

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

Complaint no.: 813 of 2024
Date of filing: 01.03.2024
Order pronounced on: 04.07.2024

Seema Gujral

R/o:- H. No. 35, Surya Enclave, Tirumal Giri, Hyderabad,
Telangana-500015.

Complainant

Versus

M/s Vatika Limited

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

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Abhijeet Gupta (Advocate)

Shri Anurag Mishra (Advocate)

Complainant

Respondent

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*.

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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. N.	Particulars	Details
1.	Name and location of the project	"Vatika Turning Point" by Vatika Express City at Village Harsaru, Sector-88B, Gurugram.
2.	Project area	18.80 Acres
3.	Nature of Project	Residential (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	M/s Vaibhav Warehousing Private Limited & 9 others
6.	Rera registered/ not registered and validity status	Registered 213 of 2017 dated 15.09.2017 Valid upto 15.03.2025 (Promoter has made an application for deregistration of the project) [Note* In proceedings dated 04.07.2024, it was inadvertently recorded as Lapsed (De-registered)]
7.	Unit No.	603, West End-5 (As per page no. 18 of complaint)
8.	Unit area admeasuring	1595 sq. ft. (as per allotment letter at page no. 53 of complaint) 1034.09 sq. ft. (carpet area) and 94.51 sq. ft. (balcony area) (as per BBA at page 45 of compliant)
9.	Date of Allotment letter	16.12.2016 (As per page no. 18 of complaint)
10.	Date of buyer's agreement	12.12.2017 (As alleged by the complainant and admitted by the respondent.)
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.

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	 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 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.....” (Emphasis supplied) (page 30 of complaint)
12.	Due date of Possession	15.03.2025 (Taken from previous cases of same project) [Note* due date of possession in proceedings dated 14.07.2024 is inadvertently recorded as 12.12.2020, whereas the due date of possession is 15.03.2025.]
13.	Sale Consideration	Rs.96,75,061/- (as per BBA at page no. 25 of complaint)
14.	Total amount paid by complainant	Rs.9,29,161/- (As alleged by the complainant in its complaint and as admitted by respondent in para 8 of reply and also confirmed by both the parties during proceedings.)
15.	Occupation Certificate	Not obtained
16.	Offer for Possession	Not offered

B. Facts of the complaint.

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

- I. That the complainant is responsible citizen of India, taxpayer to the public exchequer and entitled to the constitutional right to property as envisaged in the Constitution of India.
- II. That, the respondent i.e., Vatika Limited is a company incorporated under the provisions of Companies Act, 1956 Vide CIN U74899HR1998PLC054821 and having its registered office at A-002, INXT

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City Centre, Ground Floor, Block -A, Sector -83, Vatika India Next, Gurugram HR 122004 IN and is interalia engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.

- III. That, pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium Project, named as "Turning Point (Phase 1)"- a Group Housing colony with impeccable facilities having HRERA registration certificate no 213/2017, which was situated in sector 88B, Gurugram and believing the same to be correct and true, the complainant considered purchasing a residential apartment bearing no. 603 ad-measuring 1595 Sq. Ft., West End - 5 in Vatika Turning Point, Sector 88B, Vatika Express City, Gurugram along with one parking based on the carpet area having total sale consideration of Rs.97,54,811/-. That the respondent reduced the area from 1650 sq. ft. to 1595 sq. ft. and finally to 1034.09 sq. ft. as categorically stated in the agreement for sale.
- IV. That, upon enquiry by the complainant about the availability of necessary approvals for development & construction of the project, respondent, categorically and explicitly stated that the project is registered under HRERA, Gurugram, respondent, made further assurances, representations to the complainant that the respondent is the absolute owners of land on which the project is to be developed & constructed and respondent has obtained all the necessary approvals for development & construction of the project from the Department of Town and Country Planning, Haryana vide license No. 91/2013. That it was discovered by the complainant that the license no. 91/2013 issued by DTCP, had expired in 2017, thereby meaning

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that the respondent had no effective license at the timing of signing the agreement for sale with the complainant and has purposefully cheated upon the complainant by misrepresenting the facts that they have the all-necessary approvals to commence the project.

