

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

Complaint no.	3473 of 2023
Date of complaint	08.08.2023
Date of Order	10.01.2024

Aditya Tyagi & Geeta Tyagi Registered address: 5-D. Type-6, HUDCO Place. Behind Ansal Plaza, Andrews Ganj, South Ext-II, South Delhi, Delhi-110049, India.	Complainants
Versus	
M/s Vatika Ltd. Registered address at: Vatika Triangle, 4 th Floor, Sushant Lok, ph-1, Block-A, MG Road, Gurugram-122002	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Pawan Kumar Advocate	Complainants
Shri Anurag Mishra Advocate	Respondent

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 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 provision of the



Act or the rules and regulations made there under or to the allottees as per the buyer's agreement 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	Vatika Turning Point Phase I, Sector 88-B, Gurugram.
2.	Nature of the project	Group Housing Colony
3.	Project area	93588.71 Sq. Mtrs.
4.	DTCP license no.	91 of 2013 dated 26.10.2013
5.	Name of licensee	Vaibhav Warehousing Pvt. Ltd., Feldon Developers Pvt. Ltd., Sh Sahil Grover, Sh. Chanderbhan Grover and 5 others.
6.	RERA Registered/ not registered	Lapsed project
7.	Unit no.	HSG-026, West End-7-305 (Page no. 39 of Complaint)
8.	Unit area admeasuring (Carpet area)	936.89 sq. ft. (Page no. 39 of Complaint)
9.	Date of execution of builder buyer agreement.	09.05.2018
10.	Possession clause	None
11.	Due date of possession	09.11.2021 <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them,</i>



		<p><i>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> <p>“An additional extension of 6 months is provided in view of HARERA Notification no. 9/3-2020”</p> <p>In view of the above-mentioned reasoning, the date of execution of Builder Buyer Agreement dated 09.05.2018 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 09.11.2021.</p>
12.	Total sale consideration	Rs.66,33,535/- (Page no. 36 of Complaint)
13.	Amount paid by the complainants	Rs.12,82,655/- (Page no. 39 of Complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. The complainants had trusting upon respondent through advertisement in newspaper and as per broacher/prospectus have booked an apartment bearing no.305 measuring carpet area of approx. 936.89 sq. ft. along with a car parking spot in Tower/Block HSG-026-West End-7 in project of the respondent namely at "VATIKA TURNING POINT" situated at Sector-88-B, Gurugram, Haryana under construction linked payment plan. Thereafter, a builder buyer agreement was executed between the parties regarding the said

allotment on 09.05.2018 for a total sale consideration of Rs.66,33,535/- against which the complainants/allottees have paid a sum of Rs.12,82,655/- in all.

- II. That at the time of booking of the unit the respondent has assured complainants/allottees that the construction of the project would be completed within 2021 and no specific period w.r.t handing over of possession was mentioned in clause 7 of the BBA.
- III. That the respondent never offered possession as the construction of the project is still incomplete and now the builder has stopped the construction of the project.
- IV. That the complainants kept visiting the site of the project with an interval to know the development of the project but the project was very slow even the foundation of the project could not be established by the builder till 3 years. The allottees requested the builder many times with their personal visits at the registered office of the builder to complete the project timely but the just and genuine request of the allottees were never paid any heed. Thereafter, on 21.05.2022 allottees requested the builder for the refund of the amount paid by them. The builder had promised to refund the paid-up amount, but the builder failed to pay the said amount.
- V. That even repeated requests via mobile calls, e-mails and office visit by allottees/complainants, builder/respondent failed to refund the amount of Rs.12,82,655/- to the complainants/allottees.
- VI. That the respondent is bound to refund the amount paid by the complainants/allottees and the respondent is also bound to pay compensation along with interest and litigation expenses to the complainants/allottees in the interest of justice.



C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):

- i. Direct the respondent to refund the entire paid-up amount of Rs.12,82,655/- along with interest @18 % per annum on the amount.
- ii. Direct the respondent to pay litigation charges of Rs.1,00,000/- to the complainants and compensation on account of mental pain and agony by the respondent as per the relevant provisions of the Act.

D. Reply by respondent:

5. The respondent vide reply dated 06.09.2021 contested the complaint on the following grounds: -

- i. That the project namely "TURNING POINT" is a residential group housing project being developed by the respondent on the licensed land admeasuring 18.80Acres. It is submitted that the License No.91 of 2013 and approval of building plan and other approvals granted for the "Turning Point Project" has been obtained on 26.10.2013 by respondent and the construction whereof was started in terms thereof.
- ii. Further, after establishment of the Haryana Real Estate Regulatory Authority the respondent applied for registration of its Project and the authority registered the said project vide registration no.213 of 2017 dated 15.09.2017.
- iii. It may be noted that despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of Turning Point Project was undertaken by the respondent in right earnest and the same proceeded in full swing.



