

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

Complaint no.: 3911 of 2023
Date of filing: 24.08.2023
Order pronounced on: 15.05.2024

Bhawna Narang
R/o:-B-416, Sarita Vihar, New Delhi- 110076

Complainant

Versus

1. Vatika Limited

Regd. Office at:- 4th floor, Vatika Triangle, Sushant Lok- 1, Block-A, Mehrauli- Gurgaon Road, Gurugram- 122002

2. Piramal Housing Finance Limited

R/o:- 2nd floor, Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Gurgaon Road, Gurugram

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Kartikeya Rastogi (Advocate)
Shri Anurag Mishra (Advocate)
Shri Suresh Ranjan Kumar (Advocate)

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. This complaint has been filed by the complainant/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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

S. No.	Particulars	Details
1.	Project name and location	"Turning Point", Sector- 88B, Village Harsaru, Gurugram, Haryana
2.	Project area	18.80 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav Warehousing Pvt. Ltd. And 9 others
6.	RERA registration details	Registered Vide registration no. 213 of 2017 dated 15.09.2017 valid up to 15.03.2025 for area admeasuring 93588.71 sq. mtrs.
7.	Unit no.	G02, West End- 7 (3BHK) (PLC of Rs.2,85,000/- for Club/Pool facing/Green facing) (page 67 of complaint)
8.	Unit area admeasuring	899.22 sq. ft. (carpet area) (page 31 of complaint)
9.	Allotment letter	11.02.2019 (page 67 of complaint)
10.	Date of execution of builder buyer agreement	28.12.2018 (page 29 of complaint)
11.	Possession clause	7.1 A) Schedule for possession of the said apartment subject to timely payment of amounts due by the Allottee to the Promoter as per agreed payment plan/schedule, as given in Schedule D of the Agreement. The Promoter assures to hand over possession of the apartment along with parking as per agreed terms and conditions unless there is delay due to "force majeure", Court/Tribunal/NGT Orders, Government

		<p><i>Policy/guidelines, decisions affecting the regular development of the real estate project. If the completion of the project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to extension of time for delivery of possession of the Apartment....."</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(page 38 of complaint)</p>
12.	Due date of Possession	<p>28.06.2022</p> <p>(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. Further, an additional extension of 6 months provided to the developer in view of HARERA Notification no. 9/3-2020 in lieu of Covid-19)</p> <p>In view of the above-mentioned reasoning, the due date for handing over the possession of the unit comes out to be 28.06.2022.</p>
13.	Tri-partite Agreement	<p>12.02.2019</p> <p>(page 68 of complaint)</p>
14.	Date of approval of building plans	26.10.2013
15.	Basic sale consideration	<p>Rs.74,81,250 /-</p> <p>(as per SOA at page 15 of reply)</p>
16.	Amount paid by the complainant	<p>Rs.37,75,242/-</p> <p>(as per SOA at page 15 of reply)</p>

17.	Occupation Certificate	Not obtained
18.	Offer of Possession	Not offered

B. Facts of the complaint.

3. The complainants have made the following submissions by way filing of this complaint dated 24.08.2023 and written submissions dated 12.04.2024: -

- I. That the complainant is an allottee within the definition of "Allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 and booked a housing unit bearing no. HSG-026-West End-7-GO2 in the project of respondent no. 1.
- II. That respondent no.1 is a company dealing in the development of real estate projects and was developing a project with the name and style of "Vatika Turning Point" (hereinafter referred to as "Project"), Sector 88B, Gurugram, Haryana.
- III. That respondent no. 2 is a company that provides housing finance and other financing solutions and is incorporated under the Companies Act, 2013 having its registered office at 2nd floor, Piramal tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai, Maharashtra- 400013.
- IV. That in 2019, the complainant while searching for a residential apartment, came across the advertisements/brochures/sales representatives of the respondent no. 1 of upcoming housing project namely "Vatika Turning Point".
- V. That, in order to persuade the complainant to book a unit in the project, respondent no.1 offered a scheme of assured rental-No EMI till actual possession wherein respondent no.1's representatives assured the complainant that she would be provided with monthly rentals against the rent charge of her residence each month till possession of the housing unit. It was further assured and represented that if due to any reason, the construction of the booked unit gets delayed, then the respondent no.1 undertakes to pay the pre-EMI's to the complainant even after May 2022.

- VI. That upon various representations made on behalf of the respondent no. 1, the complainant paid a booking amount of Rs.4,00,000/- on 09.02.2018 for unit No. HSG-026-West End-7-GO2 admeasuring 1425 sq ft bearing Booking ID 18-02-0291887. Thereafter, the complainant made further payments in purview of the payment plan of Rs. 3,50,000/-, Rs 23,600/- and Rs. 76,127/- on 27.06.2018, 08.10.2018 and 13.12.2018 respectively. That the complainant was represented and assured by the respondent no.1 that the project would be completed by 2022 and the complainant will be given possession of the same.
- VII. That however, on 08.06.2018, the complainant agreed to opt out of pre-EMI's amounting to Rs.14,500/- on the assurance of the respondent no.1, that the entire cumulative pre- EMI's amount will be deducted by the respondent no. 1 during the final settlement of the last installment for the housing unit.
- VIII. That on 28.12.2018, the complainant and the respondent no.1 entered into a builder buyer agreement for sale of the aforementioned housing unit for a sale consideration of Rs.84,20,025/- and later, the complainant was given an allotment letter dated 11.02.2019 whereby she was allotted unit no. HSG-026-West End-7-GO2 in the project of the respondent.
- IX. That further respondent no.1 persuaded the complainant to avail a home loan specifically from respondent no. 2, i.e., Piramal Capital and Housing Finance Limited in order to make timely payments for the unit. Thereafter the respondent no.2 approached the complainant for the grant of the loan towards payment of the housing unit and subsequently a tri-partite agreement dated 12.02.2019 was entered between the parties by means of which the complainant was sanctioned a loan of Rs 75,00,000/- by respondent no. 2.

- X. Thereafter, the complainant was sanctioned a loan of Rs 78,50,412/- and was disbursed a sum of only Rs 32,24,001/- against the said loan amount.
- XI. That from 05.11.2021 onwards, respondent no. 2 has already started deducting the EMI's, from the complainant's bank account irrespective of the fact that the possession of the housing unit hasn't been handed over to her. That there was no extension of subvention scheme till the final completion and handing over of the abovesaid unit to the complainant.
- XII. That the complainant contacted the official representatives of the respondent company many a times to get the information of the construction progress but the same was intentionally and deliberately ignored by the respondent's representatives. Further in 2021, the complainant got to know that there was no construction going on and the project was abandoned completely.
- XIII. That on 09.09.2022, the complainant received an email from respondent no. 1 wherein it was unequivocally informed to the complainant that the project has been delayed and they are willing to offer the complainant some other ready to move in project options.
- XIV. That the respondent company acted fraudulently intentionally and deliberately by raising illegal demands time and again for the project from the complainant, knowing the fact that the said project had been abandoned by respondent no. 1 and that construction of the said project had not even commenced. That the complainant made numerous calls and visited the office of the respondent no. 1 multiple times seeking a refund of the booking amounts paid by her, however respondent no. 1 paid no heed to her requests.
- XV. That the respondent no.1 was responsible to develop the project in accordance with the sanctioned map, layout plan and necessary NOC's and

approvals, permissions and clearances to the said project within the subvention period i.e., 05.05.2022.

- XVI. That the complainant is a single lady and was unmarried. The respondent company compelled the complainant to purchase an insurance policy equivalent to value of the loan availed by the complainant to assure repayment of the loan in case of her contingent demise. Due to the abovementioned insurance she has been paying an insurance premium every month and has paid a total premium of Rs. 89,136/- till date. Therefore, it is submitted that the complainant is also entitled to compensation for paying those premiums as mentioned in the case of 'Newtech Promoters and Developers Pvt. Ltd vs State of UP' and Others (Civil Appeal No(s) 6745-6749 of 2021).
- XVII. That, it is pertinent to mention that the subvention period has already expired on 05.05.2022 and barring the said date no other date of possession had been mentioned in the builder buyer agreement or the tripartite agreement signed between the complainant and the respondents. Nonetheless, in the present case, and it is abundantly clear from above mentioned facts and circumstances that the set project has been abandoned and the complainant has been defrauded.
- XVIII. That it is abundantly clear that no force majeure was involved, and the project has been at a standstill for several years. It is submitted that the complainant has already made a total payment of Rs. 8,49,727/- to respondent no.1 towards the residential unit booked by her. Also, the complainant had paid a sum of Rs. 5,43,213 to respondent no. 2 as EMI's and insurance premium for the loan disbursed by the respondent no. 2 to the complainant. Despite paying such a huge sum towards the unit, respondent no.1 has failed to stand by the terms and condition of the BBA and the tri-partite agreement entered between the parties.

- XIX. That respondent no.1 is not only guilty of deficiency of service and for unfair trade practice along with the breach of contractual obligations, mental torture, but harassment of the complainant by misguiding her, keeping her in the dark and putting her future at risk by rendering her homeless.
- XX. That in view of the aforementioned facts and circumstances, the complainant is entitled to cancel the booking of the residential unit in dispute and is also entitled for a refund of the entire money paid by the Complainant to the Respondents along with interest and costs in consonance with Section 18 of the Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest;
- ii. Direct the respondent no. 2 not to deduct any further EMIs from the complainant in lieu of the sanctioned loan;
- iii. Direct the respondents to pay the complainant Rs.2,00,000/- on account of litigation costs and harassment.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds:

- a. That "TURNING POINT" is a residential group housing project being developed by the respondent on the licensed land admeasuring 18.80 acres situated at Sector 88B, Gurugram. It is submitted that license no. 91 of 2013 and approval of building plan and other approvals granted for the project has been obtained on 26.10.2013 by respondent and the construction whereof was started in terms thereof.
- b. That vide 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 construction and development of sector roads was published in newspaper ✓

Dainik Jagran on 30.12.2014. However, it is pertinent to state that the even though the respondent has received license of the said land however the land was not acquired by the Authority/Government for the purpose of development and utilization of sector roads and therefore there has been delay on the part of the state government for acquiring the land for more than 3 years i.e. till 23.12.2016.

- c. That, after establishment of this Authority, the respondent applied for registration of its project "Turning Point" and the authority registered the said project vide its Registration No. 213 of 2017 dated 15.09.2017.
- d. That as per clause 7 of the Agreement to Sale 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 admitted position of the complainant that the respondent is required to handover the possession of the said unit within 48 months from the date of execution of the builder buyer agreement and therefore filing a pre-mature complaint is not maintainable and same must be dismissed on the said ground.
- e. That it is the admitted position that the complainant has only made payment of Rs. 8,49,727/- towards the booking of the said unit which is around 10% of the total sale consideration only. Also, the complainant has not made any further payment after the year 2018 till date. Thus, the Complainant has defaulted in making the payment as per the terms of the said Agreement and therefore such frivolous complaint must be dismissed on the said ground itself.
- f. That the pace of construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the

developer. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers including the complainants, in the Turning Point Project have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the Project.

- g. That the complainant has delayed and defaulted in making timely payments of instalments to the respondent. The said delay by the complainant has also contributed to the delay in completion and possession of the apartment in addition to other factors beyond the control of the respondent. It is an established law, that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. A defaulter under an agreement cannot seek remedy for default against the other for delay. Needless to say that obligation for payment of the instalments (consideration) was first on the complainants and then the obligation of the respondent was to complete and hand over the apartment. Therefore, the complainant cannot allege delay in completion under the camouflage of refined wordings and misuse of the process of law.
- h. It is submitted that beside the above major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated November 8, 2016 has also affected the pace of the development of the project. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wages labourers. The effect of such demonetization were that the labourers were not paid and consequently they had stopped working for the project and had left the

project site/ NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non-availability of adequate funds with the banks had further escalated this problem many folds.

- i. That it is deemed that prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access / approach roads, key distances, looked at the vicinities, physical characteristic of the project etc. and then filed an application for allotment with the OP which factum is also recorded in the builder buyer agreement executed the complainant. Not only this, basis the individual requests, the OP also caused site visits for the prospective buyers who had made requests for visiting the project site before making application for allotment. It is submitted that almost all the buyers (including the complainant) have visited the project site and were aware of the fact that the project had no direct access road and the OP was working on the getting a remedy for the same.
- j. That as far as the service tax is concerned nothing has been recovered illegally and the same has been recovered in accordance with the rules, policies, laws prevailing from time to time and deposited to the govt. account. Since entire money so recovered from the complainants have been duly deposited to the service tax department and as soon as the concerned department will release the money, the same will be returned to the complainant.
- k. That most of the flat buyers in the said project have wilfully defaulted in the payment schedule which is the main cause of the delay in the construction activity and affecting the completion of the project. This wilful default by the flat buyers is due to the fact that most of them have purchased the flats as an investment option when real estate market was doing well in the year

2014. When in the year 2015-2016 onwards, the real estate market started facing slowdown, the flat buyers started defaulting in payment of instalments. The complainant was well aware of the above mentioned facts and reasons behind the delay in completion of the project. Hence the present complaint before this Hon'ble Commission is a malafide attempt to misuse due process of law and gain unlawful enrichment at the cost of the OP when the real estate market is down and thus, this complaint must be dismissed.

- i. That 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

- m. That the project could not be completed and developed on time due to various hindrance such as government notifications from time to time and force majeure conditions, breakdown of Covid-19 pandemic and other such reasons, which miserably affected the construction and development of the project as per the proposed plans and layout plans, which were unavoidable and beyond the control of the respondent.
- n. That due to the loss suffered in the said project, the respondent no. 1 had no option but to apply for de-registration of the said project.
- o. The complainants have made false and frivolous allegations against the respondent, suppressing facts and raising baseless, vague, and incorrect grounds. None of the reliefs prayed for by the complainants are sustainable before this Hon'ble Authority in the interest of justice.
7. All other averments made in the complaint were denied in toto.
8. 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 on the basis of these undisputed documents and submissions made by the parties.
9. Vide proceedings dated 20.12.2023, the respondent no. 2 was directed to file his reply in the registry of the authority. However, no reply had been filed by respondent no.2 despite availing reasonable opportunities. In view of the same, the matter is proceeded ex-parte against respondent no.2.

E. Jurisdiction of the Authority:

10. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

11. 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:

12. 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.

13. 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 complainant at a later stage.

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct

expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objection raised by the respondent.

F.I Objection regarding force majeure conditions:

16. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.

17. Further, the authority has gone through the possession clause of the agreement and observed that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima**

and Ors. (12.03.2018 - SC); MANU/SC/0253/2018, 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.

18. In the present case, the due date comes out to be 28.12.2021. *That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.* The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 28.12.2021 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 notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **28.06.2022**. 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.I. Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest.

G.II Direct the respondent no. 2 not to deduct any further EMIs from the complainant in lieu of the sanctioned loan.

19. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

20. 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 unit comes out to be 28.06.2022, 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. Thirdly, the allotment was made under subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

21. It was pleaded by respondent no. 2 that it advanced loan against the allotted unit leading to execution of tripartite agreement between them. But the primary responsibility to pay the loan amount was that of the complainant/allottee. So, in case of refund of any amount, the same may be paid to it against the loan amount so disbursed and the remainder, if any be paid back to the complainant/allottee.

22. 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 the above-mentioned promoters in order to restrict the promoter from further withdrawal from the accounts till further order.

23. 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.

24. 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, none 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.

25. 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 **complaint bearing no. 173 of 2021 and 27 others titled as Ashish Kumar Aggarwal vs Vatika Ltd.** 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, *ibid.* 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."

26. 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. So, in such situation complainants are entitled for refund of the paid-up amount i.e., Rs. 37,75,242/- from the developer with interest at the rate of 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of deposit till its realization within the timelines provided in rule 16 of the Haryana Rules, 2017, ibid.

27. Out of total amount so assessed, the amount paid by the bank i.e., respondent no. 2 be refunded first in the bank and the balance amount along with interest will be refunded to the complainant. Further, respondent no. 1 is directed to get the NOC from respondent no. 2 and give it to the complainant within a period of 30 days of this order.

G.III Direct the respondents to pay the complainant Rs.2,00,000/- on account of litigation costs and harassment.

28. The complainant is seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers 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 regards 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 complainant may approach the adjudicating officer for seeking the relief of compensation.


H. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast

upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent no. 1 is directed to refund the paid-up amount i.e. Rs. 37,75,242/- received by it from the complainant against the allotted unit along with interest at the prescribed rate of 10.85% per annum from the date of deposit till its realization.
 - ii. Out of the total amount so assessed, the amount paid by the bank i.e., respondent no.2 be refunded first in the bank and the balance amount along with interest will be refunded to the complainant.
 - iii. The respondent no. 1 is directed to get the NOC from respondent no. 2 and give it to the complainant within a period of 30 days of this order.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - v. The respondent no.1 is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
30. Complaint stands disposed of.
31. File be consigned to registry.

Dated: 15.05.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram