

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

**Complaint no.:**

4278 of 2023

**Date of decision:**

05.04.2024

Nishant Timothy

**R/o:** C/o Meenakshi Isabel Dhall 11, Promise Vatika  
City Sohna Road, Gurugram, Haryana - 122018

**Complainant**

Versus

M/s Vatika Limited

**Registered office:** Vatika Triangle, 4<sup>th</sup> floor, Sushant  
Lok, phase-1, block-A, Mehrauli-Gurugram road,  
Gurugram-122002

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Ms. Rashi Jain (Advocate)

Sh. Anurag Mishra (Advocate)

Complainant

Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. no.	Heads	Information
1.	Name of the project	"TURNING POINT group housing", Sector 88B, HARSAPU, Gurgaon
2.	Project area	18.80 acres
3.	Nature of the project	Residential group housing project
4.	RERA Registration No.	Registered vide no. 213 of 2017 dated 15.09.2017 area admeasuring 93588 sqm. Valid upto 15.03.2025
5.	Unit no.	1001, West end - 8 [Annexure 4 at page no. 91 of the complaint]
6.	Carpet area	685.23 sq. ft. [Annexure 4 at page no. 96 of the complaint]
7.	Date of allotment	30.11.2016 [Annexure 4 at page no. 91 of the complaint]
8.	Date of agreement for sell	15.02.2018(reg.) [Annexure 3 at page no. 95 of the complaint]
9.	Possession clause	<b>Clause No. 7</b> "Schedule for possession of the said Apartment Subject to timely payment of amounts due by the Allottee to the Promoter per agreed payment plan/schedule, as given in Schedule D of the Agreement, the Promoter agrees and understands that timely delivery of possession of the Apartment along with

		<p>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 Rule 2(1)(i) of Rules, 2017, is the essence of the Agreement.</p> <p>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 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 the extension of time for delivery of possession of the Apartment.."</p> <p><b>(Emphasis supplied)</b></p>
10.	Due date of possession	15.03.2025
11.	Total sale consideration	Rs.66,21,038.28/- [Annexure 5 at page no. 97 of the complaint]
12.	Amount paid by the complainant	<p><b>Rs. 13,98,931/-</b></p> <p><b>As per the receipts annexed with the complaint at page no. 66-74 of the complaint</b></p> <p>Inadvertently amount paid is written as Rs. 24,81,667/- in proceeding of the day dated 05.04.2024(now the same has been corrected)</p>
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

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

- a. The respondent has caused wrongful loss to the complainant in furtherance of false and frivolous advertisement and representations as made through builder buyer agreement. Thereby, the respondent is liable to refund the hard earned money of the homebuyers as the respondent has contravened Section 12 of the RERA, 2016 by inducing homebuyers to deliver their hard earned money in furtherance of false advertisement and representation made in the builder buyer agreement. The possession of the unit was to be provided by 2019, however, contrary to the same, the construction had not taken an iota since the day of the allotment letter. The respondent has abandoned the project and had not undertaken construction for the last 5-6 years, thereby, the respondent is liable to refund his hard earned money in accordance with Section 18 of RERA, 2016. Also, the respondent has applied for the deregistration of the project before RERA and discontinued the construction of the project.
- b. That due to unlawful misrepresentations as made in the brochure/ advertisement the Complainant has suffered huge losses, financial and mental harassment, helplessness and exploitation and thereby are left with no option but to approach this Hon'ble Authority seeking refund of the entire amount paid by him as there has been gross failure on the part of the Respondent in fulfilling the terms of the agreement as made and is liable for false and wrong advertisement. That the failure on the part of the respondent in complying with the agreement has caused financial, mental and emotional injuries to the complainant and the complainant is not left with any other option but to approach this Hon'ble Authority against the atrocities as committed by the respondent against him. That

the present complaint is filed with a limitation period and there is no legal impediment as to which the relief sought should be denied. That the Hon'ble RERA authority has jurisdiction to entertain the present complaint

