

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

Date of decision: 25.07.2024

NAME OF THE BUILDER		VATIKA LIMITED	
PROJECT NAME		"ASPIRATION"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/968/2023	Manish Kumar V/s Vatika Limited	Ms. Priyanka Agarwal Advocate (Advocate for complainants) Shri Harshit Batra Advocate (Advocate for respondent)
2.	CR/973/2023	Ms. Vibha Vijay V/s Vatika Limited	

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the flat buyer's agreement executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Aspiration" (Affordable Residential Plotted Colony under DDJYL) being developed by the same respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the allotment letter and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to execute the

- agreement to sale w.r.t. the subject units in question, hence, the complainant(s) intends to continue with the project and seeking direction for setting aside the notice for termination and execution of buyer's agreement w.r.t. the allotted unit.
3. The details of the complaints, reply to status, unit no., expression of interest, allotment letter, total sale consideration, total paid up amount, and relief sought are given in the table below:

Project Name and Location		M/s Vatika Limited at "Aspiration" situated in Sector-88B, Gurugram.			
Possession Clause: - Not available as no BBA executed between the parties.					
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Total sale consideration and amount paid
1.	CR/968/2023 Manish Kumar V/S Vatika Limited. D.O.F 06.03.2023 Reply 18.01.2024	Plot no.6, A4, Evolution 131 sq. yards. super area. (page no. 65 of complaint)	Not executed Allotment Letter 16.04.2022 (page no. 64 of complaint)	16.04.2025	SC: - Rs.94,90,950/- AP: - Rs.24,32,400/-
2.	CR/973/2023 Ms.Vibha Vijay V/S Vatika Limited. D.O.F 06.03.2023 Reply 18.01.2024	Plot no.4, A4, Evolution 131 sq. yards. super area. (page no. 62 of complaint)	Not executed Allotment Letter 16.04.2022 (page no. 61 of complaint)	16.04.2025	SC: - Rs.94,90,950/- AP: - Rs.27,32,400/-
Note: In the table referred above certain abbreviation have been used. They are elaborated as follows:					
Abbreviation		Full Form			
DOF		Date of filing complaint			
SC		Sale consideration			
AP		Amount paid by the allottee(s)			

4. The aforesaid complaints were filed against the promoter on account of violation of provisions of Act of 2016 and for not executing buyer's agreement, and are seeking award for execution of buyer's agreement and quashing of notice for termination dated 28.12.2022.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/968/2023 titled as Manish Kumar V/S Vatika Limited* are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details.

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

CR/968/2023 titled as Manish Kumar V/S Vatika Limited

S. N.	Particulars	Details
1.	Name and location of the project	"Aspiration" at Sector-88B, Gurugram.
2.	Project area	19.70 Acres
3.	Nature of Project	Residential Plotted Colony
4.	DTCP license no. and validity status	1. 13 of 2022 dated 24.02.2022 Valid upto 23.02.2027 2. 152 of 2022 dated 29.09.2022 Valid upto 28.09.2027
5.	Name of Licensee	M/s Vatika Limited
6.	Rera registered/ not registered and validity status	Registered Vide registration no. 130 of 2022 dated 23.12.2022 Valid upto 30.06.2024
7.	Unit No.	Plot no. 6, A4, Evolution (page 65 of complaint)
8.	Unit area admeasuring	131 sq. yds. (page 65 of complaint)
9.	Allotment letter	16.04.2022 (page 64 of complaint)

10.	Date of buyer agreement	Not executed
11.	Possession clause	Not available
12.	Due date of possession	16.04.2025 <i>"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."</i> In view of the above-mentioned reasoning, the date of the allotment letter dated 16.04.2022 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 16.04.2025.
13.	Total Sale Consideration	Rs.94,90,950/- (page 65 of complaint)
14.	Amount paid by complainant	Rs.27,32,400/- (as per SOA dt 04.01.2023 at page 75 of complaint)
15.	Occupation certificate/ Completion certificate	Not Obtained (as confirmed by the counsel for the respondent during proceeding dated 30.05.2024)
16.	Intimation of possession	08.12.2022 (page 60 of complaint)
17.	Demand letter/Bills of supply	07.12.2022, 07.12.2022 & 08.12.2022 (page 70, 71 & 72 of complaint)
18.	Notice for Termination	28.12.2022 (page 80 of complaint)

B. Facts of the complaint

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

- i. That the complainant is a citizen of Haryana, In the hope of independent house for family of complainant was allured by an advertisement of the respondent and believing on the plain words of respondent in utter good

- faith the complainant was duped of her hard-earned monies which they have saved from bonafide resources by the respondent in the garb of running a builder construction company by offering plot in a time bound manner. After the RERA Act came the respondent is still doing illegal arbitrary and malefic activity in complete violation of the Act.
- ii. That the respondent had already acquired the proficiency to throw dust in the eyes of the law and Hon'ble Authority and advertised and sold the new project without getting RERA registration. The respondent also started selling the project in 2021 much before from RERA registration of project. Also, as per section 3 of RERA Act builder can't advertise, sale and collect the money from buyers without registered the project before RERA.
 - iii. That respondent i.e., M/s Vatika Limited received the license no. 13 of 2022 for development of plotted colony under scheme DDJAY on dated 24.02.2022 and license no. 152 of 2022 dated 29.09.2022 after that respondent registered the project "ASPIRATION" under HARERA Authority on dated 23.12.2022 and received the registration no. GGM/655/387/2022/130 DATED 23.12.2022 but builder advertised and sold the project much before (from 2021) receiving of RERA registration
 - iv. That the respondent advertised his project in 2021 and taken application form/expression of interest along with booking amount. That the complainant was shown expression of interest in Plotted colony for booking of plot and were asked to fill the form of expression of interest/application form as provided by the builder along with booking amount of Rs.5,00,000/- which the complainant promptly did by transferring Rs.50,000/- online on 25.07.2021 vide ICICI Bank NEFT reference No.000167080738 and depositing cheque No.082927 of Rs.45,000/- dated 25.07.2021 drawn on SBI bank and cheque was deposited in the name of Vatika Limited. In expression of interest/application form, builder

mentioned the construction link payment plan which was also violation of the terms of RERA Act. The expression of interest and Booking was acknowledged by respondent company without registering the project before RERA Authority, Gurugram.

- v. Previously complainant had booked (Plot no. 4 of B2 street) in DDJAY plotted colony "Aspirations" Sector-88B, Gurugram. And paid booking amount of Rs.5,00,000/-. Due to change in layout plan size of plot was increased and builder was not able to give the same plot of the same size as was initially promised and the money was collected. Finally, builder change the plot and allotted new plot no. 6 of A4 street only with plot size of 131 sq. yds. in DDJAY Plotted colony "Aspirations" Sector-88B, Gurugram.
- vi. That the allotment letter which was issued by builder on dated 16.04. 2022 mentioned the details of plot (Plot no. 6, A4, Aspiration Gurugram) but allotment letter also not in prescribed format of RERA.
- vii. That subsequently complainant has paid further instalments as demanded by builder. The builder is a habitual defaulter and that the respondent had already acquired the proficiency to throw dust in the eyes of the law and details of paid and demanded instalments mentioned below date wise:

Date of Payment	Amount
25.07.2021	4,50,000
25.07.2021	50,000
10.09.2021	1,09,000
22.03.2022	21,23,400
06.06.2022	1,14,885
Total Paid	28,47,285

- viii. That the builder continues demanding instalments through undated supply of bills (only mentioned date of Invoice 07.12.2022 & 8.12.2022). On request and regular follow ups by the complainant for execution of BBA, builder had refused to do so and asked for further payments (the total

- amount to 90% of the total sale consideration) without which they refused to execute BBA.
- ix. That the builder had shared builder account statement for allotted plot no. 6 street no A4 in Aspirations Sector-88B, Gurugram. In Account statement builder adjusted the amount of previous allotted Plots in the other allotted plot i.e. plot no. 6 street no A4 in Aspirations Sector-88B, Gurugram.
 - x. That the builder had issued the formal allotment letter on dated 16.04.2022 after paying approx. 30 % amount for plot no 6 of A4 street. but in allotment letter is also not as per prescribed format and due date of possession also not mentioned. In the allotment letter builder mentioned the lesser amount than what builder had received i.e. approx. 30 % amount.
 - xi. As per account statement total value of plot was Rs.94,90,950/- out of that complainant was paid Rs.28,47,285/- which is approx. 30 % of total sale value of plot.
 - xii. That the complainant raised the objection on illegal demands that was raised by the builder without executing builder buyer agreement. In the reply of objection builder continued to threaten the buyer about cancellation of booking of the plot.
 - xiii. That the complainant received undated bill of supply many times for further demand of instalments. Complainant always stated the facts about the total paid amount, requested builder to share RERA registration certificate, reconcile the accounts, issue allotment letter and also execute BBA and only post execution of BBA, they will make further payments.
 - xiv. That the Respondent was send intimation of possession on dated 08.12.2022 without doing appropriate work and without executing BBA. The builder is playing trick for extracting more and more amount.
 - xv. That the complainant was shocked to see the termination letter of respondent which was received on dated 28.12.2022, in which it was

- mentioned that due to violation of agreement (which was not executed a in spite of multiple requests by complainant) till date and non-payment of instalment and mentioned the term of earnest money as mentioned in BBA. On receipt of the same, complainant was visited their office and requested for revocation of termination and execution of BBA but builder has again declined the request to execute the BBA and demanded that the 90% of the total consideration amount to be paid for execution of agreement.
- xvi. That the respondent issued the termination notice illegally. And same was opposed by the complainant many times but builder didn't entertain complainant request. As per Section 11(5) of RERA Act builder can cancel the allotment as per terms of BBA.
- xvii. That the respondent after deterrent legislation still were involved in looting the public including the complainants. And that the respondent had already acquired the proficiency to throw dust in the eyes of the law and Hon'ble Authority.
- xviii. That the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the plot which is the subject matter of this complaint is situated in Sector 88 B, Gurugram which is within the jurisdiction of this Hon'ble Authority.
- xix. The respondent has indulged in all kinds of tricks and blatant illegality, misrepresentation and huge mental and physical harassment of the complainants and their family. All the savoured dreams, hopes and expectations of the complainants have been rudely and cruelly been dashed to the ground. After failing to get any response from the respondent to his various posers from time to time, the complainant is eminently justified in seeking possession of plot and execution of BBA agreement.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)

- a. Direct the respondent to quash the termination of Plot and execute the BBA.
 - b. Direct the respondent to raise the demand after execution of Agreement already received the approx. 30 % amount.
 - c. Direct the respondent to quash the sale of allotted plot no. 4 street no A4 in Aspirations Sector-88B, Gurugram. If have
 - d. To issue the show cause notice for violation of violation of term of RERA registration certificate and Act.
 - e. To immediately start the enquiry against builder for violation of term of RERA registration certificate and Act.
 - f. To stop the future sale of project till the receiving of outcome of enquiry or future thereon.
 - g. To revoke the registration certificate
 - h. To form high end committee which will produce the report about violation of term of Act and Registration certificate.
 - i. To imposed heavy penalty for violation of term of registration certificate and Act.
 - j. Pass such other and further order(s) as this Hon'ble Regulatory Authority may deem fit and proper in the facts and circumstances of the present case;
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 contested the complaint on the following grounds: -
 - i. That the respondent utterly denies and rebuts all the averments made and contentions raised by the complainant in the present complaint as the same are fallacious, unfounded, baseless, vexatious, and contrary to the facts of the present matter as the complainant with malafide intention have conveniently concealed the material facts and made the vital misrepresentations before this Hon'ble Authority. As such, the complaint filed by the complainant is entirely bereft of merits and the complainant are not entitled to the relief sought including equitable relief as the complainant has not approached this Ld. Authority with clean hands with the sole rationale to mislead the Ld. Authority.

- ii. That the present complaint is not maintainable in law. As the present complaint raises several such issues which cannot be decided by this Hon'ble authority.
- iii. That the complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply. It is vehemently and most humbly stated that to bring out the true and correct facts and circumstances is subject to the contention of the respondent that the Hon'ble Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable for reasons stated in the present reply.
- iv. That the complainant after extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that it took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question and booked a unit in the said project "Vatika India Next Aspiration"
- v. That the complainant approached the respondent for allotment of a unit in the project of the respondent by way of an expression of interest for plot. That pursuant to the booking of the said unit, the complainant was issued an allotment letter dated 16.04.2022 confirming the allotment of the said unit no. 6, A4, Aspiration, Sector 88B, Gurgaon, admeasuring 131 sq. yards in favor of the complainant. The complainant consciously and wilfully accepted the terms and conditions of the allotment and for remittance of sale consideration for the unit in question and further represented to the respondent that he shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in her favor.

- vi. Further, the intimation of possession was made to the complainant on 08.12.2022, wherein the complainant was called upon to remit the due payment towards the unit of Rs.67,85,550/-, and take possession of the unit after fulfilling all the documentation processes. However, the complainant miserably failed to pay the balance amount towards the unit.
- vii. That the respondent was in such circumstance constrained to issue notice for termination dated 28.12.2022 to the complainant due to the default of payment of the complainant. That it is pertinent to mention that the unit of the complainant has been terminated by the respondent. That only the amount of Rs.27,32,400/- had paid by the complainant to the respondent.
- viii. That apparently the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought are liable to be dismissed. No clause of action arises since the refund has already been made to the complainant. No relief much less any interim relief, as sought for, is liable to be granted to her.
- ix. That without prejudice to the contents of this reply, that the project of the respondent was faced with certain force majeure conditions affecting the construction of the project. It is also pertinent to state here that unless and until, the high-tension line issue was not finalized, the company was not even able to plan the colony and also no sector/ internal roads, nor any facility or to be decided to be laid in area, which hampered the planning and development of residential colony.
- x. At the time of approval of initial layout for the licensed land there is an existence of overhead defanged high tension Line ("HT Line"), which is also passing through a portion of land under the licensed area of company and the same has to be removed/ re-routed through underground culvert and for the removal and re-routing of same also several communication and meeting had been done with HVPNL, electricity department and company

has also even deposited the huge fees and spent money for re-routing the same. The company was in continuous communication with the HVPNL for re-routing/ shifting of defanged HT Line.

- xi. That the doctrine of supervening impossibility applies. The doctrine of supervening impossibility or the doctrine of frustration becomes applicable when a contract becomes impossible to perform due to the happening of some unforeseen circumstances which were beyond the control or calculation of the parties involved. When such a contract becomes entirely impossible without the fault of the parties, the contract gets dissolved by this doctrine. This doctrine is based on the maxim '*Lex non cogitadimpossibilia*'. The maxim essentially means that "law does not compel the impossible". The following are the requisites for the application of this doctrine:
- When an event or incident occurs that the parties were unable to contemplate when the contract was formed.
 - None of the parties are at fault for the occurrence of the event.
 - The contract if performed would turn out different from what the parties agreed to initially.
- xii. That the complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favor of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent.

xiii. That in light of the bona fide conduct of the respondent, non-existence of cause of action, and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondent.

12. 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 based on these undisputed documents and submission made by the parties.

E. Written submission made by both the parties

13. The complainant has filed the written submission on 24.04.2024, and on behalf of respondent on 23.05.2024 and the same are taken on record. No additional facts apart from the complaint and reply have been stated in the written submissions.

F. Jurisdiction of the authority

14. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

15. 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.

F. II Subject matter jurisdiction

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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.

17. 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.
- G. Findings on the relief sought by the complainants.**
- G.I Direct the respondent to quash the termination of Plot and execute the BBA.**
- G.II Direct the respondent to raise the demand after execution of Agreement already received the approx. 30 % amount.**
- G.III Direct the respondent to quash the sale of allotted plot no. 4 street no A4 in Aspirations Sector-88B, Gurugram.**
18. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
19. In the present complaint, the complainant was allotted a plot bearing no. 6, A4, Evolution, having admeasuring 131 sq. yds. vide allotment letter dated 16.04.2022, under construction linked payment plan, for the sale consideration of Rs.94,90,950/- out of which the complainant-allottee has paid a total amount of Rs.27,32,400/- which is 28% of the sale consideration. Thereafter, the respondent-promoter has issued three demands to the complainant (i) on 07.12.2022 "on commencement of installation of street lights of the block", (ii) on 07.12.2022 "on bitumen work on plot" and (iii) on 08.12.2022 "on offer of possession" and issued an intimation for possession on 08.12.2022, in which respondent-promoter is

demanding an amount of Rs.67,58,550/- to be payable till 30.12.2022. Thereafter, on 28.12.2022 the respondent-promoter has issued a notice for termination for unit no.6, A4, referring to the demand letter dated 08.12.2022.

20. Now, the complainant intends to continue with the project and is seeking quashing of notice for termination dated 28.12.2022, execution of buyer's agreement and restricting the respondent-promoter for raising illegal demands under section 13(1) of the Act. Section 13(1) proviso reads as under.

"Section 13: - No deposit or advance to be taken by promoter without first entering into agreement for sale: -

13(1). A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

13(2). The agreement for sale referred to in subsection (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

21. Now, the question arises before the Authority whether the offer of possession letter dated 08.12.2022 and notice for termination letter dated 28.12.2022 issued by the respondent is valid or not, in the eyes of law?
22. On consideration of documents and submissions made by both the parties, the authority is of the view that the respondent has raised various demand letter to the complainant (i) on 07.12.2022 "on commencement of installation of street lights of the block", (ii) on 07.12.2022 "on bitumen work on plot" and (iii) on 08.12.2022 "on offer of possession" and issued an intimation for possession on 08.12.2022, in which respondent-promoter is demanding an amount of Rs.67,58,550/- to be payable till 30.12.2022.

Thereafter, on 28.12.2022 the respondent-promoter has issued a notice for termination for unit no.6, A4, due to non-payment of outstanding dues. The agreed payment plan as per allotment letter is reproduced below for ready reference: -

Annexure-A: - Payment Plan
Construction linked payment plan

Sr. No.	Instalment	Percentage of total sale consideration	Amount (in Rs.)
1	On booking	10%	9,49,095/-
2	Within 60 days of booking	10%	9,49,095/-
3	On earthwork of plot	10%	9,49,095/-
4	On receipt of allotment	20%	18,98,190/-
5	On demarcation of plots	20%	18,98,190/-
6	On removal of High-tension wire	10%	9,49,095/-
7	Bitumen work on roads	10%	9,49,095/-
8	On offer of possession	10%	9,49,095/-
		100%	94,90,950/-

23. Firstly, the authority would like to clarify regarding the concept of "valid offer of possession". It is necessary to explain this concept because after valid and lawful offer of possession, the liability of promoter for offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining completion certificate.
- ii. The subject unit must be in habitable condition.
- iii. Possession should not be accompanied by unreasonable additional demands.

24. However, in the present case, there is no record available on the paper book to show why the completion certificate has not been granted by the competent authority. Accordingly, the authority keeping in view the above-

mentioned facts considers that the respondent may not have applied a complete application for grant of completion certificate and has not rectified the defects, if any pointed out by the concerned authority. Further, during the proceedings dated 30.05.2024, the counsel for the respondent states that the occupation certificate/ completion certificate of the project is not yet granted as the project is not yet completed. So, without getting completion certificate, the builder/respondent is not competent to issue any offer of possession to the complainants. It is well settled that for a valid offer of possession, there are three prerequisites as mentioned above. Hence, the intimation regarding the offer of possession offered by respondent/promoter on 08.12.2022 is not a valid or lawful offer of possession.

25. Further, the authority observes that the demands raised by the respondent were not as per the agreed payment plan as mentioned in allotment letter. It is observed that the demand letter dated 07.12.2022 raised for the milestone "*on commencement of installation of street lights of the block*" is not a part of agreed payment plan. and thereafter demand raised on 08.12.2022 for the milestone "*on offer of possession*" is not a valid demand as the intimation for possession letter dated 08.12.2022 is not a valid offer of possession. Furthermore, in the reply, the counsel for the respondent has asserted that the unit of complainant-allottee stands cancelled/terminated, however, the respondent has not submitted any document pertaining to such cancellation/termination of allotment of complainant-allottee before the authority.
26. In view of the reasons quoted above and documents available on record, the authority is of the view that the notice for termination letter dated 28.12.2022 is not valid in the eyes of law, as the demands raised by the respondent are in violation of section 13 of the Act and demand on offer of

possession is also not a valid demand and the notice for termination letter dated 28.12.2022 is hereby set aside and the respondent is directed to restore the allotted unit of the complainant-allottee within 30 days from the date of this order.

G.IV To issue the show cause notice for violation of violation of term of RERA registration certificate and Act.

G.V To immediately start the enquiry against builder for violation of term of RERA registration certificate and Act.

G.VI To stop the future sale of project till the receiving of outcome of enquiry or future thereon.

G.VII To revoke the registration certificate

G.VIII To form high end committee which will produce the report about violation of term of Act and Registration certificate.

G.IX To imposed heavy penalty for violation of term of registration certificate and Act.

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

28. On consideration of the documents available on record, the Authority observes that the promoter has already received an amount of Rs.27,32,400/- against sale consideration of Rs.94,90,950/- which is 28% of sale consideration without entering into agreement for sell, which is a clear violation of section 13(1) of the Act, 2016.

29. In view of the reasons quoted above and documents available on record, the Authority hereby directs the planning branch of the Authority to initiate the penal proceedings against the promoter under section 61 in terms of the violation of section 13(1) of the Act, 2016.

H. Directions of the authority

30. 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 notice for termination letter dated 28.12.2022 is not valid and is hereby set aside, and the respondent-promoter is hereby directed to restore the allotted unit of the complainant-allottee within a period of 30 days from the date of this order.
 - ii. The respondent-promoter is directed to execute the agreement to sale with the complainant-allottee with the same price as agreed in allotment letter within 30 days of this order.
 - iii. 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.
 - iv. The planning branch of the Authority is hereby directed to initiate penal proceedings against promoter in respect to violation of the provisions of the Act, 2016.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
33. File be consigned to registry.

Dated: 25.07.2024


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