

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

Complaint no.: 3712 of 2023
Date of filing complaint: 29.08.2023
Date of decision: 14.12.2023

Maya Jain

R/o: House no.813, Urban Estate Sector-4, near
Chintpurni Mandir Gurugram

Complainant

Versus

M/s Vatika Limited

Registered office: Vatika Triangle, 4th floor, Sushant
Lok, phase-1, block-A, Mehrauli-Gurugram road,
Gurugram-122002

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Surbhi Garg Bhardwaj (Advocate)

Complainant

Sh. Pankaj Chandola (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 complainants, 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	Registered vide no. 213 of 2017 dated 15.09.2017 area admeasuring 93588 sqm. Valid upto 15.03.2025
7.	Unit no.	704 (as per BBA page 29 of complaint)
8.	Unit area	1395.22 sq. ft. (carpet area)
9.	Date of builder buyer agreement	07.12.2018 (page 22 of complaint)
10.	Possession clause	5. <i>Subject to timely payment of dues/ demands by the Allottee(s), the Promoter shall abide by the time schedule for completing the Project as disclosed at the time of</i>



		<i>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>
11.	Due date of possession	15.03.2025
12.	Total sale consideration	Rs.1,27,28,190/- (as per BBA page 48 of the complaint)
13.	Amount paid by the complainants	Rs. 16,61,085/- (as per SOA dated 29.03.2023 page 60 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

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

- a. That the respondent advertised about its new project namely 'Vatika Turning Point', sector-88B, Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims and representing that the project aims at providing a residential community where homes have been created to fit one's budget without compromising on facilities and amenities.



- b. That on 14.06.2018, the complainant booked an apartment bearing no. 704 admeasuring 1395.22 sq. ft. carpet area in tower/building no. HSG-026-West End-5, for a total consideration of Rs.1,27,28,190/- in the said project by paying an amount of Rs.1,00,101/- towards the booking amount in accordance with the demand raised by the respondent.
- c. That the complainant informed the respondent that she did not have the requisite finances to pay Rs.1,27,28,190/- on the date of booking, to which respondent assured to provide the flat under subvention scheme plan with finance from a financial institution for which the complainant was required to pay some initial amount out of the total sale consideration and rest of the amount to be paid after taking the possession of the said flat.
- d. That an agreement for sale dated 07.12.2018 was executed between the parties for the subject unit. The respondent omitted to mention any specific date for handover of possession and assured that the agreement is in accordance with the Real Estate (Regulation and Development) Act, 2016 and the unit would be handed over within four years, i.e. by 2022. Thereafter, till November 2019, the complainant paid Rs.16,61,085/- against the total sale consideration as per the demand raised by the respondent.
- e. That in December 2019, the complainant visited the respondent's office to seek the processing status of the subvention scheme and rental benefit as offered by the respondent. The representatives of the respondent company assured that the payment scheme and rental benefit would be processed soon. Thereafter, in January 2020, the complainant again visited the respondent's office to enquire about the scheme status and to have a look at the construction status at the project site. However, the

project was still at the excavation stage despite the lapse of 1.5 years from the date of booking. The complainant was informed that the respondent is no longer offering the subvention scheme and rental benefit scheme.

- f. That the agreement for sale's Schedule-D specified the payment plan for the subject unit to be the subvention payment plan. However, as per the statement of account the payment plan was revised to an instalment/milestone linked plan. Subsequently, the complainant approached the respondent to revive the subvention scheme with rental benefit as promised at the time of booking or to refund the paid amount. Further, the respondent denied to change the payment plan and asked the complainant to continue with the revised payment plan, and in the event of cancellation, the entire amount paid would be forfeited as earnest money.
- g. That the complainant learned about judgments allowing refunds for buyers of the abandoned project and discovered that the project's license had expired in 2017 and seeks for the refund of the paid-up amount from the respondent.

C. Relief sought by the complainant:

4. The complainant have sought following relief:
- 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:
- That in June 2018, the complainant became aware of the project called 'Vatika Turning Point', Sector 88B, Gurugram, Haryana. The complainant made several attempts to obtain information about the project from the respondent. Moreover, the complainant sought details about the project's



- specifications and authenticity, and after reviewing the necessary proposals for the project's development, complainant was content with the information provided.
- b. That the complainant developed a strong interest in the project after conducting her own examination and investigation and expressed a desire to purchase a flat. Subsequently, on 12.06.2018, the complainant booked a flat by submitting an application form.
- c. That on 04.07.2018, the respondent sent a letter requesting the execution of a builder buyer agreement for unit no. 704, West End-S, with an area of 1395.22 sq. ft. and intimated the complainant to sign the agreement and return it within 30 days for execution, which the complainant failed to do. Thereafter, the buyer's agreement was executed on 07.12.2018 after a prolonged delay by the complainant.
- d. That the respondent sent several reminders to pay the outstanding dues. However, the complainant failed to comply with the reminders and has paid Rs.16,61,085/- for the allotted unit against the total sale consideration of Rs.1,23,34,690/-.
- e. That as per the clause 5 of the buyer's agreement, the respondent was under obligation to handover the possession to the complainant as per the timelines 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 and accordingly due date of possession was 15.03.2025.
- f. The 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

- g. The respondent upon failure to continue the development work of the project as per the proposed plan and layout plan due to the reasons stated above elaborately 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.
- h. The intention of the respondent is bonafide and the above-said proposal for de-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 reasons beyond the control of the respondent.
6. All other averments made in the complaint were denied in toto.
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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. 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

9. 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

10. 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.

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. Finding on the objection raised by the respondent.

F.I Objection raised by the respondent regarding force majeure condition.

12. It is contended on behalf of the respondent/builder that due to various circumstances such as various orders passed by NGT, Hon'ble Supreme court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA beyond its control, it could not speed up the construction of the project, resulting in its delay, then handing over to NHAI, re-routing of high tension lines passing through the land of the project, impact on the project due to policy of NIPL and TOD issued on 09.02.2016 and outbreak of covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden.
13. The due date of possession in the 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 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.1 Direct the respondent to refund the paid entire amount paid by the complainant.

14. 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.



15. 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.

16. 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.

17. 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.
18. 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 abovementioned case 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."

19. 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. Though, while filing reply, the developer took a plea that the project is taking up, but which is otherwise false and against the facts on record. So, in such situation besides refund of the paid-up amount i.e., Rs.16,61,085/- given by the complainants to the developer with interest at the prescribed rate of interest i.e., 10.75% P.A., he may file complaint separately seeking compensation before the adjudicating officer having powers under section 71 of the Act of 2016.

H. Directions of the Authority:

20. 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:
- The respondent-builder is directed to refund the paid-up amount i.e., Rs.16,61,085/- received from the allottee deposited 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 15 of the Rules, 2017.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to the registry.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2023