**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.

**D. Reply by respondent:**

5. The respondent made the following submissions in its reply:
  - a) That the "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. The respondent has obtained license no.91 of 2013 and approval of building plan and other approvals granted for the said project on 26.10.2013 and the construction 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 construct and development of sector roads was published in newspaper "Dainik Jagran" on 30.12.2014. However, the respondent has received license of the said land, 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 the Haryana Real Estate Regulatory Authority the respondent applied for registration of the said project and the Authority registered the said project vide registration No. 213 of 2017 dated 15.09.2017. Despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of the said project was undertaken by the respondent in right earnest and the same proceeded in full swing.
- d) That the complainant had booked a unit bearing no. HSG-026-West end-8-1001 admeasuring 685.23 sq. ft. and agreement to sale was executed between parties on 15.02.2018. As per clause 7 of the agreement to sale the construction of the project was contemplated to be completed with subject to force majeure circumstances mentioned in clause 9 which provided for extension of time.
- e) That the present complaint is pre-mature as it is the admitted position of the complainant that the respondent is required to handover the possession of the said unit by 2019 and therefore filing a pre-mature complaint is not maintainable.
- f) That the complainant has only made payment of Rs.16,89,068/- towards the booking of the said unit which is around 45% of the total sale consideration and had made no further payment after the year 2018. The complainant had defaulted in making the payment as per the terms of the said agreement including other buyers who opted for construction linked plan which has also contributed to the delay in the construction activity and affecting the completion of the project.
- g) That beside the major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and

INR 1000 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 was that the labours 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.

- h) 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 respondent which factum is also recorded in the builder buyer agreement executed with each of the complainant. The respondent also caused site visits for the prospective buyers who had made requests for visiting the project site before making application for allotment. The Complainant have visited the project site and was aware of the fact that the project had no direct access road and the respondent was working on the getting a remedy for the same.
- i) That the respondent has not charge any service tax illegal, it has been charged in accordance with the rules, policies, laws prevailing from time to time and deposited to the govt. account. The entire money so recovered from the complainant have been duly deposited to the service tax department and whenever the concerned department will release the money, the same will be returned to the complainant. As per the judgement of CESTAT, Allahabad 2016(7)TMI52) in the matter titled as

commissioner of central excise, Lucknow Vs Eldeco Housing & industries Pvt. Ltd it was observed that the money which is deposited with the department in lieu of the service tax, the same has to be directly returned to the buyers by the concerned department.

- j) That almost all the buyers of the project had agreed for a payment schedule i.e. "construction link payment plan". The pace of construction and timely delivery of apartments in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. 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. The flat buyers in the said group housing 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 in the said project. The real estate market was doing well in the year 2014. In the year 2015-2016 onwards, the real estate market started facing slowdown, the flat buyers started defaulting in payment of instalments. The complainant is well aware of the above mentioned facts and are the reasons behind the delay in completion of the project.
- k) That the delay is on account of reasons beyond the control of the respondent and there is no breach on the part of respondent. The time stipulated for completion under the allotment / agreement is not the essence and respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond the control and not attributable to respondent. The complainant



with regard to delay in completion of construction of the possession is misconceived.

- l) That in addition to the major default in non-payment of instalments by the majority of buyers, the demonetization of currency notes of INR 500 and INR 1000, announced by the Government of India which has impacted the pace of the project's development and non payment to labours. The capping on withdrawal and non-availability of adequate funds with the banks further exacerbated this problem.
- m) That the demonetization of currency notes of INR 500 and INR 1000, announced by the Government of India significantly impacted the pace of a construction project resulting to labour crisis ensued when the workers and labours at the construction sites, who were paid in cash due to their daily wage employment and subsequently stopped working for the project which led to a significant shortage of labours. Subsequently, the NHAI planned the development of Gurugram-Pataudi-Rewari Road under Bharatmala Pariyojana on 11.07.2018 and re-routing of high tension wires lines passing through the lands resulted in inevitable changes in layout plans. Further among various measures NGT, EPCA, HSPCB, and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2016 to December 2019. These partial and unplanned bans become a factor for delay in construction of the project. In addition, the Government imposed various restrictions on the construction sites. The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction project.
- n) Furthermore, the COVID-19 pandemic and the subsequent lockdown imposed by the Government of India from 22nd 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.

- o) That due to the losses suffered by the respondent in the project, the respondent had no choice but to apply for the de-registration of the said project. The respondent with bona fide intention has filed for de-registration is in the interest of the allottees of the project.
  - p) That the complaint is filed on false and frivolous allegations and none of the reliefs prayed for by the complainant is sustainable before this Hon'ble Authority.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

7. 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**

8. 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**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

10. 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.

## **G. Finding on the objection raised by the respondent.**

**G.I Objection raised by the respondent regarding force majeure condition.**

11. It is contended on behalf of the 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 a 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.
12. 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 complainant:**

**G.1 Direct the respondent to refund the paid entire amount paid by the complainant.**

13. 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.

14. 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.
- f.

15. 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.

16. 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 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.
17. 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."*

18. 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.

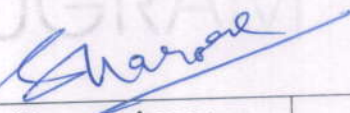
**H. Directions of the Authority:**

19. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent-builder is directed to refund the paid-up amount i.e., Rs. 13,98,931/- received from the allottee 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 respondents to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 05.04.2024**