

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Date of decision: 03.05.2024**

NAME OF THE BUILDER		M/S VATIKA LTD.	
PROJECT NAME		TURNING POINT	
S. No.	Case No.	Case title	Appearance
1	CR/191/2023	Neha Batoo V/S M/S Vatika Ltd. and Piramal capital and Housing Finance Ltd.	Sh. Sanjay Gaba Sh. Harshit Batra for R1 Sh. Suresh K. Jajoria for R2
2	CR/2141/2023	Geetanjali Dambalkar Gupta and Namit Gupta V/S M/S Vatika Ltd. and Piramal capital and Housing Finance Ltd.	Sh. Vijender Singh Sh. Anurag Mishra for R1 Sh. Suresh K. Jajoria for R2
3	CR/2388/2023	Rishi Gandotra and Kuldip Gandotra V/S M/S Vatika Ltd.	Sh. Amitabh Narayan Sh. Anurag Mishra

**CORAM:**

Shri Sanjeev Kumar Arora

**Member****HARERA**  
GURUGRAM  
**ORDER**

1. This order shall dispose of the three complaints titled above filed before this 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.
- 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, Turning Point situated at Sector-88 B, Village Harsaru, Gurugram being developed by the same respondent/promoter i.e., M/s Vatika Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid amount.
  - The details of the complaints, reply 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:

<b>Project Name and Location</b>	"Turning Point" at sector 88B, Village Harsaru, Gurgaon, Haryana.
<b>Project area DTCP License No.</b>	18.80 acres 91 of 2013 dated 26.10.2013 valid upto 25.10.2017
<b>Rera Registered</b>	Registered vide no, 213 of 2017 dated 15.09.2017 valid upto 15.03.2025
<b>Possession clause:</b> <b>7.Possession of the apartment:</b> <i>7.1 Schedule for possession of the said apartment, the promoter agrees and understands that timely delivery of possession of the Apartment along with parking to the Allottee(s) and the common areas to the association of Allottee's or the competent authority, as the case may be, as provided under Rule2(1)(f) of Rules, 2017, is the essence of the Agreement.</i>	
<b>Due date of possession:</b>	NA
<b>Occupation certificate:</b>	Not Obtained

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of agreement to sell	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/191/2023  Neha Batoo V/S M/S Vatika Ltd. and Piramal capital and Housing Finance Ltd.  <b>DOF:</b> 31.01.2023  <b>Reply by R1:</b> 25.10.2023  <b>Reply by R2:</b> Not Received:	805, 8 <sup>th</sup> floor, Tower-West End -I	1460 sq. ft.	18.06.2019  Tripartite agreement: 19.06.2019	15.03.2025  (taken from previous cases of same project)	BSP: Rs. 81,29,280/-  TSC: - Rs. 83,48,280/-  AP:- Rs. 37,63,629/-	Refund
2.	CR/2141/2023  Geetanjali Dambalkar Gupta and Namit Gupta V/S M/S	West End-1, 3002	898.03 sq. ft.	20.12.2018  Tripartite agreement: 18.01.2019	15.03.2025  (taken from previous cases of same project)	TSC: - Rs. 81,95,090/-  AP: - Rs. 37,55,487/-	Refund

	Vatika Ltd. and Piramal capital and Housing Finance Ltd.  <b>DOF:</b> 26.05.2023 <b>Reply by R1:</b> 22.12.2023 <b>Reply by R2:</b> Not Received:						
3	CR/2388/2023  Rishi Gandotra and Kuldip Gandotra V/S M/S Vatika Ltd.  <b>DOF:</b> 26.05.2023 <b>Reply status:</b> 22.12.2023	West End-6-503	1635 sq. ft.	24.05.2018	15.03.2025  (taken from previous cases of same project)	TSC: -Rs. 81,21,980/-  AP: - Rs. 13,21,461/-	Refund

<p><b>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</b> <b>Abbreviation Full form</b> TSC Total Sale consideration AP Amount paid by the allottee(s)</p>
--

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the total amount paid by them.
  5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
  6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case *CR/191/2023 Neha Batoo V/S M/S Vatika Ltd. and Piramal capital & Housing Finance Ltd.* are being taken into consideration for determining the rights of the allottee(s).
- A. Project and unit related details**
7. 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/191/2023 Neha Batoo V/S M/S Vatika Ltd. and Piramal capital & Housing Finance Ltd.*

S. N.	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.	Date of agreement to sell	18.06.2019 (Page no. 19 of complaint)
8.	Date of tripartite agreement	19.06.2019 (page no. 52 of complaint)
9.	Unit no.	805, 8 <sup>th</sup> floor, Tower-West End -I (page no. 35 of reply)
10.	Unit area admeasuring	1460 sq. ft. (page no. 35 of reply)
11.	Possession clause	<i>7. Possession of the apartment</i> <i>7.1</i> Schedule for possession of the said apartment, the promoter agrees and understands that timely delivery of possession of the Apartment along with parking to the Allottee(s) and the common areas to the association of Allottee's or the competent authority, as the case may be, as provided under Rule2(1)(f) of Rules, 2017, is the essence of the Agreement.

12.	Due date of possession	15.03.2025 (taken from previous cases of same project)
13.	Total sale consideration	Rs. 83,48,280/- as per SOA dated 20.02.2023
	Basic sales price	Rs. 81,29,280/- as per SOA dated 20.02.2023
15.	Amount paid by the complainant	Rs. 37,63,629/- as per SOA dated 20.02.2023
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

#### B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
9. That, relying upon representation of the respondent no.1 to be true, the complainant had booked a flat bearing no. HSG-026- West End -I-805, located on 8<sup>th</sup> floor, admeasuring 1460 sq. ft. in Tower West End, situated at Turning Point, Vatika, Sector-88B, Gurugram along-with one number of car parking for a total sale-consideration of Rs.83,48,280/- by paying an amount of Rs.9,35,000/- towards booking amount.
10. That, after provisionally allotment of the said unit to the complainant, the respondent no.1 executed an agreement for sale dated 18.06.2019,
11. That, in order to buy the said unit, the complainant has also availed the facility of loan from respondent no.2, i.e., Piramal Capital & Housing Finance Limited, and in this regard a tripartite agreement was executed between complainant, respondent no.1 and respondent no.2.
12. That, as per the subvention scheme, the respondent no.1 was under legal obligation to pay the amount of Pre-EMIs and interest thereof to the

- respondent no.2 but respondent no.1 stopped paying Pre-EMIs to the respondent no.2.
13. That, as per the agreement for sale, the respondent no.1 has to handover the possession of the said unit to the complainant within 3 months from the date of agreement dated 18.06.2019, as at the time of approach the respondent No.1 as well its representative(s) have assured and promised the complainant that the respondent no.1 has obtained and secured all the approvals, sanctions and permission from all the competent authorities.
  14. That the respondent no.1 itself has infringed terms and conditions of the agreement for sale by not handing over the possession of the said unit to the complainant. The complainant also read an article, published in Real Estate Regulatory Development Authority, Gurugram, whereby imposed restriction on the sale or purchase of apartment or unit in the project of respondent no.1, as licences pertaining to the projects situated in Sector-88A & 88B of the respondent no.1 has already been expired in year 2019 and even after expiring of licence of the project of the respondent no.1, the respondent no.1 kept the complainant in abeyance with a reason to extort more and more money from the complainant in an illegal manner and way.
  15. That From the date of booking and till today, the respondent no.1 has raised various demands for the payment of installments on the complainant towards the sale consideration of the said unit
  16. That as on today also, the land proposed for the aforesaid project is still lying vacant and no such project named vatika turning point came up on the said land. The respondent no.1 has also stopped paying pre-emis to the respondent no.2, reasons best known to the respondent no.1 and the



respondent no.1 never had intention to construct the project only to cheat and play fraud upon innocent persons like the complainant.

17. The complainant had been running pillar to post and approached the respondent no.1 and its staff/officials inquiring about the status of construction of project or otherwise to refund the money for last several years but none had bothered to provide any satisfactory answer or reply/response to the complainant about the same.
18. The complainant had written several e-mails to the respondent no.1 inquiring the status of project and respondent no.1 was also requested to make the pre-emis to the respondent no.2 but the respondent no.1 chose not to reply any of those e-mails.
19. That, as on the date of this complaint, the complainant has paid an amount of Rs.37,98,534/- and the same was received/taken by complainant from the bank illegally even without commencement of the construction work.
20. That, when nothing fruitful came out, the complainant sent an intimation dated 9.11.2022, to the respondent no.1, vide which the respondent no.1 was requested to refund the amount of Rs.42,32,534/- paid by her and respondent No.2 along-with interest @ 24% per annum from the date of booking of the said unit till actual realization within 15 days from the receipt of the intimation /demand, failing which complainant shall be constrained to take the shelter of the Court of law including but not limited to Real Estate Regulatory Authority, Gurugram, Civil Court, consumer Court etc. against the respondents having jurisdiction.

**C. Relief sought by the complainant: -**

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

- I. Direct the respondent to refund the total amount paid along with interest to the complainant.
- II. Direct the respondent no. 1 to pay interest at the rate of 18% p.a. to the complainant.
- III. Direct the respondent no. 2 to stop taking further payment of EMI's from the complainant against the said unit and from releasing the amount in respect of the property to respondent no. 1.

22. 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.**

23. That the complainant is not an "allottee" but investors who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as their residence.
24. That the complainant approached the respondent no. 1 and expressed interest in booking of an apartment in the residential group housing colony developed by respondent no. 1 known as "Turning Point" situated in sector 88B, Gurgaon, Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent no. 1, to book the unit in question.

25. That thereafter the complainant, vide an application form dated 05.03.2019 applied to the respondent no. 1 for provisional allotment of the unit. Pursuant thereto, unit bearing no HSG-026-West End-1-805, admeasuring 1460 sq. ft. (tentative area) was allotted to the complainant vide allotment letter dated 21.06.2019. The complainant consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent no. 1 that he shall remit every installment on time as per the payment schedule.
26. Thereafter, a buyer's agreement dated 18.06.2019 was executed between the complainant and the respondent no. 1. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
27. That as per clause 7.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. That being in a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
28. That the respondent no. 1 has got its project registered with the Hon'ble Authority. The Hon'ble Authority vide memo number HRERA-430/2017/1106 dated 15.09.2017 was pleased to register the said project. The present complaint filed by the complainant is premature. There is no cause of action arising in favor of the complainant. As per

clause 5 of the agreement, the respondent no. 1 is under an obligation to complete the said project in consonance with the validity period of registration of the project, i.e., 90 months from the date, it was issued i.e., 15.09.2017 which comes out to be 15.03.2025 and the same has been enshrined under clause 5 of buyer's agreement.

29. That the construction of the said project is going on at a very good pace and the respondent no. 1 will offer the possession of the units to their respective allottees within the agreed time. As per the buyer's agreement dated 18.06.2019 executed between the parties, the total sale consideration of the said unit is Rs. 83,48,280/-. Out of the total sale consideration, the complainant has paid only an amount of Rs. 37,63,629/-.
30. The project is obstructed due to reasons beyond the control of the respondent no 1 due to directions of NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana, Commissioner, Municipal Corporation, Gurugram has passed an order dated 11<sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11<sup>th</sup> Oct 2019 to 31<sup>st</sup> Dec 2019. Furthermore, the COVID-19 pandemic and the subsequent lockdown imposed by the Government of India from 22<sup>nd</sup> March 2020 led to a mass exodus of construction workers to their home towns, causing severe manpower shortages and productivity impact. The on-going migration of labours and the fear of subsequent COVID waves have further hindered their return to work sites. The factors were beyond the control of the respondent and have resulted in significant construction delays.

31. The progress of the said project is affected due to various unforeseen circumstances such as:

- Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W) proposed to run through the project of the Respondent No. 1. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.
- The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.
- The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the acquisition and construction process, it had already laid down the services according to the earlier sector road levels. However, due to upliftment caused by the HUDA in NH 352 W the

company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to it.

- Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.

32. That the tripartite agreement dated 22.05.2019 was executed between the complainant and the respondent no. 2. The complainant availed a loan amounting to Rs. 74,80,000/- from the respondent no. 2 for making the payment towards the unit booked in the project of the respondent no. 1. They were offered with subvention scheme under which the respondent no. 1 undertook the liability to pay the pre-Emi in regard to the loan taken by the complainant up to the subvention period mentioned under the tripartite agreement. As per clause 4 of the tripartite agreement, the respondent no. 1 was under an obligation to pay the pre-equated monthly installment interest (Pre EMIs) on behalf of the complainant. The respondent no. 1 has performed its obligations by duly paying the said pre-Emi's to the respondent no. 2. So, the claim of the complainant that the respondent no. 1 has failed to oblige by its duties is nothing but an afterthought to engage it in a fictitious litigation.

33. That the plea of the complainant in regard to assured rental scheme has no foundation in any agreement or communications existing between the parties. The aforesaid scheme would be provide up to the due date of possession and also there was no such agreement executed in this regard. Therefore, genuineness of the claim of the complainant is liable to be verified in detail and would be adjudicated before appropriate Civil Court through producing of proper evidence. The complainant has raised

multiple baseless and absurd allegations in order to gain favorable order by misleading the Hon'ble Authority through producing bare submissions which are erroneous in the eyes of law. Moreover, the due date of possession has not reached and the construction is going on at a full pace.

34. 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 submission made by the parties.

**E. Jurisdiction of the authority**

35. 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**

36. 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**

37. 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) *The promoter shall-*

*(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.*

38. 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.

**F. Findings on the objection raised by the respondent**

**F.1 Objection regarding the complainant being investor.**

39. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act.



Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

40. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

#### **F.II Objections raised by the respondent w.r.t force majeure.**

41. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay 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, 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. Thirdly, due to covid-19 there may be delay but the same has been set off by the govt. as well as authority while granting extension in registration of the projects, the validity of which expired from March 2020 for a period of 6 months.

42. The due date of possession in the present case as per clause 7.1 is 15.03.2025, so, any situation or circumstances which could have an effect on the due date should have been considered 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 complainant.**

- I. Direct the respondent to refund the total amount paid along with interest to the complainant.
- II. Direct the respondent no. 1 to pay interest at the rate of 18% p.a. to the complainant.
- III. Direct the respondent no. 2 to stop taking further payment of EMI's from the complainant against the said unit and from releasing the amount in respect of the property to respondent no. 1.

43. 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 4 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. Thirdly, the allotment was made under subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

44. 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.

45. 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.

46. 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  
ld. 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.*

47. 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."*

48. 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 there has been an inordinate delay in the project which cannot be condoned. Thus, the complainant cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.

**H. Directions of the authority**

49. 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-builder is directed to refund the paid-up amount received from the allottees deposited by him against his allotted unit along with interest at the prescribed rate of 10.85% per annum from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017.
- ii. 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.

- iii. Out of the total amount so assessed, the amount paid by the bank/payee be refunded first in the account of the bank and the balance amount along with interest if any, be refunded to the complainant-allottees in CR/191/2023 and CR/2141/2023.
50. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
51. The complaints stand disposed of.
52. Files be consigned to registry.

  
सत्यमेव जयते  
(Sanjeev Kumar Arora)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 03.05.2024

**HARERA**  
**GURUGRAM**