



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

<b>Complaint no.</b>	<b>241 of 2022</b>
<b>Date of complaint</b>	<b>31.01.2022</b>
<b>First date of hearing</b>	<b>13.05.2022</b>
<b>Date of decision</b>	<b>03.01.2024</b>

<b>Kiran Nandal &amp; Randeep Singh Nandal</b> <b>Registered address:</b> House no. 89, Sector 17, Gurugram, Haryana-12001	<b>Complainants</b>
<b>Versus</b>	
1. Vatika One on One Pvt Ltd <b>Registered Address:</b> Vatika Business Centre, Thapar House, 3rd Floor Eastern & Central wing, Gate no. 1, 124 Janpath Road, CP, New Delhi-110001. 2. Vatika Ltd. <b>Registered Address:</b> Unit No. A-002, INXT City Centre, Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram-122012.	<b>Respondents</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Vaibhav Sandeep Advocate	Complainants
Ms. Ankur Berry Advocate	Respondents

**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 29 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.

**A. Unit and project-related details**

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

S. N.	Particulars	Details
1.	Name and location of the project	One on One Phase- 1, Sector- 16, Village Silokhera, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	12.13 acres
4.	DTCP license no.	05 of 2015 dated 06.08.2015
5.	Name of licensee	Keshav Dutt and others.
6.	RERA Registered/ not registered	237 of 2017 dated 20.09.2017
7.	Unit no.	Block 4, Ground floor, 001 (Page no. 46 of Complaint)



8.	Unit admeasuring (super area)	area	1700 sq. ft.  (Page no. 46 of Complaint)
9.	Date of booking		23.10.2018  (Page no. 46 of complaint)
10.	Date of execution of builder agreement	buyer	Not executed
11.	Possession clause		None
12.	Due date possession	of	23.04.2022  <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 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.</i>



		<p>In view of the above-mentioned reasoning, the date of the booking dated 23.10.2018 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 23.04.2022.</p> <p><b>(6 months extension in view of Covid 19 pandemic is allowed)</b></p>
13.	Total sale consideration	<p>Rs. 3,97,80,000/-</p> <p>(As per SOA dated 13.12.2018, annexure C5, on page no. 46 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 4,45,53,600/-</p> <p>(As per SOA dated 13.12.2018, annexure C5, on page no. 46 of complaint)</p>
15.	Assured return received	<p>Rs. 8,44,516/- (on 13.12.2018)</p> <p>(Page no. 52 of complaint)</p>
16.	Request for cancellation/refund	<p>05.02.2019</p> <p>(Page no. 54 of complaint)</p> <p>02.02.2021 (annexure C12, page 72 of complaint)</p>



17.	Undertaking by complainants regarding cancellation of unit/committed return.	by 26.04.2019 (annexure R-4, page 30 of reply) The developer paid an amount of Rs. 13,60,000/- to the complainant as compensation for delay in refund.
18.	Money received by complainant as per undertaking dated 28.01.2021	Rs. 1,80,00,000/- (Page no. 69-71 of complaint)
19.	Occupation certificate	06.09.2021 (Page no. 27 of reply)
20.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants booked retail space in the real estate project known under the name and style of "One on One" at Sector 16, Village Silokhera, Tehsil and District Gurugram, Haryana.
4. That in 2018, the complainants, attracted by the shrewd gimmicks of the authorised representative of the respondents, fell into their trap of deals, which were put forth as lucrative deals in form of assured returns @10% till the completion of the unit and assured rental @8% after completion. That relying on the assurances, representations and warranties of the authorised representative of the respondents, the complainants booked retail space in the project and disbursed a sum of



INR 4,45,53,600 through RTGS on 23.10.2018 as is evident from the account statement dated 13.12.2018.

5. That in respect of the huge sum of money paid by the complainants, no allotment of any unit had been made by the respondents till date. Allotment of the unit is considered to be a done at the time of booking, i.e., payments made against the unit, as evident from section 11(3) of the Act.
6. That not only did the respondents failed in the allotment of the unit and the execution of the agreement for sale but consequently also failed in making available the information of the unit and the project, as per the section 11(3) of the Act thereby violating the same. The account statement reveals the retail space to be "Unit GF 001" against the entire amount paid by the complainants. That even GF 001 does not disclose the exact details of the unit with the bifurcation of the carpet and super areas. The booking amount paid by the complainants was against multiple spaces. That as on, 16.01.2022, the price of "Ready to Move" in unit in the project of 1500 sq. ft. appears to be Rs. 2.85 Cr and for 2500 sq. ft. appears to be Rs 4.75 Cr. However, the entire amount of Rs. 4,45,53,600 was adjusted towards one unit of 1700 sq. ft.
7. Having taken 100% of the sale consideration from the complainants and not making the allotment or executing the agreement for sale/builder-buyer agreement as per the Section 13 of the Act, the respondents have been in violation of the same. Further, no agreement for assured returns was executed with the complainants. The complainants, put their trust in the respondent, which was shattered by the utter *malafide* and unlawful acts of the respondents.



8. The complainants received a sum of 8,44,516.13 against assured returns vide cheque no. 001130 dated 13.12.2018 drawn on Kotak Mahindra Bank.
9. Thereafter, no assured returns were paid by either of the respondents despite the complainants constantly requesting the same, time and again. That tired by the delaying tactics of the respondents and not having received the promised assured returns, allotment of the unit and the execution of the agreement for sale, the complainants decided to get their money back and accordingly requested from the respondents, however, were again delayed. That the same was acknowledged by the respondents, as is evident from the inter office memo dated 20.12.2019.
10. That making the booking of the complainants on the basis on payment of assured returns and cancelling the same, is a grave violation of section 12 of the Act and allows the complainants to get refund of their deposited amounts along with interest.
11. Thereafter, after multiple meetings, upon the illegal, malafide and unlawful conduct of the respondents, they accepted their obligation to refund the amount paid, as is evident from emails dated 02.04.2019, 06.02.2019 and 20.11.2020. However, the same was again unreasonably delayed for two years throughout which, the complainants were in constant communication with the respondent. The complainants, shocked by such mala fide conduct of the respondent no. 2, expressed their discomfort vide email dated 02.04.2019. However, no action was taken thereafter, as is revealed from further emails.

✓



12. After more than two years of enjoying the money of the complainants and wrongly misappropriating the same, the complainants were made to execute an undertaking dated 28.01.2021 through which the interest component to be paid by the respondents was intentionally left out despite knowing that the same is an unfettered right of the complainants, as per the provisions of the Act, which, the complainants also communicated to the respondents. That it was categorically decided that the payments shall be made in three instalments: 30% at the time of execution of the undertaking, 20% was bound to be paid within 15 days from the date of execution of the undertaking and 50% within 90 days from the date of execution of the undertaking, as is evident from the clause 3 of the undertaking. That till date, the complainants have received Rs. 1,80,00,000 in the following manner:

Date	Amount received
02.02.2021	Rs. 1,50,00,000
10.03.2021	Rs. 15,00,000
15.04.2021	Rs. 15,00,000
Total	Rs. 1,80,00,000 (Rupees One Crore Eighty Lakh only)

13. That no payment in lieu of the refund was received thereafter by the complainants. The respondents failed in obliging their responsibilities as per the undertaking and payment of the remaining amount of Rs. 2,65,53,600/-.
14. Furthermore, as per clause 4 of the undertaking dated 28.01.2021, upon delay in making payments, as above mentioned, the respondent no. 2 was liable to compensate the claimants by 10% interest on the

✓





remaining value. That however, despite of the same, the complainants shall be entitled to seek the refund along with interest on a pro-rata basis as per section 18 of the Act read with rule 15 of the HRERA Rules, 2017, according to which, the rate of interest payable to the allottee shall be the State Bank of India highest marginal cost of lending rate plus two percent.

15. That respondent no. 2 failed to repay the remaining amounts to the complainants and forced the complainants to sign on the cancellation letter dated 02.02.2021. That the respondent no. 2 communicated the execution of the same as a prerequisite for reimbursement of the remaining sum. The respondent no. 2, in order to absolve itself from any liability, wrongfully mentioned that the cancellation was on account of personal reasons, which, is not the case. The complainants have been defrauded, harassed, mentally and financially.

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

16. The complainant has sought the following relief(s):
- Direct the respondent to refund the amount of Rs. 3,15,53,600/- along with interest as per sec 18 of Act of 2016.
  - Direct the respondent no. 2 to pay interest on the deposited amount of Rs. 4,45,53,600/- by the complainants from 23.10.2018 till date of refund.

**D. Reply by respondents:**

17. The complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect



understanding of the terms and conditions of the application form dated 16.10.2018.

18. As per clause 9 of the terms and conditions of the application form the respondent company is authorized to forfeit the earnest money along with other non-refundable amounts. That the complainants, admittedly, on 05.02.2019, requested for cancellation of the booking, thus the respondent is within its rights to deduct, earnest money. Further the respondent company has also duly completed the construction, applied for occupation certificate and received the same on 06.09.2021.
19. For the fair adjudication of grievance as alleged by the complainants, it requires detailed deliberation by leading the evidence and cross-examination, thus only the civil court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.
20. The complaint has been filed by the complainants just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainants have instituted the present false and vexatious complaint against the respondent company as the complainants of their own free will cancelled the allotment within 4 months of booking.
21. The complainants applied for allotment of commercial unit in the project Vatika One on One with respondent company owing to the name, good will and reputation of the respondent company. That the



application form was filled and submitted on 16.10.2018, however even before the BBA could be executed the complainants chose to exit the project, and thus cancellation request dated 05.02.2019 was sent by the complainants, thus the respondent became empowered to deduct the earnest money from the consideration amount before refund. That it is pertinent to submit that the respondent has diligently worked for the development of the project and the construction of building was completed and the OC for the project has already been received on 06.09.2021.

22. Further vide undertaking dated 26.04.2019, the complainants have admittedly received an amount of Rs. 13,60,000/- from the respondent company, in lieu of the delay caused in refunding the amount. Thus, the complainants were already intimated and were aware of the delay that would be faced while refunding the consideration and thus the respondent company duly compensated the huge amount of Rs. 13,60,000/-.

**E. Jurisdiction of the authority:**

23. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. 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**

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 the entire Gurugram District



for all purposes 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

So, given 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. Entitlement of the complainant for refund:**

**F.I Direct the respondent to refund the amount paid along with interest as per sec 18 of Act of 2016.**



**F.II Direct the respondent no. 2 to pay interest on the deposited amount of Rs. 4,45,53,600/- by the complainants from 23.10.2018 till date of refund.**

24. The aforesaid reliefs sought being connected are taken up together.
25. The complainants booked unit bearing no. 001, ground floor, block 4 in the respondent's project "Vatika one on one" by paying an amount of Rs. 4,45,53,600/- via RTGS/NEFT on 23.10.2018. However, no agreement to sell was executed between the parties, 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 booking i.e. 23.10.2018 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 23.10.2021. Further, an extension of 6 months is provided to the respondent in view of HARERA notification no. 9/3-2020 dated 26.05.2020 whereby an extension of 6 months was provided for projects having a completion date on or after 25.03.2020.



The completion date of the aforesaid project in which the subject unit is being allotted to complainants is 23.10.2021 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 the aforesaid notification on account of force majeure conditions due to outbreak of Covid 19 pandemic. Therefore, the due date for handing over of possession comes out to be 23.04.2022.

26. The complainants contend that the respondent failed in allotment of unit and signing the agreement to sell with them. Furthermore, the promise of the respondent regarding assured return was also not fulfilled, and the respondent paid only one tranche of assured return worth Rs. 8,44,516/- on 13.12.2018 and thereafter defaulted in paying assured returns, this led them requesting for a refund. Further, they contend that the request for refund was acceded by the respondent, and an undertaking dated 28.01.2021 was signed between the parties whereby the refund was to be made as per clause 3 of the said undertaking. The complainants contend that the respondent paid only Rs. 1,80,00,000/- as per the said undertaking and thereafter defaulted on its promise to refund the remaining amount.

27. On the other hand, the respondent contends that the complainants surrendered the unit by requesting for refund on 05.02.2019, way before the due date of possession, and hence it was empowered to deduct the earnest money before making refund. Further, the respondent contends that vide an undertaking dated 26.04.2019 given by the complainants, they themselves opted to opt out of the project since the assured return could not be paid to them in view of the new



statutory compliances. Further, a compensation of Rs. 13,60,000/- was provided to complainants in lieu of time required for refunding the amount paid. The respondent contends that the occupation certificate of the unit has already been obtained on 06.09.2021.

