

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

**Complaint no.:** 8045 of 2022  
**Date of filing:** 11.01.2023  
**Order Reserve On:** 02.08.2024  
**Order pronounced on:** 09.08.2024

1. Meenakshi Kalra
2. Kulbhushan Kalra

**Both R/o:-** H. No. 562/7, Subhash Nagar, Opp. Lord Jesus Public School, Gurgaon.

**Complainants**

**Versus**

M/s Vatika Limited

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

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Manoj Bhardwaj (Advocate)

Ms. Ankur Berry (Advocate)

Complainants  
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*.

**A. Unit and project related details.**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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	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.	2402, Tower-West end 7 (as per allotment letter on page no. 35 of complaint)
8.	Unit area admeasuring	1430 sq. ft. (as per allotment letter on page no. 35 of complaint)
9.	Allotment Letter dated	12.01.2017 (page no. 35 of complaint)

10.	Builder agreement	Buyer	Not executed
11.	Due date of possession		12.01.2020 (calculated from the date of application form) [As per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
12.	Total sale consideration		Rs. 86,81,015/- ( as per SOA on page no. 21 of reply)
13.	Amount paid by the complainants		Rs. 5,61,127/- (as per SOA on page no. 21 of reply)
14.	Reminder for execution of BBA		12.06.2018, 18.07.2018 (page no. 19-20 of reply)
15.	Notice for termination by respondent		19.06.2018 (page no. 24 of reply)
16.	Occupation certificate		Not obtained
17.	Offer of possession		Not offered

**B. Facts of the complaint.**

3. The complainants have made the following submissions in the complaint: -
4. That that complainant no. 2 is the regular customer/invertor of one Investor Clinic (an Investment Agency/broker) and he invested in many projects with Investor Clinic and a very faithful & reliable business relation had been developed between Investor Clinic and complainant no. 2. That one Mr. Gagan Mahajan from the office of INVESTOR CLINIC approaches to complainant no. 2 and demanded a fund of Rs. 10 Lakh for investment purpose with "Vatika

- Ltd” for a period of 3 month only and assured that he will return said fund within 3 months as he is in a deadly need. The complainant no. 2 relied upon wordings of said Mr. Gagan Mahajan being an old known handover a signed cheque in the name of Vatika Ltd of Rs. 10 lakh to him (only for handy use).
5. That after 4 months complainants got to know that Mr. Gagan Mahajan invested the said amount in the booking of the unit in project of respondent namely, 'Tranquil Heights' .
  6. Thereafter complainants paid the further amount of Rs. 20,00,000/- total paid is 30,00,000/-. Further the unit was shifted from 'Tranquil height' in the two projects namely Seven Element and Turning Point and an amount of Rs. 25,00,000/- and 5,00,000/- was adjusted.
  7. That complainants were very shocking when he received notices for termination of units in project "Seven Element" dated 04<sup>th</sup> December, 2019 and dated 3<sup>rd</sup> September 2020 due to not paid a balance of Rs. 28,41,073/- which was demanded illegally by respondent. The respondent had already terminated booking on unit in "Turning Point" project vide termination letter dated 10 Aug, 2017 but when complainants approached to respondent and told about the initiation of criminal proceeding against the respondent and Investors Clinic then respondent had withdrawn the said termination letter.
  8. That respondent and investor clinic played a fraud with complainants to grab hard earned money of complainants by transferring funds from one project to another projects. The complainants being a simple and sober citizen every time trusts on respondents but respondents on every stage cheated the complainants. The project of respondent no.1 is not developing according to time , moreover the "Turning Point" project of respondent No.1 has been scraped and now the respondent is trying to develop plotted colony / project at the this site.

**C. Relief sought by the complainants:**

9. The complainants have sought following relief(s):

- i. Direct the respondents to refund the complainants a sum of Rs. 6,00,000/- which had been paid by the complainants to the Vatika Ltd.
- ii. Direct the respondent to pay interest from the date of receiving till its realization.

10. 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.**

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

12. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication.

13. That the complainants are 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 complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the complainants.

14. That the complainants approached the Vatika Ltd, somewhat in year 2014 through their real estate agent Investors Clinic Infratech Pvt. Ltd. and expressed interest in booking of a unit being developed by Vatika Ltd known as "Tranquil Heights" situated in Sector 82A, Gurgaon, Haryana.

15. That the complainants requested Vatika Ltd for transfer of the funds received in lieu of their investments made in the project Tranquil Heights, into two different projects, namely "Seven Elements" and "Turning Point".

16. That the complainants booked the unit no. HSG-026-West End-7-2402, in Vatika Turning Point admeasuring 1430 sq. ft. approx.(the "Unit") in the project of the respondent known under the name and style of "Turning Point" at sector 88B, Gurugram, Haryana. Prior to the booking, the complainants 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 to book the unit in question.
17. That the complainants consciously and willfully opted for a time linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every instalment on time as per the payment schedule annexed with the application form. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in his favor.
18. That thereafter the respondent vide letter dated 02.02.2017 sent two copies of the buyer's agreement to the complainants to sign the same and return the signed agreement to the complainants. The respondent again vide letter dated 01.08.2018 sent two copies of the buyer's agreement to the complainants to sign the same. The respondent issued reminder letter dated 12.06.2018 and 18.07.2018 to return the signed copies to the respondent however, the complainants paid no heed to the letters and did not return the signed copies to the respondent.
19. That, the sale consideration of the said unit is an amount of Rs 86,81,015/-, out of which the complainants have only made the payment of Rs. 5,61,127/- only.
20. That the complainants failed to comply with his obligation as is evident from the statement of account annexed herewith. That upon the non-payment of the dues against the unit the respondent issued payment

reminder dated 04.10.2018 to the complainants however, the complainants paid no head to the reminder issued by the respondent.

21. That the respondent waited for more than a year for the complainants to execute the buyers's agreement and pay the outstanding dues however, the complainants did not come forward for the same. The Respondent was therefore, constrained to issue the notice for termination dated 04.12.2019 and 03.09.2020 whereby it is specifically mentioned that if the due amount will not received with in 7 days then the respondent shall be constrained to cancel the allotment of the said unit and thereafter the complainants shall left with no right, title, interest, charge or lien over the said unit.
22. That the respondent is entitled to deduct the earnest money from the amount paid by the complainants. Moreover, the Respondent is also entitled to forfeit the statutory dues liked as held by the Hon'ble Haryana Real Estate Appellate Tribunal in Ravinder Pal Singh v Emaar MGF land Ltd. Appeal No.255 of 2019 allowed the forfeiture of earnest money along with "the statutory dues already deposited with the government". Accordingly, the respondent is also entitled to deduct the statutory dues like GST from the amount to refunded after forfeiture.
23. All other averments made in the complaint were denied in toto.
24. 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:**

25. 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:**

26. 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:**

27. 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.*

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



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

30. 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.**

**I Objection on ground of complainants being investors.**

31. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
32. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and 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 under section 31 of the Act, 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. Upon careful perusal of all the documents it is revealed that the complainants are an allottee/buyer and they have paid total price of Rs.5,61,127/- to the promoter towards purchase of the said unit in the project of the promoter. 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;"*

33. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottees 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". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act stands rejected.

**G. Findings on the relief sought by the complainants.**

- i. Direct the respondents to refund the complainants a sum of Rs. 6,00,000/- which had been paid by the complainants to the Vatika Ltd.
- ii. Direct the respondent to pay interest from the date of receiving till its realization.

34. In the present complaint, the complainant has stated that he has given money to Mr. Gagan Mahajan from the office of Investors Clinic for investment in Vatika Ltd. for 3 months only and assured to return the amount after the said period. On such assurances of Mr. Gagan Mahajan complainants gave an amount of Rs. 10,00,000/- to him. After 4 months complainants got to know that Mr. Gagan Mahajan invested the said amount in the booking of the unit in project of respondent namely, 'Tranquil Heights'.
35. Thereafter complainants paid the further amount of Rs. 20,00,000/- total paid is 30,00,000/-. Further the unit was shifted from 'Tranquil height' in the two projects namely Seven Element and Turning Point and an amount of Rs. 25,00,000/- and 5,00,000/- was adjusted. Further the complainants made a payment in the said project. The complainants were allotted unit no. 2402, Tower-West end 7 admeasuring 1430 sq. ft. vide allotment letter dated 12.01.2017. No builder buyer agreement was executed between the parties.
36. The unit of the complainants-allottee was cancelled by the respondent company on 19.06.2018 and the respondent has stated that cancellation of unit is valid as per law and they have deducted the 10% of the sale consideration and after deduction no amount was left to refund as the complainants have only paid Rs. 5,61,127/-
37. The authority is of the view that the complainants were allotted unit no. 2402, Tower-West end 7 admeasuring 1430 sq. ft. vide allotment letter dated 12.01.2017. No builder buyer agreement was executed between the parties. The respondent on 12.06.2018 sent a notice to the complainants for execution of BBA and finally on 19.06.2018 sent a notice for termination of unit. The cancellation of unit is bad in eyes of law as no proper notices was served to complainants-allottees.
38. Moreover, 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 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.

39. 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.

40. 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.

41. 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.

42. 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."*

43. 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. 5,61,127/- from the developer with interest at the rate of 11% 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**

44. 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 is directed to refund the paid-up amount i.e. Rs.5,61,127/- received by it from the complainants against the allotted unit along with interest at the prescribed rate of 11% 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.

45. Complaint stands disposed of.

46. File be consigned to registry.

Dated: 09.08.2024

**HARERA**  
GURUGRAM

  
(Sanjeev Kumar Arora)

Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram