

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

**Complaint no.** 3007 of 2023  
**Date of filing complaint** 07.07.2023  
**First date of hearing** 08.11.2023  
**Order pronounced on** 04.12.2024

Ravinder Verma  
**Resident of:** K.P. 184, Pithampura, New West Delhi-  
110034

**Complainant**

Versus

Vatika Limited  
**Regd. office:** Flat no. 621A, 6<sup>th</sup> Floor, Devika Towers,  
6, Nehru Place, New Delhi - 110019  
**Corporate office:** 7<sup>th</sup> Floor, Vatika Triangle, Block A,  
Sushant Lok, Gurgaon-1220022

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Sanjeev Sharma (Advocate)

**Complainant**

Sh. Anurag Mishra (Advocate)

**Respondent**

**ORDER**

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

S.No.	Heads	Information
1.	Project name and location	"Vatika Sovereign Park" at Sector 99, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License no. and validity status	119 of 2012 dated 06.12.2012 valid upto 05.12.2025 65 of 2013 dated 20.07.2013 valid upto 19.07.2024.
5.	Name of the licensee	M/S Vatika Sovereign Park Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 285 of 2017 Valid upto 09.10.2022. Further extended upto 31.03.2025.
7.	<b>Application form cum allotment letter</b>	<b>02.11.2022</b> (page 19 of reply)
8.	Unit no.	L-101, 1st floor, tower L (page 29 of reply)
9.	Unit area admeasuring	3345 sq. ft. (carpet area) (page 29 of reply)
10.	<b>Builder buyer agreement</b>	<b>Not Executed</b>
11.	Due date of possession	Cannot be ascertained
12.	Total sale consideration	Rs. 2,60,95,200/- [as per application cum allotment letter at page 29 of reply]
13.	Amount paid by the complainant	Rs. 5,00,000/- (Paid by complainant on 29.10.2022) [as alleged by complainant in relief sought and agreed by respondent at page 2 of reply]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Letter for cancellation of booking application form	22.03.2023 (Page 18 of complaint)
17.	Notice for termination	07.03.2023 (Page 19 of complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -
- a) That the complainant booked unit no. HSG-022/101/Tower L/Sovereign Park/sector-99 in a residential colony "Sovereign Park" being developed by the respondent by making a payment of Rs. 5,00,000/- on 29.10.2022.
  - b) That the rate etc. were supposed to be decided once registration is done as per the rule /law under RERA Act 2016. However, the complainant did not pay any amount other than Rs. 5,00,000/- which was initially paid to the respondent to show his intention to buy the unit at the Sovereign Park.
  - c) That after initially paying the amount, the complainant verified about the area where such unit was booked by him and it was discovered that there are issues like water logging in the project and therefore, he decided to quit the project.
  - d) That no registration of application or agreement to sell is done under Section 13 of the act which is mandatory to be made before any further proceeding.
  - e) Considering the facts and law settled it is prayed that the builder/promoter/respondent be asked to refund the amount of Rs. 5,00,000/- along with interest.
  - f) That in addition to above, the respondent has committed various other discrepancies and defaults under various sections of the RERA Act and the respondent be refrained and directed to stop doing such unlawful acts which are against the duties and obligations of the promoter under chapter III of the real estate regulatory act.

**D. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire amount paid by the complainant along with interest.
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.

**E. Reply by the respondent.**

6. The respondent has contested the complaint by filing reply on the following grounds: -
- a) That the present complaint is liable to be dismissed as the complainant has come before this Authority with unclean hands and tried to mislead this Authority by false and frivolous averments.
  - b) That the complainant intended to buy a unit in the project of the respondent, namely "Sovereign Park" situated at Sector 99, Gurugram. The complainant visited the site as well as office of the respondent before making its application for registration of the unit. Further, the application for registration of a unit was made by the complainant with its own will and requirement. The respondent had not lured the complainant to invest in the project by any manner whatsoever.
  - c) That the complainant has only made the payment of registration amount to the tune of Rs. 5,00,000/- (Rs. 1,00,000/- on 25.10.2022 and Rs. 4,00,000/- on 29.10.2022) to the respondent and after receipt of the said amount the respondent issued a confirmation of the booking vide allotment letter dated 02.11.2022 issued by the respondent in favour of the complainant.
  - d) That the complainant is bound by the terms of the allotment letter and the said allotment letter was signed by the complainant with his own free will and thus the complainant has deliberately not annexed the copy of the said allotment letter.
  - e) That the complainant is deliberately trying to misguide this Authority to extract an order of refund even though the respondent has done no breach of any terms and conditions of the said allotment letter. It is the complainant who is un-willing to make further payment against the booking made by him. It is only in these circumstances the complainant is trying to make an unproved allegation that there is water logging in the project. The Complainant

intends to quit from the project due to reasons best known to him however, he is bound by the terms and conditions of the said allotment letter.

- f) That as per Section 18 of the Act, refund of amount and compensation can be sought by the buyer in some specific circumstances. Herein, the complainant has made the application for registration in the project on 02.11.2022 and therefore, it cannot be said that the respondent is unable to complete the project and there is delay in handing over the possession of the unit. Thus, the present complaint is frivolous.
- g) That from the allotment letter dated 02.11.2022, it is clear that the respondent had a right to forfeit first three instalments which shall amount to nearly 10% of the basic sale consideration in the event the complainant fails to make timely payment of the instalments. The relevant lines are as below:

*"8. We further understand and agree that the booking amount payable for allotment of the said Unit ("Booking Amount") shall be payable by me/us in instalments i.e.. booking amount 1, booking amount 2 and booking amount 3, the sum total of which shall constitute the Booking Amount for the said Unit for all intents and purposes. In case of cancellation of my/our allotment for any reason(s) whatsoever, the Promoter shall be entitled to forfeit the entire Booking Amount. I/We further understand and agree that in case I/we default in payment of any instalment towards the total Booking Amount i.e., booking amount 1 or booking amount 2 or booking amount 3, the Promoter shall be entitled to forfeit the entire amount paid by me/us.*

*9. We undertake and confirm that I/we shall always remain responsible for making timely payments in accordance with the Payment Plan opted by me/us. I/We understand and agree that in the event I/we default in the timely payment of any amounts payable in respect of the Unit in terms of the agreement for sale, I/we shall be liable for payment of delay payment charges at prevailing State Bank of India highest Marginal Cost of Funds based Lending Rate + 2% or such other rate as may be prescribed under the applicable laws, from the date when such amounts become due for payment until the date of receipt by the Promoter. Notwithstanding the payment of delay payment charges, in the event I/we fail to make payment towards any two consecutive instalments beyond a period of 60 (sixty) days from the due date of the last demand notice/payment request, the same shall be deemed to be a breach of the agreement for sale and the Promoter shall be entitled to call upon me/us to rectify the breach by making payment of the outstanding dues along with delay payment charges accrued thereon within a period of 30 (thirty) days, in the event I/we fail to make the payment of the outstanding dues along with delay payment charges accrued thereon within the stipulated period of 30 (thirty) days, the Promoter shall be entitled to cancel the allotment and terminate the agreement for sale in accordance therewith.*

*Provided that where the I propose to cancel/ withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the earnest money agreed as 10% of Total Sales Price, where the construction raised is up to the extent of 50% of the construction of the block or building of the said Apartment, or 25% of the Total Sales Price where the construction raised is over 50% of the construction of the block or building of the said Apartment along with non-refundable amounts like brokerage, taxes paid/payable etc and interest component on delayed payment (payable by the me for breach of agreement and non-payment of any due payable to the Promoter) as per prevalent GST rules etc. The rate of interest payable by the me/us to the Promoter shall be at the rate prescribed in the Rules. The balance amount of money paid by me/us shall be returned by the Promoter to me/us within 90 (ninety) days of such cancellation.*

- h) That the respondent further sent letters dated 14.12.2022 and 07.03.2023 to the complainant asking complainant to make further payment against booking made by the complainant however, it was the complainant who defaulted in making the payment of any amount to the respondent after making the said booking. The respondent finally sent letter dated 22.03.2023 for cancellation of the booking of the complainant.
- i) That it is the duty of the complainant to make timely payment of the dues as per the agreed schedule of payment however, in the present case it is admitted position of the complainant that no payment has been made by the complainant except Rs. 5,00,000/- till date and thus the complainant is in breach of the terms of the letter dated 02.11.2022 and accordingly the respondent has all the right to forfeit the said amount on account of breach by the complainant.
- j) That the relief sought by the complainants for refund along with interest @18% per annum cannot be granted in the present legal proceeding as the complainants have not paid the amount as a loan or with a view to earn interest or profit nor the amount was received by the respondent with a promise to refund with interest.
- k) That the refund, if any, can only be made after forfeiture of earnest money and deduction of amount paid towards service tax/ GST (for which OP only works as intermediary of the Govt.), overdue interest and brokerage, if any.

- l) That demonetization of currency notes of Rs.500 and Rs.1000 announced vide executive order dated 08.11.2016 which affected pace of development of the project. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers and media. Capping on withdrawal and non-availability of adequate funds with banks had further escalated this problem many folds.
- m) That prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access / approach roads, key distances, looked at the vicinities, physical characteristic of the Project etc. and then filed an application for allotment which factum is also recorded in the BBA executed with each of the complainants. That almost all the buyers (including the complainants) have visited the project site and were aware of the fact that the project had no direct access road and the respondent was working on the getting a remedy for the same.
7. All other averments made by the complainant were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

**F. Jurisdiction of the authority**

9. 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**

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

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

**F.II Subject matter jurisdiction**

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

**Section 11. ....**

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

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

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated*



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

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

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

**G.I Direct the respondent to refund the amount paid by the complainant along with interest.**

15. The complainant was allotted unit no. L-101, 1<sup>st</sup> floor, tower L in the project "Vatika Sovereign Park", Sector 99, Gurugram, Haryana of the respondent/builder for a total sale consideration of Rs.2,60,95,200/- vide application form cum allotment letter dated 02.11.2022. The builder buyer agreement was not executed between the parties in respect of the allotted unit and only a sum of Rs.5,00,000/- has been paid by the complainant to the respondent on 29.10.2022. Thereafter, no further payment had been made by the complainant. Various reminders were sent by the respondent to the complainant to make payment of outstanding dues. Vide letter dated 07.03.2023, last opportunity was given to the complainant to make payment of the outstanding dues and upon failure to pay the same, the respondent

cancelled the unit of the complainant vide cancellation letter dated 22.03.2023.

16. The plea advanced by complainant is that there is an issue of water logging in the project and therefore, the entire amount paid by him, i.e., Rs. 5,00,000/- be refunded to him along with interest at the prescribed rate. On the contrary, the respondent pleads that the unit has been cancelled after issuance of reminders and complainant has paid less than 10% of the consideration money. Due to the same, the respondent issued a final reminder letter dated 07.03.2023 followed by cancellation letter dated 22.03.2023.

17. Further, the complainant is in breach of the terms of the application cum allotment letter dated 02.11.2022 and accordingly the respondent has a right to forfeit the booking amount on account of breach by the complainant. Also, the respondent had a right to cancel and forfeit the booking amount in the event the complainant fails to make timely payment of the instalments. The relevant paragraphs of the letter dated 02.11.2022 are reiterated as under:

*"8. We further understand and agree that the booking amount payable for allotment of the said Unit ("Booking Amount") shall be payable by me/us in instalments i.e.. booking amount 1, booking amount 2 and booking amount 3, the sum total of which shall constitute the Booking Amount for the said Unit for all intents and purposes. In case of cancellation of my/our allotment for any reason(s) whatsoever, the Promoter shall be entitled to forfeit the entire Booking Amount. I/We further understand and agree that in case I/we default in payment of any instalment towards the total Booking Amount i.e., booking amount 1 or booking amount 2 or booking amount 3, the Promoter shall be entitled to forfeit the entire amount paid by me/us.*

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*payment charges accrued thereon within a period of 30 (thirty) days, in the event I/we fail to make the payment of the outstanding dues along with delay payment charges accrued thereon within the stipulated period of 30 (thirty) days, the Promoter shall be entitled to cancel the allotment and terminate the agreement for sale in accordance therewith.*

*Provided that where the I propose to cancel/ withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the earnest money agreed as 10% of Total Sales Price, where the construction raised is up to the extent of 50% of the construction of the block or building of the said Apartment, or 25% of the Total Sales Price where the construction raised is over 50% of the construction of the block or building of the said Apartment along with non-refundable amounts like brokerage, taxes paid/payable etc and interest component on delayed payment (payable by the me for breach of agreement and non-payment of any due payable to the Promoter) as per prevalent GST rules etc. The rate of interest payable by the me/us to the Promoter shall be at the rate prescribed in the Rules. The balance amount of money paid by me/us shall be returned by the Promoter to me/us within 90 (ninety) days of such cancellation.*

18. Accordingly, the complainant failed to abide by the terms of application cum allotment letter executed inter-se between the parties on 02.11.2022. Further, as per Section 19(6) and 19(7) of the Act of 2016, the allottee was under an obligation to make payment towards consideration of the allotted unit. However, the complainant had paid only a sum of Rs.5,00,000/- against the total sale consideration of Rs.2,60,95,200/-. The respondent has given sufficient opportunities to the complainant and finally cancelled the allotted unit of the complainant vide letter dated 22.03.2023. Even otherwise, the complainant himself want to withdraw from the project and therefore, he stopped making further payment to the respondent citing water logging as a reason. Since the cancellation is owing to complainant's own fault of not making timely payment of the instalments, therefore the said cancellation in view of terms and conditions of the application cum allotment letter dated 02.11.2022 is held to be valid.
19. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. The issue with

regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. *National Consumer Disputes Redressal Commissions in CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

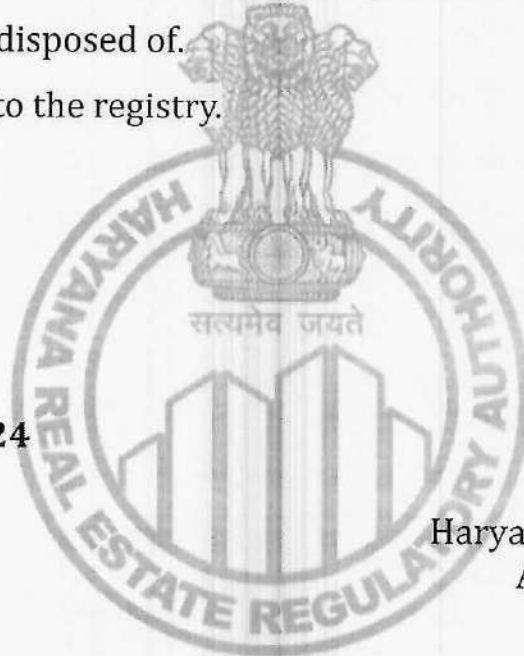
20. Keeping in view the aforesaid factual and legal provisions, the respondent can deduct the amount paid by the complainant against the allotted unit as it is both the earnest money and 10% of the consideration amount. So, the same

was liable to be forfeited in terms Regulations 11(5) of 2018. However, the amount paid by the complainant i.e., Rs.5,00,000/- which constitutes to only 2% of the sale consideration i.e., Rs.2,60,95,200/-. Thus, no direction to this effect can be given.

**H. Directions of the Authority:**

21. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complainant is dismissed being devoid of merits.
22. Complaint stands disposed of.
23. File be consigned to the registry.

**Dated: 04.12.2024**



**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
**GURUGRAM**