

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

Date of decision: 14.11.2023

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"VATIKA PREMIUM FLOORS IN VATIKA INDIA NEXT"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4729/2021	Navneet Yadav V/s M/s Vatika Limited	Shri Vijay Kumar Yadav, Advocate and Shri Venket Rao, Advocate
2.	CR/4730/2021	Aman Yadav V/s M/s Vatika Limited	Shri Vijay Kumar Yadav, Advocate and Shri Venket Rao, Advocate

CORAM:

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of all the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Vatika India Next" being developed by the same

respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to execution of builder buyer agreement in favour of the complainant, termination be declared null and void in respect of the subject unit and other demands be declared null and void till date of execution of builder buyer agreement.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Vatika Premium Floors in Vatika India Next", Sector 82, Gurugram, Haryana.				
1	2	3	4	5	6	7
S. no.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Total sale consideration and amount paid	Relief sought
1.	CR/4729/2021 Navneet Yadav V/s M/s Vatika Limited DOF-14.12.2021 Reply-21.07.2022	19 on 1 st floor of tower E-5 category 3BR+S. 1785 sq. ft. [Page 101 of complaint]	Not executed	Cannot be ascertained	TC-80,31,500 Rs. AP-2,00,000 Rs.	<ul style="list-style-type: none"> • Execute BBA. • Demand of more than 10% of total sale consideration without executing BBA be declare null and void. • Termination be declared as null and void. • The interest, maintenance and other charges demanded by the builder be declared as null and void till execution of BBA.



2.	CR/4730/ 2021 Aman Yadav V/s M/s Vatika Limited DOF- 14.12.2021 Reply- 21.07.2022	31 on 1 st floor of tower E-1 category 3BR+S 1895 sq. ft. [Page 101 of complaint]	Not executed	Cannot be ascertained	TC- 82,67,506 AP- 2,00,000	Rs. Rs.	<ul style="list-style-type: none">• Execute BBA.• Demand of more than 10% of total sale consideration without executing BBA be declare null and void.• Termination be declared as null and void.• The interest, maintenance and other charges demanded by the builder be declared as null and void till execution of BBA
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
BBA	Builder buyer agreement
TC	Total consideration
AP	Amount paid by the allottee(s)

4. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4729/2021 titled as Navneet Yadav Vs. M/s Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottee.

A. Project and unit related details

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

CR/4729/2021 titled as Navneet Yadav Vs. M/s Vatika Limited.

S.no.	Particulars	Details
1.	Name of the project	Vatika Premium Floors, Vatika India Next, Sector 82, Gurugram, Haryana
2.	Nature of the project	Residential independent floors
3.	HRERA registered or not	Not registered
4.	Allotment letter dated	15.07.2021 (page no. 101 of complaint)
5.	Unit no.	19 on 1 st floor of tower E-1 category 3BR+S (page 101 of complaint)
6.	Unit area	1785 sq. ft. (super area) (page 101 of complaint)
7.	Date of agreement for sale	Not executed
8.	Possession clause - (Clause 7 & 8 of sample agreement for sale)	<p>Clause 7- Construction of the floor The Floor is complete in its construction with its Occupational Certificate ("OC") <i>received as memo no. 9758 dated September 16, 2019, with respect of the residential building on Plot no. 57, Street no. LAMPS AVENUE, sector Sec-82, Vatika India Next, Gurugram</i> from the District Town Planner cum Member Secretary, Composition Committee, Gurugram for the complete building.</p> <p>Clause 8- Possession of the floor Schedule for possession of the said Floor, subject to timely payment of amounts due by the Allottee to the Company per agreed</p>

		<i>payment plan/schedule, as given in Schedule D of the Agreement, will be done within 2 (two) months from the date of such complete payment.</i> The Company assures to hand over possession of the Floor along with parking as per agreed terms and conditions unless there is delay due to "force majeure", Court/Tribunals/NGT orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project.
9.	Due date of possession	Cannot be ascertained
10.	Total sale consideration	Rs. 80,31,500/- (as per SOA dated 25.06.2021, page 63 of complaint)
11.	Total paid up amount	Rs. 2,00,000/- (as per SOA dated 25.06.2021, page 63 of complaint)
12.	Occupation certificate	16.09.2019 (clause 7 of agreement for sale on page no. 109 of complaint)
13.	Notice for termination dated	06.07.2021 (Page 17 of reply)
14.	Termination notice dated	24.07.2021 (Page 172 of complaint)

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -
 - a. That the respondent/developer floated a residential society in the name and style of Vatika India Next in the vicinity of Sector 82, 83, Gurugram in Gurgaon Manesar Urban Complex. That Ms. Vaishali Kaul

Member of Marketing Team approached to the complainant and insisted him to purchase residential floor in their project and also assured that they are having best reputation in the real estate market and the complainant will not face any kind of difficulties.

- b. That as per the assurances of Ms. Vailshali Kaul Member of Marketing team of respondent, complainant booked a residential floor having super area of 1785 sq. ft. on dated 16.03.2021 in project of respondent named as Vatika Premium Floors situated in Vatika India Next, Sector 82, 83, Gurugram. Thereafter, the complainant many times visited to the office of the respondent for depositing 2nd installment rather the office of the respondent was found closed due to shifting of their office at their new address i.e. Ground Floor, Tower-A, Vatika City Centre, Vatika India Next, Near Kherki Daula Toll Plaza, Sector-83, Gurugram, Haryana and due to spread of COVID -19 and lockdown.
- c. Thereafter in the month of May 2021 complainant along with Mr. Aman Kumar visited to the office of the respondent to deposit the 2nd installment of the property in question rather Ms. Nidhi Bhatnagar Client Experience Manager refused to accept the same and instructed the complainant to deposit total sale consideration at once and on asking the reason behind the same, she replied that her higher officials have directed her to receive total sale consideration at once and in absence of the same they have directed her to cancel the allotment of the complainant.
- d. That after repeated requests respondent allowed and complainant deposited a sum of rupees 6,00,000/- to the promoter/colonizer M/S Vatika Limited, vide cheque bearing no. "000007" dated 21.06.2021 amounting to Rs. 2,00,000/- and Rs. 4,00,000/- vide cheque bearing no.



- "000335" dated 22.06.2021. The promoter acknowledged the receipt of the said amount of Rs. 6,00,000/- receiving on dated 22.06.2021.
- e. Thereafter on repeated requests, the respondent allowed and the complainant deposited a sum of rupees 6 lakhs with the respondent and also demanded to issue allotment letter and execute builder buyers agreement in favour of the complainant rather despite depositing 10% of total sale consideration, the respondent have refused to execute builder buyer's agreement in favour of complainant and demanded for total sale consideration in single transaction.
- f. That on 29.06.2021, the complainant replied to the email of Ms. Nidhi Bhatnagar Client Experience Manager and informed her that he has already paid 10% of total sale consideration and asked respondent to issue allotment letter, BBA for sanction of home loan. On the same date Ms. Nidhi Bhatnagar Client Experience Manager sent another email demanding thereby complete payment cheques. Rather in her earlier email she herself asked only for 10% of TSC and hence her demand for payment of total sale consideration without executing builder buyers agreement is illegal and against the provisions of RERA Act, 2016.
- g. That on 07.07.2021, a demand notice dated 24.06.2021 was received by the complainant through post sent by respondent, with the reference of some earlier notice dated 24.05.2021 and asked to pay the total sale consideration. Thereafter, the complainant visited the office of the respondent and asked them to get encashed the cheques deposited by him and also requested them to execute builders buyers agreement in favour of complainant and also to issue allotment letter in his favour but despite the receipt of 2nd installment and 10% of total sale consideration, the respondent is intentionally not depositing the



- cheques with their bank for clearance and refused to accept the request of the plaintiff to execute the builder buyers agreement in his favour.
- h. That on 15.07.2021, a civil suit against the respondent was filed for seeking relief of permanent injunction, restraining the respondent from cancelling the allotment of the complainant and directing the respondents to execute builder buyer's agreement in favour of the complainant. As per directions of the court, counsel for complainant made a statement in the court that the complainant will pay the entire sale consideration within a week after execution of builder buyer's agreement in favour of complainant. Authorized representative of respondent also made his statement in that they will not cancel the allotment if the complainant pays the entire sale consideration within a week and assured that their office is open to execute the BBA on the same date. Officials of respondent did not provided the copy of BBA to complainant despite the court orders.
- i. That on 16.07.2021, the complainant collected allotment letter and draft builder buyer's agreement from the respondent on dated 16.07.2021. The draft BBA was provided to the complainant for reading its terms and conditions and it was not finalized. That after reading the builder buyers agreement issued by the respondent, the complainant found that the said builder buyers agreement was one-sided, and is not as per law and hence on 21.07.2021, the complainant sent an email with the observations in the BBA as many terms and conditions as mentioned in the BBA was vague and not acceptable and the stamp used for the same was of year 2018.
- j. That on dated 23.07.2021, Ms. Erza Client Experience Manager replied to the email of the complainant and agreed to make the necessary

changes in BBA and requested to return the BBA issued earlier. Thereafter, the complainant sent an email dated 29.07.2021 to the respondent to share soft copy of BBA with changes.

- k. That subsequently a termination letter dated 24.07.2021 was received to the complainant on dated 30.07.2021 from the respondent alleging thereby for cancelling the allotment of complainant. On 30.07.2021, the complainant send reply to the alleged termination of the respondent through email and requested them to abide by their own statement and admissions. Thereafter on 06.08.2021, the respondent replied to the email of the complainant and refused to comply with their own statement in the court and also refused to execute BBA in favour of complainant. Respondent also refused to comply with their own admission for rectifying the BBA on dated 23.07.2021.
- l. That the demand raised by the respondent is illegal and against the law and also against the provisions of the Act. The respondent/developer cannot demand more than 10% amount without entering into builder buyer's agreement as per the provisions of section 13(1) of the Act. Hence the present complaint.

C. Relief sought by the complainants:

7. The complainant has sought following relief(s)
- Direct the respondent to execute builder buyer agreement in favour of complainant.
 - Demand of more than 10% of total sale consideration raised by the respondent without executing and entering into builder buyer agreement be declared as illegal.

- c. Termination letter and termination proceedings be declared as null and void and respondent be directed to handover the possession of the property/flat to the complainant and the interest, maintenance and other charges as demanded by the builder be declared as null and void till the date of handing over the possession.
- d. Any other relief which this hon'ble authority deems fit and proper.
8. 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**
9. The respondent contested the complaint on the following grounds:
- a. That the complainant has not approached the authority with clean hands and is trying to suppress the material facts relevant to the matter. The complainant is making false, baseless and unsubstantiated allegations against the respondent with the malicious intent and sole purpose of evading his contractual obligation towards the payment of total sale consideration in respect of the unit booked with the respondent.
- b. That the complainant made several visits to the office of the respondent to know about the details of the project titled "Premium Floors" as "Vatika India Next-Gurugram", Sector 82-83, Gurugram, Haryana. That the complainant enquired about the veracity of the project of the respondent and had immense interest to invest in the project. Therefore, the complainant came forward to invest in the

project of the respondent to extract speculative gains. That the complainant booked a unit bearing no. First floor, 19, E-501, Vatika India Next, Gurugram, Haryana by paying the requisite booking amount of Rs.2,00,000/- in the project of the respondent subject to the payment plan as accepted thereunder in the application form.

- c. That it was again communicated to the complainant and it was made clear that until the execution of builder buyer agreement, the payment plan and the other terms and conditions as stipulated in the application form shall be treated as the understanding between the parties.
- d. That as per the terms and conditions of the application form and acknowledged by the complainant was specifically agreed that merely by submitting the said application form, the complainant would not become entitled to allotment of the said floor and same would be only after issuance of the allotment letter as well as subject to the execution of the builder buyer agreement.
- e. That the respondent being in a position of a developer did not make any false promises and had not given any fake assurances to the complainant. That all the terms and conditions were made crystal clear to the complainant at the time of booking and application form. That the complainant proceeded with the booking will-fully and consented to the same without any object whatsoever.
- f. That the respondent has sent various communications, mails, calls etc. to the complainant to make payments as per the agreed payment plan

but the same went unheeded. The respondent on 24.06.2021 sent a final opportunity letter requesting the complainant to make payment of pending dues immediately failing which the respondent would be constrained to terminate the booked above said unit of the complainant. Upon not receiving the outstanding dues, finally a termination letter dated 06.07.2021 was sent to the complainant stating that the allotment of the complainant is thereby cancelled for a delay of total 74 days, out of which 7 days delay in the payment of 2nd instalment and delay of 67 days in the payment of 3rd instalment. That the complainant has not cleared the outstanding dues and instead filed the present complaint with the sole purpose of defrauding the respondent and to take undue advantage of the provisions of the Act.

- g. That the non-payment of the outstanding amount depicts that the complainant intentionally ignored all the reminders sent by the respondent to avoid making the payment towards outstanding dues upon him. The complainant has booked the subject unit along with his friend namely Mr. Aman Kmar who is a real estate agent and his matter is also before the authority. The respondent is under a strong belief that the complainant is not a genuine allottee but has merely booked the unit in along with his friend to make gains by way of reselling it or by any way best known to them. It is also evident from the email id provided by the friend of the complainant i.e., amanrealtyworld@gmail.com.

- h. That since the complainant failed to clear the outstanding dues, the answering respondent was constrained to and left with no other alternative, cancelled the said unit as per clause 18 of the booking application form and further, the complainant has defaulted to comply with clauses of the said form whereby the respondent has to recover the amount of Rs.10,58,784/- from the complainant.
- i. That after the termination of the booking of the complainant, the respondent has already allotted the said unit bearing no. First floor, 19, E-5.1, Vatika India next, Gurugram, Haryana.
- j. That the complainant is trying to shift its onus of failure on the part of the respondent, it is the complainant who has failed to comply his part of obligations and miserably failed to pay the instalments in time which clearly shows the gross misconduct and malafide motive. The complainant who has pre-determined motive to cause harassment and financial loss to the respondent by raising baseless and absurd allegations which was not maintainable in the eyes of law.
10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

11. 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

12. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

14. 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 complainant-

15. In the present complaint, the subject unit was booked by the complainant by paying booking amount of Rs.2,00,000/- in the project of the respondent namely, Vatika Premium Floors situated in Vatika India Next, Sector 82, 83, Gurugram, Haryana. Upon failure on the part of the complainant allottee to make payment as per the agreed payment plan, the respondent terminated the subject unit vide cancellation letter dated 06.07.2021. Being aggrieved by the termination of the allotment in respect of the subject unit, the complainant allottee filed a civil suit bearing no. CS-2060-2021 for permanent injunction. Vide order dated 15.07.2021, both the parties were directed to fulfil the assurances laid down before the court. Accordingly, complainant was to make payment of complete consideration on executing allotment letter and buyer's agreement. On the other hand, the respondent was directed to get the buyer's agreement executed on same day and not to cancel the unit if the entire amount is paid within one week of order. However, the said complaint was ***dismissed as withdrawn vide Order dated 01.11.2021***. Finally, the allotment in respect of the subject unit was terminated by the respondent vide termination notice dated 24.07.2021 due to non-payment of outstanding dues by the respondent.



16. Now, the question posed before the authority is that whether the complainant has made the payment of 10% of the total sale consideration and consequently, the termination made by the respondent is valid in the eyes of law?
17. It is matter of facts that in view of the directions passed by the civil court, the respondent issued an allotment letter dated 15.07.2021 in favour of the complainant allottee and the respondent has also shared a draft agreement with the complainant allottee. On the other hand, the complainant-allottee was supposed to make the payment as agreed between them. The case of the complainant is that he has made a payment of Rs.6,00,000/- to the respondent vide cheque bearing no. "000007" dated 21.06.2021 amounting to Rs. 2,00,000/- and Rs. 4,00,000/- vide cheque bearing no. "000335" dated 22.06.2021. It is observed that the cheques relied upon by the complainant bearing no. "000007" dated 21.06.2021 and "000335" dated 22.06.2021 were issued by some "Sunder Lal Singhal" and "Abhay Singh" respectively. It is observed that the said cheques were issued by some individual other than the complainant. It is also pertinent to note here that the said individuals are neither applicant to the application form nor a party to the present complaint. Further, the complainant is alleging that the said payment was received by the respondent as it has stamp and receiving by the respondent. In this regard it is observed that it does not bear any specific date of acceptance or any designation signifying as to who has received the same on behalf of the respondent. Moreover, the respondent is denying that



the alleged cheques were neither handed over nor received by the respondent. The said payment by the cheques cannot be considered valid as the said cheques were neither issued nor authorised by the complainant. The authority observes that the complainant allottee was under a statutory obligation to pay 10% of the total sale consideration as per section 13 of the Act prior to the execution of the buyer's agreement. In light of the aforesaid reasons and documents placed on record, the authority is of the view that the complainant-allottee has failed to make the payment in terms of section 13 of the Act and the cancellation done by the respondent is valid. Thus, both the complaints stand dismissed on merits. True certified copy of this order shall be placed in the case file of each matter.

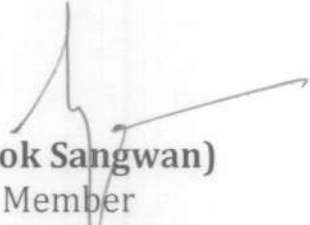
18. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 14.11.2023


(Ashok Sangwan)

Member