28. On consideration of the documents available on record and submissions by both parties, the Authority is of the view that the complainants have paid a sum of Rs. 4,45,53,600/- to the respondent against the total sale consideration of Rs. 3,97,80,000/-, and that the complainants requested for refund vide e-mail dated 05.02.2019, and then on 26.04.2019, they signed an undertaking whereby they requested for cancellation of their booking. Further, they received a sum of Rs. 13,60,000/- as compensation. The relevant para of the said undertaking is reproduced below:

*a. That we had booked a property no. GF-001 in Block 4 admeasuring 1700 sq ft in the project 'Vatika One On One' (hereinafter referred to as "Unit") developed by Vatika One on One Pvt Limited having its Corporate Office at 4th Floor, Vatika Triangle, Sushant Lok-I, Gurugram ("Developer") in October 2018 and had paid the total sales consideration of Rs. 4,45,53,600/- ("Consideration") upfront on the condition of getting monthly returns on such Unit.*

*b. That we received an email from the Developer on 30th Nov. '2018 stating that the arrangement of paying the committed returns on the Unit has been withdrawn due to the statutory compliances. In lieu of this new development and on our request, the Developer has cancelled the booking of the Unit. We have received a sum of Rs. 13,60,000/- (Rupees Thirteen Lakh Sixty Thousand Only) from the Developer towards the compensation in lieu of the time period required for refunding the Consideration paid by us against the said unit. With the receipt of this amount, we undertake that we shall not have any claim against the Developer of whatsoever nature with respect to the committed return*



*qua the booking of unit except the Consideration amount,*

Since the said request was made by the complainant before the due date of possession, the respondent is empowered to deduct earnest money before making a refund. Thereafter, an undertaking deed dated 28.01.2021 was executed by both the parties regarding the tenure of refund. However, the respondent failed to pay the complete amount as per said deed and paid only a part sum of Rs. 1,80,00,000/-.

29. While cancelling the unit, it was an obligation of the respondent to return the paid-up amount after forfeiting the amount of earnest money. However, a perusal of the records brought before the Authority shows that it has refunded only part of the paid-up amount i.e. Rs. 1,80,00,000/- and has retained the remaining paid-up amount of the complainants. Further, the complainants have received an amount of Rs. 8,44,516/- as assured return and a sum of Rs. 13,60,000/- as compensation. Since the complainants discontinued with the project, the said amount shall be adjusted in the refundable amount.
30. While deciding the amount of earnest money that needs to be deducted by the respondent while making refund, as per the law laid down by the Hon'ble apex court in case of *Maula Bux vs Union of India 1969(2) SCC 554* must be highlighted, where it was held that a reasonable amount by way of the earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view the principles laid down in those cases, a regulation in

✓





the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under

*"5. AMOUNT OF EARNEST MONEY*

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the amount of the real estate i.e. apartment/plot/building as the case may be in all case where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

31. Thus, keeping in view the aforesaid provisions and the facts detailed above, the respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration being earnest money along with interest at the prescribed rates from the date of cancellation i.e., 05.02.2019 up to the date of actual realization.
32. Out of the amount so assessed, the respondent shall deduct the amount which has already been paid to the complainants.

**G. Directions of the Authority:**

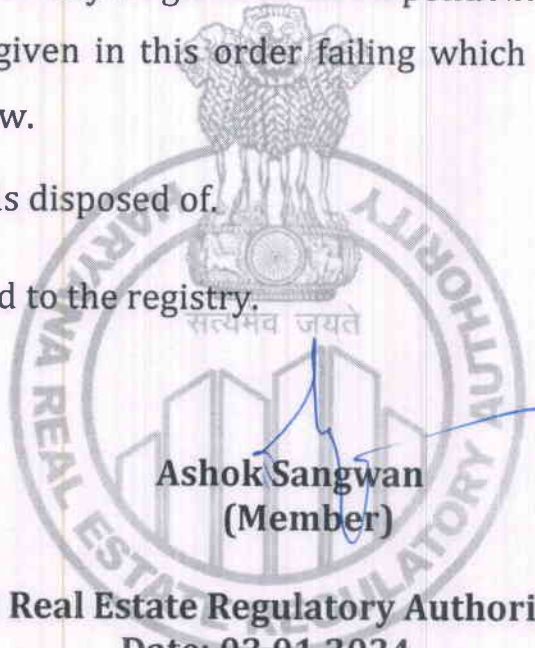
33. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.



- i. The respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration being earnest money along with interest at the prescribed rates from the date of cancellation i.e., 05.02.2019 up to the date of actual realization.
- ii. Out of the amount so assessed, the respondent shall deduct the amount which has already been paid to the complainants.
- iii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.

34. Complaint stands disposed of.

35. File be consigned to the registry.



**Ashok Sangwan**  
**(Member)**

**Haryana Real Estate Regulatory Authority, Gurugram**

**Date: 03.01.2024**

**HARERA**  
**GURUGRAM**