



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>664 of 2024</b>
<b>Date of filing:</b>	<b>07.05.2024</b>
<b>First date of hearing:</b>	<b>30.07.2024</b>
<b>Date of decision:</b>	<b>21.11.2024</b>

Subhash Chand Chhabra  
R/o 1266, Sector-1, Phase-II HUDA, Shahabad  
Markanda, District Kurukshetra, Haryana-136135

.....COMPLAINANT

Versus

Vatika Limited through its Managing Director  
Vatika Triangle, 4<sup>th</sup> Floor, Sushant Lok Phase, Block-A  
Mehrauli, Gurugram

.....RESPONDENT

**CORAM: Parneet S Sachdev**

**Nadim Akhtar**

**Dr. Geeta Rathee Singh**

**Chander Shekhar**

**Chairman**

**Member**

**Member**

**Member**

**Present:** - None for the complainant.

Mr. Abhishek Kathuria, Counsel for the respondent through  
VC.

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**ORDER (PARNEET S SACHDEV-CHAIRMAN)**

1. Present complaint was filed on 07.05.2024 by the complainant for contravention of Section 63 of the Real Estate Regulatory Authority Act 2016, for failure on part of the respondent to comply with the order dated 02.08.2023 passed by this Authority, in complaint no. 1077 of 2019, where by relief of refund of ₹ 51,94,027/- to be paid by respondent to the complainant was granted. Authority vide this order had directed the respondent promoter to make the payment above stated amount within 90 days, which lapsed on 30.10.2023. However, respondent had failed to refund the said amount as directed.

2. That time period of 9 months has lapsed but nothing has been done by the respondent to honour the directions of Hon'ble Authority meaning thereby the respondents have indulged themselves in the practice of deliberate non-compliance of the order which amounts to violation and contravention of the provisions of RERA Act,2016. Said non-compliance of the order of the Authority dated 01.04.2022 is punishable by way of imposition of penalty, for everyday for which such default continues, which may extend upto 5% of the estimated cost of the project as determined by the Authority. Further, counsel for complainant has referred to following sections of the Act 2016 to substantiate the present complaint:



i. Section 31 of the Real Estate Regulatory Authority Act 2016, states that for any violation or contravention of the provisions of the Act or the rules and the regulations made thereunder, by any promoter, allottee, real estate agent, a complaint may be filed. Therefore, this section nowhere limits the scope of violation/contravention or provides for any separate mechanism to be followed for dealing with the offences under Chapter VIII of the Real Estate Regulatory Authority Act 2016. Thus present complaint under section 31 of the Real Estate Regulatory Authority Act 2016, is very much maintainable.

ii. Section 34(f)(g), 37,38, 63 of the Real Estate Regulatory Authority Act 2016, provides for functions of the Authority which shall include:

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

*(g) to ensure compliance of its regulations or **orders** or **directions** made in exercise of its powers under this Act.*

*Section 37-The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such*

*directions from time to time, to promoters or allottees or real estate agents and such directions shall be binding upon all the concerned.*

*Section 38- The Authority Shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, allottees and real estate agent, under this Act.*

*Section 63- Penalty for failure to comply with orders of the Authority by promoter:*

*If any promoter, who fails to comply with or contravenes any of the orders or directions of the Authority, he shall be liable to penalty for every day..."*

Cumulative reading of all the above sections if read with the factual matrix of present case, then it states that in order to ensure compliance of the obligations casted upon respondent under Section 34(f) of the Real Estate Regulatory Authority Act 2016, Authority in exercise of its powers under Section 37 an 38 of the Real Estate Regulatory Authority Act 2016, had issued directions to the respondent vide order dated 01.4.2022 which were binding upon promoter as word "SHALL is used and not MAY" in section 37 of the Real Estate Regulatory Authority Act 2016. Hence, only remedy available for non-compliance of the



orders and directions is under Section 63 of the Real Estate Regulatory Authority Act 2016. Thus, penalty be imposed upon respondent for non-compliance.

