s) situated on the same floor and has preferred to file the present one single complaint for both the commercial unit(s). It may be noted that this authority while adjudicating upon similar matter had dismissed the complaint filed by the allottee(s) for two separate unit(s).
- d. It is submitted that the complaint under reply is not maintainable as the complainant herein had clubbed 2 unit(s) in the instant complaint and the authority while adjudicating upon complaint no. 1259 of 2018, had dismissed the complaint vide order dated 20.12.2018, wherein a single complaint was filed for four units. The relevant abstract of the order dated 20.12.2018, is reproduced hereinbelow for ready reference:  
*"In the present complaint, a single complaint for four-unit Nos. SA-3/11, SA-3/12A, SA/4A/13 and SA-4A/25 has been filed which is not maintainable. Complainants are directed to file individual complaint so that their rights may be judicially decided. Complaint is disposed of.."*
- e. Thus, considering the precedent passed by this authority the instant complaint is also liable to be dismissed on the same ground alone. Also, in another matter titled as '**Sancho Joseph vs Vatika Limited bearing Complaint No, 1135 of 2020**'; wherein, the issue of maintainability of complaint was challenged before this authority as the complainant in the said matter had filed one single complaint clubbing two units. But the maintainability of the same was challenged and later on withdrawn by the complainant for the said reason.
- f. It is a matter of fact that even in the present complaint under reply to the respondent herein had filed one complaint for 6 unit(s) and in the





lights of the precedents decided by the authority the instant complaint is also liable to be dismissed.

- g. That the complainant had purchased **2 (two) commercial space(s)** in the project of the respondent for steady monthly returns first in the form of assured return and subsequently in the form of lease rental. It is an evident fact that since starting the complainants herein booked the unit in question considering the same as an investment opportunity. That it is an admitted fact that by no stretch of imagination it can be concluded that the complainants herein are not an "**allottee**". It is a matter of fact, that the complainant is simply investors who approached the respondent for investment opportunities and for a steady rental income.
- h. It is imperative to note, that the original allottee namely Ravi Sharma and Upma Sharma (*herein collectively referred to as 'Original Allottee'*), learned about the convenience shopping centre launched by the Respondent titled as '**Vatika City Market**' (*herein referred to as 'Project'*) situated at Sector 49, Gurgaon and approached the respondent repeatedly to know more details of the said project. Further, the original allottee inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- i. That after having keen interest in the project constructed by the respondent the original allottee on 12.12.2008, booked two commercial spaces upon own investigation and judgment and paid an amount of Rs. 1,00,000/- for further registration.



- j. The respondent vide allotment letter dated 16.02.2009, allotted two units bearing no. GF-10 admeasuring 398.05 Sq. ft. and 309.46 Sq. ft. to the original allottee in the aforesaid project.
- k. Subsequently, 16.02.2009 and on 17.03.2009, two builder buyer agreement were executed separately between the original allottee and respondent for the two Unit(s) bearing no. GF-10 and GF-11, respectively.
- l. In accordance with clause 17, of the agreement the unit in questions were supposed to be further leased out at a mutually agreed lease rental, upon completion and the same was very well agreed between the original allottee and the respondent.
- m. That on 29.10.2012, the original allottee herein for the reason best known requested the respondent to transfer the unit(s) being purchased by the original allottee and further leased to the tenants. However, upon such request from the original allottee the respondent vide letter dated 04.02.2014, further transferred and assigned all the rights of the original allottee over the two commercial units in favor of the complainant.
- n. It is pertinent to bring into the attention of this authority that since inception the unit(s) being booked by the original allottee and subsequently purchased by the complainant has been further let out on lease with the tenants by way of various lease deed's being executed from time to time.
- o. Further, it may be noted that the respondent herein has leased out the two commercial spaces being purchased by the complainant vide Lease deed dated 05.11.2022, executed between the respondent company and "Needs Supermart Pvt. Ltd."

- p. It is submitted that the as per the clause (i) of the above-mentioned lease deed the Respondent herein had further leased out the commercial space to the M/s. Needs Supermart Pvt. Ltd. for a lease period of 60 (sixty) months from the lease commencement date i.e., by 01.11.2020.
- q. It may also be noted that the complainants herein has been enjoying and very well receiving the lease rental from the tenant from the lease commencement date without any protest or demur. And, now today on delay in receiving or in any dispute in regard with the lease deed the complainant today has approached this Id. Authority.
- r. It is submitted that the initially the original allottee and then the complainant herein had been enjoying the peaceful and legal possession of the Unit(s) in question since the year 2012. Even the respondent herein in due compliance of its duties and obligations has executed the conveyance deed in the year 2021.
- s. It is to note, that the complainant herein had been enjoying the benefit of the lease rental since the year 2012 and had been duly accepting the same. However, the complainant herein had approached this authority for the issue of rent which is not admissible before this authority.
- t. It is pertinent to mention that the respondent herein was very well authorized to further lease out the commercial spaces. It may also be noted that since inception the respondent herein has further leased out the unit(s) of the complainant by way of various lease deeds executed from time to time between the respondent and the respective tenant.
- u. However, today the complainant herein after having executed the lease deed with M/s. Needs Supermart Pvt. Ltd. has approached this



authority over the issue of rent which is with all due respect outside the preview of this authority.

- v. It is submitted that there is no cause of action as much as in favor of the complainant or against the respondent and for any dispute so claimed or if any arising out of the lease deed the complainant herein ought to have approached the appropriate forum as per the law and not this authority.
  - w. That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has misled this authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this authority and in the interest of justice.
  - x. That, it is evident that the entire case of the complainants are nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainants have not approached the authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. 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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

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

**E.II Subject-matter jurisdiction**

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

**Section 11**

\*\*\*\*  
(4) The promoter shall-

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

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

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

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

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

**F.I Direct the respondent to make the payment on account of pending rent till the execution of lease deed directly with the tenant.**

**F.II. Direct the respondent to cancel the present lease agreement dated 01.11.2020 as executed between the respondent and tenant and further to ensure the fresh execution of lease agreement between the complainant and tenant for two units bearing no. GF-1K and GF-1L having carpet area admeasuring 398.05 sq. ft. and 309.46 sq. ft. respectively.**

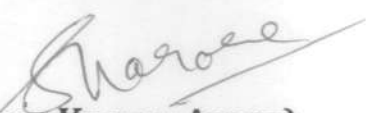
**F.III. Direct the respondent to make payment of ₹ 3,82,471/- on account of pending rent including GST as on 12.10.2023 for the shop bearing no. GF-1K & ₹ 3,02,677/- for the shop bearing no. GF-1L alongwith the interest till its realisation.**

12. In the present matter the counsel for the complainant has sought the relief for rental as per the lease agreement interse parties and to cancel the said lease and get the new lease agreement executed.

13. The authority observes that section 2(c) of the Act, 2016 defines only "agreement for sale" as an agreement entered into between the promoter and the allottee. Further Rule 8 of the rules, 2017 states that agreement for sale shall be as per annexure "A". Further the scheme of the Act clearly defines certain rights and obligations of the promoter, the allottee and the real estate agent. Section 31 of the Act states that any aggrieved person can approach this authority for violation or contravention of the provisions of

this Act or the Rules and regulations made thereunder against any promoter allottee or the real estate agent as the case may be.

14. The authority observed that the present compliant filed by the complainant is not maintainable for two fold reasons. Firstly, the complainant has failed to prove as to what provisions of this Act, or rules & regulations made thereunder has been violated by the respondent herein. Secondly, the lease agreement on the basis of which the present compliant has been filed by the complainant is not in the nature of the agreement for sale as defined under the Act, 2016. Moreover, the lease agreement executed between the parties is neither defined in the Act, 2016 nor in the rules, 2017.
15. In the light of the aforesaid provisions and above sated reasons, the present complaint stands dismissed as not maintainable with a liberty to the complainant to approach the appropriate forum for redressal of her grievance.
16. File be consigned to registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.12.2023