- V. That the booking of the said Unit i.e., residential apartment bearing no. 603 ad-measuring 1595 Sq. Ft., West End - 5 in Vatika Turning Point, Sector 88B, Gurugram was confirmed to the complainant as per the allotment letter dated 16.12.2016.
- VI. That thereafter an agreement for sale was executed between both the parties, wherein the respondent explicitly assigned all the rights and benefits of residential apartment bearing no. 603 ad-measuring 1034.09 Sq. Ft., West End - 5 in Vatika Turning Point, Sector 88B, Gurugram to the complainant. That the area of the unit was changed by the respondent builder without informing the complainant on two occasions, First from 1650 sq. ft. to 1595 sq. ft. and then subsequently to 1034.09 sq. ft. This was done arbitrarily by the respondent without giving any prior information/notice to the complaint.
- VII. That the complainant had paid a total amount of Rs. 9,29,161/-.
- VIII. That it is pertinent to note that at the time of signing the application form to book a unit in respondent project, the complainant was informed that the possession of the unit will be handed over in the month of December 2021. However, the respondent never gave anything in writing about the possession date in any of the documents executed between respondent and complainant.
- IX. That the complainant anticipated and believed that the respondent would commence the construction of project immediately after receiving the booking amount. However, till date, respondent has failed to commence the construction of project. When the complainant visited the site to check on

the progress of the construction, she was completely shocked and appalled to see that no construction whatsoever had taken place and no construction work was even ongoing at the site. Based on the construction work at project site, it appears to the complainant that the project has been miserably delayed and the project has been abandoned by the respondent.

- X. That, by the act and conduct of the respondent, it's been unambiguously lucid that the respondent from the very beginning had malafide intention to cheat and defraud the complainant.
- XI. That, even at the time of the execution of the agreement for sale the respondent had represented to the complainant that they are in possession of the necessary approvals from the DTCP, Haryana to commence with the construction work of the residential project as stated in clause no. A on page No. 1 and 2 of agreement to sale. However, till date no construction whatsoever has taken place at the site. Only, some excavation work has been done at the site and since then the site & the project have been abandoned by the respondent.
- XII. That, it is pertinent to mention that the respondent has not complied with the section 4(2)(L)(D) of the Real Estate Regulation and Development Act 2016 for which several notices have been sent by this Hon'ble authority dated 18.11.2019, 24.12.2019, 25.01.2020, 23.01.2020, 20.07.2020 & 03.09.2020 respectively was sent to the respondent. Moreover, it is also pertinent to mention that a fine of Rs.25,000/- per day for per day till the date the default continues, with effect from 31.12.2019 was imposed on the respondent by this Hon'ble authority for non-compliance. Also, a show-cause notice was also issued to the respondent in which promoter is required to comply with the directions of the Authority within one month from the date of receipt of this notice otherwise show cause as to why their registration certificate should not be revoked under section-7 of the Real

Estate (Regulation and Development) Act 2016 and Rule-7 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

- XIII. That the Authority vide its order dated 12.08.2022, in the case titled as "Ayush Vardhan Aggarwal V. Vatika Limited" ordered an enquiry into the project and appointed an enquiry officer to determine the status of the project. The enquiry officer in his preliminary report has submitted that the project has been abandoned and there is no construction whatsoever at the project site. Thereafter, the enquiry officer submitted a report dated 18.10.2022, wherein it was 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. So, it was cleared that the project has been abandoned by judgment debtor. That the Hon'ble Authority received a letter dated 30.09.2022, filed by the judgment debtor containing a proposal for De-registration of the project and settlement with the existing allottees. The same has been approved by the Hon'ble Authority.
- XIV. The Hon'ble Authority by exercising powers vested in it under section 34(1) of the Real Estate (Regulation and Development) Act, 2016 has passed orders dated 28.10.2022 in 28 complaints, in which the complaint no. RERA-GRG-173-2021 titled as Ashish Kumar Agarwal Versus M/S Vatika Limited and Ors. being the lead case. That in all 28 cases, the Hon'ble Authority awarded to refund the total amount paid by the allottees along with the interest as per the Section 18 of the Act.
- XV. That as on the date of filing this complaint, the respondent builder has applied for de registration of the said project and the same was accepted by the Hon'ble Authority, HRERA, Gurugram, with directions to refund the money collected from the allottees for the construction of the above said project. That despite the directions of the authority, the respondent builder has failed to refund the money to the complainant.

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- XVI. That, the respondent is not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless allottees but also for mental harassment to the complainant by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
- XVII. That the respondent had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail pace and the said project is far from completion and the same will not be able to deliver the possession within the stipulated time. It is abundantly clear that the respondent has played a fraud upon the complainant and has cheated them fraudulently and dishonestly with a false promise to complete the construction of the project within the stipulated period.
- XVIII. That the complainant herein is constrained and left with no option but to cancel the allotment of the said unit i.e. residential apartment bearing no. 603 ad-measuring 1034.95 Sq. Ft. West End 5 in Vatika Turning Point, Sector 88B, Gurugram. Further, the complainant is seeking and is entitled to full refund of the amount paid to the respondent along with litigation cost and mental harassment. The complainant further states that she is entitled to any other relief which the authority deems fit in the present circumstances. Further, the complainant herein reserves her right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserves the right to produce additional document(s) or submissions, as and when necessary or directed by this Hon'ble Authority.
- XIX. That as per section 12 of the RERA Act. 2016, the promoter is liable for giving any incorrect, false statement etc.

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- XX. That as per section 11 (4) of the RERA Act. 2016, the promoter is liable to abide by the terms and agreement of the sale.
- XXI. That as per section 18 of the RERA Act. 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottee of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- XXII. In addition to the abovementioned provision, the respondent is also bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest to be computed while calculating compensation to be given by a promoter to an allottee in case of a default.
- XXIII. The complainant after losing all the hope from the respondent, after being mentally tortured and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- XXIV. That, the complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- To cancel the booking of the residential unit booked by the complainants and refund of the total amount paid till date i.e., Rs.9,29,161/- with interest as per RERA Act.
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.

6. The respondent has contested the complaint on the following grounds:

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- 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 the complainant had booked apartment HSG-026-West End-5060, West End-5 in Vatika Turning admeasuring 1595 sq. ft. vide agreement to sale dated 12.12.2017.
- e. That as per clause 7 of the Agreement to Sale dated 12.12.2017 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

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buyer agreement and therefore filing a pre-mature complaint is not maintainable and same must be dismissed on the said ground.

- f. That it is the admitted position that the complainant has only made payment of Rs.9,29,161/- 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.
- g. 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.
- h. 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.

- i. 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.
- j. 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. 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.

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- k. 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.
- l. 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.
- m. That following were the reasons that halted the construction and development of the project as under:

S.No.	Particulars
1.	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
2.	The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr.

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	Road (NH-352 W) near Harsaru Village shall develop & construct by the NHAI
3.	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.
4.	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.
5.	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
6.	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.
7.	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/-
8.	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.
9.	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
10.	Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
11.	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
12.	Due to outbreak of Covid 19 pandemic, there was a complete lockdown on two instances, 1. In 2020 GOI nearly for 6 months

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which was extended for another 3 months. 2. In 2021, for two months at the outbreak of Delta Virus

- n. 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.
- o. That due to the loss suffered in the said project, the respondent had no option but to apply for de-registration of the said project.
- p. 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.

E. Jurisdiction of the Authority:

9. 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:

10. 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

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authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

11. 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.

12. 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.

13. 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

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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."

14. 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:

15. 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.
16. It is contended on behalf of respondent/builder that due to various circumstances beyond the control of respondent. It could not speed up the construction or 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 project, the validity of which expired from March 2020 for a period 6 months.

17. 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 before fixing a due date. Moreover, the circumstances detailed earlier did not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to refund the entire amount of Rs.9,29,161/- paid by the complainant to the respondent along with interest.

18. 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 15.03.2025, there is no physical work progress at the site except for some digging work. Even the promoter failed to file

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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.

19. 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,

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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.

20. 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.

21. 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.

22. 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."

23. 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.9,29,161/- from the developer with interest at the rate of 10.95% 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*.

H. Directions of the authority

24. 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):

- A*
- The respondent is directed to refund the paid-up amount i.e. Rs.9,29,161/- received by it from the complainant against the allotted

unit along with interest at the prescribed rate of 10.95% per annum from the date of each deposit till its realization.

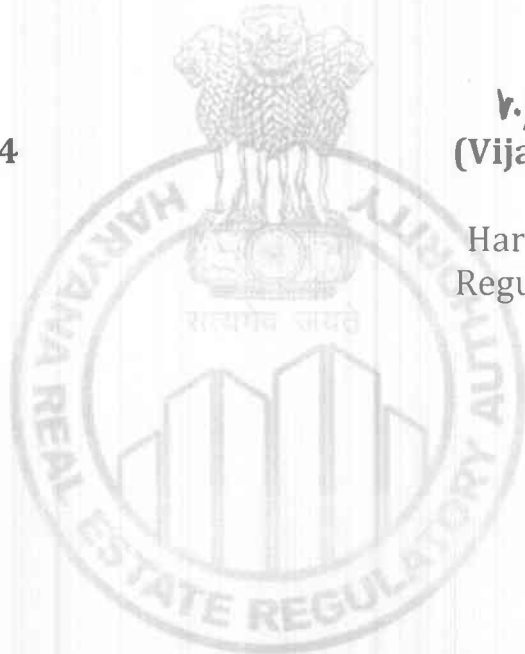
ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to registry.

Dated: 04.07.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM