BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**3097 of 2023**
Date of filing	**07.07.2023**
Date of first hearing	**08.11.2023**
Order pronounced on	**14.08.2024**

1. Sushil Sindhwani
2. Suman Sindhwani

Both R/o:-House no. 40 B, Platinum Enclave, PKT-1, Sector 18, Rohini, Delhi- 110089 **Complainants**

Versus

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

2.ICICI Bank Limited
R/o:- ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodra, Gujarat- 390007 **Respondents**

CORAM:
Shri Ashok Sangwan **Member**

APPEARANCE:
Shri Abhijeet Gupta (Advocate) Complainants
Shri Anurag and Shri Pankaj Vivek (Advocates) Respondents

ORDER

1. This complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or

the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

Sr. No.	Particulars	Details
1.	Project name and location	"Turning Point", Sector- 88B, Village Harsaru, Gurugram, Haryana
2.	Project area	18.80 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav Warehousing Pvt. Ltd. And 9 others
6.	RERA registration details	Registered Vide registration no. 213 of 2017 dated 15.09.2017 valid up to 15.03.2025 for area admeasuring 93588.71 sq. mtrs.
7.	Unit no.	HSG026, West End- 7 (3BHK) (PLC of Rs.2,85,000/- for Park facing/Corner/Pool facing/Green facing) (page 47 of complaint)
8.	Unit area admeasuring	899.22 sq. ft. (Carpet area) 100.43 sq. ft. (Balcony area) (page 47 of complaint)
9.	Application Form	13.10.2016 (page 18 of reply)
10.	Allotment letter	12.12.2016 (page 19 of complaint)
11.	Date of execution of builder buyer agreement	06.02.2018 (page 24 of complaint)
12.	Possession clause	**7.1 A) Schedule for possession of the said apartment subject to timely payment of amounts due by the Allottee to the Promoter as per agreed payment plan/schedule, as given in Schedule D of the Agreement.** ..... *The Promoter assures to hand over possession of the apartment along with parking as per agreed terms and conditions unless there is*

		delay due to "force majeure", Court/Tribunal/NGT Orders, Government 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 31 of complaint)
13.	Due date of Possession	06.08.2021 **(Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**- Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Further, an additional extension of 6 months provided to the developer in view of HARERA Notification no. 9/3-2020 in lieu of Covid-19) In view of the above-mentioned reasoning, the due date for handing over the possession of the unit comes out to be 28.06.2022.
14.	Tri-partite Agreement	27.02.2018 (page 58 of complaint)
15.	Date of approval of building plans	26.10.2013
16.	Basic sale consideration	Rs.73,69,031.25 /- (as per SOA dated 22.06.2023 at page 82 of complaint)
17.	Amount paid by the complainant	Rs.38,68,101/- (as per SOA dated 22.06.2023 at page 82 of complaint)
18.	Occupation Certificate	Not obtained
19.	Offer of Possession	Not offered

B. Facts of the complaint.

3. The complainants have made the following submissions by way filing of this complaint dated 07.07.2023: -

a) That pursuant to advertisements, assurances, representations and promises made by the respondent no. 1 in the brochure circulated by them about the timely completion of a premium project namely "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 complainants considered purchasing a residential apartment bearing no. HSG026, West End 7, admeasuring 899.22 sq. ft. in Vatika India Next 2, Sector 88B, Gurugram along with parking based on the carpet area in basement having total consideration of Rs.88,28,806/-.

b) That an allotment letter dated 12.12.2016 was issued in favour of the complainants. Respondent no. 1 made another representation that respondent no. 1 is the absolute owner of the land on which the project is to be developed and constructed and respondent no. 1 had obtained all the necessary approvals for development and construction of the project from Department of Town and Country Planning, Haryana vide license no. 91/2013.

c) That thereafter builder buyer agreement dated 06.02.2018 was executed between the parties, wherein respondent no. 1 assigned all the rights and benefits of residential apartment bearing no. HSG026, West End 7, admeasuring 899.22 sq. ft. in Vatika India Next 2, Sector 88B, Gurugram to the complainants. The respondent executed the tri-partite agreement on 27.02.2018. Vide sanction letter dated 17.03.2018, respondent no. 2 provided the details of the loan sanctioned as per the loan sanction letter signed between the parties.

d) That the complainants had paid an amount of Rs.38,68,101/-. Out of this, the total amount paid by the complainants out of their own pocket is Rs.9,24,734/- and the amount disbursed by respondent no. 2 to respondent no. 1 is Rs.28,40,936/-.

e) That in pursuance of the builder buyer agreement executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, date of completion, etc. Vide clause 5 of the builder buyer agreement, respondent no. 1 assured that the time is of essence.

f) That at the time of signing of application form, the complainants were informed that the possession of the unit will be handed over in the month of January 2020, which is almost 3 years from the date of signing of the builder buyer agreement. However, respondent no. 1 never gave in writing about the possession date in any of the documents executed between respondent no.1 and the complainants.

g) That it was also assured and represented by respondent no. 1 that if due to any reason the construction of the booked unit gets delayed, then respondent no. 1 undertakes to pay the pre-EMIs to the buyer. The payment of the pre-EMIs shall continue till the application for occupancy certificate including the actual possession, has been applied for booked unit is issued to the buyer.

h) That the complainants visited the project site to check the progress of construction of the project but were appalled to see that no construction whatsoever had taken place and no construction work was even ongoing at the site. The project has been abandoned by respondent no.1.

i) That in June 2023, the complainants decided to withdraw from the project as respondent no. 1 failed to keep the construction of the project as per the construction plan and there is no sign and hope of the project getting

completed and ready for possession till the next four years as came out while interacting with the employees of respondent no.1.

j) That the complainants were further aghast when it came to their notice that respondent no. 1 and respondent no. 2 have intentionally colluded in the illegal act to disburse and collect huge amount of money from the complainants even when the construction of the project has not started. Only some excavation work has been done at the site and since then the site and the project have been abandoned by respondent no. 1.

k) That it was discovered that license no. 91 of 2013 issued by DTCP had expired in 2017, thereby meaning that the respondent had no effective license at the time of signing of the BBA and had purposefully cheated the complainants by misrepresenting the facts that they have all the necessary approvals to commence the project.

l) That respondent no. 1 has not complied with Section 42D of the RERA Act, 2016 for which several notices have been sent by this Hon'ble Authority dated 18.11.2019, 24.12.2019, 25.01.2021, 20.07.2020 and 03.09.2020 respectively to respondent no.1. A fine of Rs.25,000/- per day till the date the default continues, w.e.f. 31.12.2019 was imposed on respondent no.1 for non-compliance. Also, a show cause notice was issued to the respondent in which promoter was directed to comply with directions of Authority within one month from date of receipt of tbhis notice otherwise show cause as to why their registration certificate should not be revoked under Section 7 of the RERA Act, 2016 and Rule 7 of the Haryana RERA Rules, 2017.

m) 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 reported that there is no construction of the project except some excavation work and pukka labour quarters built at the site. So it was cleared that the project has been abandoned. That the Authority received a letter dated 30.09.2022, filed by the judgment debtor (herein the respondent no.1) containing a proposal for de-registration of the project and settlement with the existing allottees. The same has been approved by the Authority.

n) That the Authority by exercising powers vested in it under Section 34(1) of the RERA Act, 2016 has passed orders dated 28.10.2022 in 28 complaint cases, with lead complaint case no. 173 of 2021 titled as "Ashish Kumar Agarwal Versus M/S Vatika Limited and Ors." That in all 28 cases, the Authority awarded the relief of refund of the total amount paid by the allottees along with the interest as per Section 18 of the Act.

o) That as per the loan sanction letter sent by respondent no. 2 to the complainants, respondent no.2 informed that the total amount of Rs.28,40,936.00 has been already disbursed. There is no obligation on the complainants to pay the pre-EMIs as the onus is on the respondent no.1 to continue paying the pre-EMIs and also considering the fact that the project has been abandoned.

p) That the complainants herein are constrained and left with no option but to cancel the allotment of the said unit no. HSG 026 West End 7 ad-measuring 899.22 sq. ft., in Vatika India Next 2, Sector 88B, Gurugram. Further, the complainants are seeking and entitled to full refund of the amount including but not limited to all the payments made in lieu of the said unit/flat, as per terms and conditions of the builder-buyer agreement executed by respondent no. 1.

q) That as per Section 12 of the Act, the promoter is liable for giving any false, incorrect statement, etc. As per Section 11(4) of the Act, the promoter is liable to abide by the terms and agreement for sale. Further, as per Section 18 of the Act, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottee for an apartment, building or project for a delay or failure in handing over such possession as per the terms and conditions of the agreement for sale.

C. Relief sought by the complainant:

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

   I. Direct the respondent to cancel the booking of the residential unit booked by the complainants and refund the total amount paid till date with interest as per the RERA Act;

   II. Direct the respondent no. 2 not to take any coercive action against the complainants.

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

D. Reply by the respondent no. 1

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

a) That on October 2016, the complainants learnt about the project 'Vatika Turning Point', situated at Sector 88B, Gurgaon, Haryana. The complainants repeatedly approached the respondent to know the details of the said project. The complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

b) That after having keen interest in the project launched by the respondent, the complainants upon its own examination and investigation desired to purchase a flat and on 13.10.2016, the complainants vide application form, booked a flat for a total sale consideration of Rs.88,28,806/- in the said

project and further on its own volition, paid an amount of Rs. 4,00,000/- as booking amount.

c) That on 31.10.2017, the respondent sent a letter for execution of builder buyer agreement for unit no. HSG 026 West End 7, admeasuring 899.22 sq. ft. by enclosing two copies of agreement. The respondent in the said letter, intimated the complainants to sign the agreement and return it to respondent within 30 days for execution, while the complainants failed to do so. The complainants deliberately delayed the execution of the agreement. After a lot of persuasion, the builder buyer agreement dated 06.02.2018 was executed between the parties.

d) That as per clause 12 of the agreement, the complainants have agreed that time is the essence of the agreement with respect of allottee obligations to pay price of the said residential flat to be paid on or before the due date or as when demanded by the developer as the case may be. However, the said clause specified that it is not obligatory on the part of the developer to send demand notices/ reminders regarding the payments and in case of default /delay in the payments by the allottee, the allotment shall be liable to be cancelled and entire earnest money deposited by the allottee is liable to be forfeited, however, inspite of the default of the complainants in making the schedule of the payments, the respondent has been lenient and forbade from the cancelling of the booking/allotment.

e) That as per clause 5 of the agreement, the respondent was under obligation to handover the possession to the complainants as per the timelines as disclosed at the time of registration of the project. As per the project registration no. 213 of 2017, the respondent was to complete the project within 90 months from the date of grant of RERA registration i.e., 15.09.2017 as per which the due date of possession comes out to be 15.03.2025. The respondent was constrained stop the development work in the mid-way due

to various hindrances in construction of the project, which were unavoidable and purely beyond the control of the respondent.`1

f) That following were the reasons that halted the construction and development of the project as under:

S.No.	Particulars
1.	Notification No. L.A.C. (G)-N.T.L.A./2014/3050 dated 24.12.2014 to acquire land in sectors 88A,88B,89A,89B,95A,95B & 99A for purpose of construct and develop sector roads published in newspaper Dainik Jagran on 30.12.2014.
2.	Award No.56 on dated 23.12.2016 passed by the Land Acquisition Collector Sh. Kulbir Singh Dhaka, Urban Estates, Gurugram, Haryana for purpose of development and utilization of land for sector roads in sectors 88A,88B,89A,89B,95A,95B & 99A. **(Important Note: We have got license no.91 on 26.10.2013 but till 23.12.2016 land was not acquired by the authority/Govt for purposes of development & utilization of sector roads. Delay for the acquiring process was 3 years two months)**
3.	The Road construction and development works in Gurugram are maintained by the HUDA/GMDA but the NHAI has plan the development of Gurugram Pataudi-Rewari Road, NH-352 W under Bharatmala Pariyojana on 11.07.2018
4.	The notification was published by the Ministry of Road Transport & Highways in Gazette of India on 25.07.2018 that the main 60 Mtr. Road (NH-352 W) near Harsaru Village shall develop &construct by the NHAI
5.	The GMDA has approached the Administrator, HSVP, Gurugram and request to direct HSVP/LAO to hand over encumbrance free possession of land from Dwarka Expressway i.e. junction of 88A/88B to Wazirpur Chowk to GMDA so that possession of land may be handover to NHAI on 08.09.2020.
6.	The DTCP published a notification no.CCP/TOD/2016/343 on 09.02.2016 for erecting transit oriented development (TOD) policy. Vatika Limited has filed an application for approval of revised building plan under (TOD) policy 05.09.2017 and paid amount of Rs. 28,21,000/- in favor of DTCP.

7.	Vatika Limited has filed an another application on 16.08.2021 for migration of18.80Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana
8.	Vatika Limited has made a request for withdrawal of application for grant of license for mix land use under (TOD) policy on 03.03.2022 due to change in planning.
9.	The DTCP has accepted a request for withdrawal of application under (TOD) Policy on 17.08.2021 & forfeited the scrutiny fee of Rs. 19,03,000/-
10.	Vatika Limited has filed an application to Chief Administrator, HUDA, Sector-6, Panchkula, Haryana to grant award in favor of Vatika Limited to construct sector roads in sector 88A, 88B, 89A & 89B.
11.	No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W
12.	Re-routing of high tension wires lines passing through the lands resulting in inevitable change in layout plans.
13.	Various Orders passed by the Hon'ble Supreme Court, NGT, Environment Pollution Control Authority regarding ban on construction activities every year for a period of 50-75days in the best months for construction
14.	Due to outbreak of Covid 19 pandemic, there was a complete lockdown on two instances, 1. In 2020 GOI nearly for 6 months which was extended for another 3 months. 2. In 2021, for two months at the outbreak of Delta Virus

g) 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.

h) That Haryana RERA, Gurugram granted registration certificate bearing no.213 of 2017 dated 15.9.2017 for a period of 90 days, i.e., till 15.03.2025. The respondent upon failure to continue the development work of the project as per the proposed plan and layout plan due to reasons stated above, filed a proposal bearing "In Re: Regd. No. 213 of 2017 dated 15.09.2017, for De- Registration of the project Turning Point" and settlement mechanism with existing allottees before the registry of this Authority on 30.09.2022. Same was in the interest of the allottees of the project.

i) The complainants have made false and frivolous allegations against the respondent, suppressing facts and raising baseless, vague, and incorrect grounds. None of the reliefs prayed for by the complainants are sustainable before this Hon'ble Authority in the interest of justice.

7. All other averments made in the complaint were denied in toto.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

9. Vide proceedings dated 08.11.2023, the respondent no. 2 was directed to file his reply in the registry of the authority. However, no reply had been filed by respondent no.2 despite availing reasonable opportunities. In view of the same, the matter is proceeded ex-parte against respondent no.2.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction:

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is

situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> *Section 11(4)(a)*
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> *Section 34-Functions of the Authority:*
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

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

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

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

F. Findings on the objection raised by the respondent.

F.I Objection regarding force majeure conditions:

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

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

and Ors. (12.03.2018 - SC); MANU/SC/0253/2018, the Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

18. In the present case, the due date comes out to be 06.02.2021. ***That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020***. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 06.02.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **06.08.2021**. 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 cancel the booking of the residential unit booked by the complainants and refund the total amount paid till date with interest as per the RERA Act;

G.II Direct the respondent no. 2 not to take any coercive action against the complainants.

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

20. On the basis of license no. 91 of 2013 dated 26.10.2013 issued by DTCP, Haryana, a residential group housing colony by the name of "Turning Point" was to be developed by the respondent/builder over land admeasuring 18.80 acres situated in Sector 88-B, Gurugram. This project was later on registered vide registration certificate No. 213 of 2017 with the authority. After its launch by the respondent/builder, units in the same were allotted to different persons on vide dates and that too for various sale considerations. Though, the due date for completion of the project and offer of possession of the allotted unit comes out to be 06.08.2021, there is no physical work progress at the site except for some digging work. Even the promoter failed to file quarterly progress reports giving the status of project required under Section 11 of Act, 2016. So, keeping in view all these facts, some of the allottees of that project approached the authority by way of ***complaint bearing no. 173 of 2021 and 27 others titled as "Ashish Kumar Aggarwal vs Vatika Ltd."*** seeking refund of the paid-up amount besides compensation by taking a plea that the project has been abandoned and there is no progress of the project at the site. The version of respondent/builder in those complaints was otherwise and who took a plea that the complaints being pre-mature were not maintainable. Secondly, the project had not been abandoned and there was delay in completion of the same due to the reasons beyond its control. Thirdly, the allotment was made under subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

21. 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.

22. 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.

23. 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, its 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 ld. Authority in the present matter and to decide the same in the manner as the ld. Authority will approve under the present proposal.
v. To pass any other relief in the favour of the applicant company in the interest of justice.

24. 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."*

25. 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. 38,68,101/- from the developer with interest at the rate of 11.10% 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.

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

H. Directions of the authority

27. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

I. The respondent no. 1 is directed to refund the paid-up amount i.e. Rs. 38,68,101/- received by it from the complainants against the allotted unit along with interest at the prescribed rate of 11.10% per annum from the date of each deposit till its actual realization.

II. Out of the total amount so assessed, the amount paid by the bank i.e., respondent no.2 be refunded first in the bank and the balance amount along with interest will be refunded to the complainants.

III. The respondent no. 1 is directed to get the NOC from respondent no. 2 and give it to the complainants within a period of 30 days of this order.

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

V. The respondent no.1 is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottees.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 14.08.2024

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