- iv. That the complainants had booked unit bearing no. HSG-026-West End-7-305 admeasuring carpet area 936.89 sq. ft. vide builder buyer agreement dated 09.05.2018.
- v. It is submitted that as per clause 7 of the buyer's agreement dated 24.05.2018 executed with the complainants, the construction of the project was contemplated to be completed subject to force majeure circumstances mentioned in clause 9 thereof which provided for extension of time. It is further submitted that the present complaint is pre-mature as it is the admitted position of the complainants that the respondent is required to handover the possession of the said unit by Sept. 2024 and therefore filing a pre-mature complaint is not maintainable at all and the same must be dismissed on the said ground.
- vi. That the complainants had only made payment of Rs.12,82,655/- towards the booking of the said unit which is around 15% of the total sale consideration only. Also, the complainants had not made any further payment after the year 2018 till date. Thus, the complainants had defaulted in making the payment as per the terms of the said buyer's agreement and therefore such frivolous complaint must be dismissed on the said ground itself.
- vii. That the project was delayed due to reasons beyond the control of the respondent. Therefore, there is no breach whatsoever on its part. Further, the time stipulated for completion under the allotment/agreement is not the essence and the respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to it. The completion of construction of the project was delayed due to the following reasons:



- a) Defaults by the buyers in the Project including the complainants.
 - b) Demonetization of currency notes.
 - c) Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
 - d) Ban on construction due to the directions issued by the National Green Tribunal during various times since 2016.
 - e) Lockdown on account of covid-19 pandemic.
 - f) Delay in supply of cement & steel due to various agitations and covid-pandemic – 2019.
 - g) Declaration of Gurgaon as notified area for the purpose of ground water & restrictions imposed by the state government on its extraction for construction purposes.
- viii. That due to the above-mentioned reasons the respondent had no option left but to make a request for withdrawal of application for grant of license for mix land use under (TOD) policy due to change in planning. 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/-. Further, 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.
- ix. That due to the said loss suffered by the respondent in the said project, it had no other option but to apply for de-registration of the said project.
- x. That the intention of the respondent is bonafide and the above said proposal for de-registration of the project is 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.

E. Jurisdiction of the authority:

6. 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

7. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the buyer's agreement. 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.

9. 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. Findings on the objections raised by the respondents:

F.I Objections regarding force Majeure

10. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as various direction issued by National Green Tribunal regarding ban on construction in NCR region, notification of the Municipal Corporations Gurugram, Demonetization on currency notes, etc. The plea of the respondent regarding various directions by NGT, etc., and all the pleas advanced in this regard are devoid of merit. The directions issued by NGT for banning on construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong. Though respondent has pleaded covid 19 pandemic as one of reasons for delay in completion of project. In view of HARERA notification no. 9/3-2020, the respondent is provided an extension of 6 months for completion of project.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the amount deposited by the complainants along with interest at the prescribed rate.

11. The complainants were allotted a unit bearing no. HSG-026, West End-7-305 in the project of the respondent/builder namely "Turning Point", Sector 88B, Gurugram, Haryana vide buyer's agreement dated 09.05.2018 for a total sale consideration of Rs.66,33,535/-. However,



there is no clause mentioned in the buyer's agreement vide which the due date for handing over of possession can 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.

12. In view of the above-mentioned reasoning, the date for execution of BBA i.e., 09.05.2018 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 09.11.2021 (Including 6 month relaxation in view of HARERA notification no. 9/3-2020)
13. As per record, the complainants have paid a sum of Rs.12,82,655/- to the respondent against the total sale consideration of the unit of Rs.66,33,535/-. However, the complainants contended that the unit was not offered to them despite this and no occupation certificate has yet been obtained, further, the aforesaid project has lapsed, and application for de-registration has been filed with the Authority. Hence, in case allottees wish to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the buyer's agreement. This view was taken by the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. (supra)** reiterated in the case of **M/s Sana Realtors Private Limited &**

other vs. Union of India & others SLP (Civil) (supra) wherein it was observed as under: -

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

14. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016 or the rules and regulations made thereunder or to the allottees as per the buyer's agreement under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the buyer's agreement or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondent/promoter in respect of the unit with interest at such rate as may be prescribed.
15. There has been an inordinate delay in the project which cannot be condoned. Keeping in view the fact that the allottees/complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in



accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.

16. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to a refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 8.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay cost of litigation.

17. The complainants are seeking above mentioned relief w.r.t. Litigation and compensation on account of mental pain & agony. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:



18. 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/promoter is directed to refund the amount i.e., Rs.12,82,655/- received by it from the complainant/allottees along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
 - ii. 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.
19. Complaint stands disposed of.
20. File be consigned to the registry.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2024