3. That complainant has also referred to a Judgment dated 31.05.2022, titled as Amandeep Kaur and Sukwant Singh Bhatti Versus ATS Infrabuild Pvt Ltd. passed by RERA Punjab, wherein same relief has been adjudicated and granted to the complainant upon by the said forum, which is annexed as Annexure C-3 of the complaint book.

4. On the other hand, respondent has neither filed reply nor someone is appearing today for arguments. It is to mention here that no one is appearing on behalf of complainant to argue the case.

5. After hearing both parties and going through relevant record, it is observed that the case of the complainant is that the Authority vide its final disposal order dated 02.08.2023 passed in complaint no. 1077 of 2019, titled as Subhash Chand Chhabra Versus Vatika Limited had directed the respondent-promoter to refund to the complainant the paid amount along with interest i.e ₹ 51,24,097/-within 90 days, as provided under Rule 16 of the Haryana Real Estate (Regulatory and Development) Rules 2017. Complainant in its complaint had further stated that as per Section 37 of the Real Estate Regulatory Authority Act 2016, the directions issued by the Authority are binding on all concerned. However, the respondent had failed to comply with the order

of the Authority dated 02.08.2023 passed in complaint no.1077 of 2019 and are thus liable for imposition of penalty under Section 63 of the Real Estate Regulatory Authority Act 2016, which may extend to upto 5% of the estimated cost of the development of the project. It is noteworthy here that the complainant by way of filing the present complaint are seeking the relief of “ imposition of penalty under Section 63 of the Real Estate Regulatory Authority Act 2016 upon respondent for non-compliance of the order dated 02.08.2023 passed by the Authority”. Further it is pertinent to mention that the complainant is seeking the above mentioned relief without prejudice to his rights under the Real Estate Regulatory Authority Act 2016, w.r.t. execution of the orders of the Authority.

6. It is observed that the respondent-promoter vide last order dated 30.07.2024 sought time to file reply. Today, ld. Counsel for respondent stated that reply will be filed today in registry. To his request, Authority observes that in case reply will be filed today in registry then same will be taken on record. Otherwise case will be disposed on basis of available documents. As per office record, respondent has filed its reply on 22.11.2024, i.e. as on date of hearing 21.11.2024 no reply was placed on record by respondent. Hence, the case is being adjudicated on the basis of available record. Further, it is pertinent to mention here that no one has put in appearance on behalf of complainant. However, complaint



case bearing no. 78 of 2023 involving similar issues filed by same counsel had already been decided by the Authority. Therefore, Authority decides to proceed and adjudicate the matter by considering the document/ complaint or file and oral submissions/averments, if any made by the counsel.

7. In order to effectively adjudicate on the instant complaint, the Authority deems it appropriate to address the following issues involved:-

- (i) The complainant-allottee being aggrieved by the non-compliance/ contravention of the orders/ directions issued by the Authority passed vide its order dated 02.08.2023, passed in case no. 1077 of 2019; what is the remedy available to the allottees as per provisions of Real Estate Regulatory Authority Act 2016 and the Rules and Regulations made there under.
- (ii) Can imposition of penalty under Section 63 of the Real Estate Regulatory Authority Act 2016 be sought as a relief by aggrieved allottees for non-compliance of an order of the Authority or is it a power entrusted upon the Authority.

8. Authority takes up and addresses the issues

It is observed that the Authority vide its said order had held that respondent-promoter had failed in his obligation to handover the possession of the unit as per time line stipulated in agreement



for sale, thus, violating the provisions of Section 11(4)(a) of the Real Estate Regulatory Authority Act 2016. In view of such violation the Authority held that the complainant as per Section 18(1) is entitled to the relief of refund along with interest at the prescribed rate. Accordingly, Authority vide the said order directed the respondent-promoter to refund the total amount of Rs 51,94,027/-, which was inclusive of the principal amount and the interest till actual realization of the amounts at the prescribed rate, calculated till the date of order (i.e 02.08.2023). Further, the Authority had directed the respondent-promoter to refund the aforementioned amount within the time prescribed under Rule 16 of The Haryana Real Estate (Regulation & Development) Rules, 2017 i.e., 90 days. It is apparent from the present complaint that till the date of filing of the complaint, respondent-promoter had not complied with the orders/ directions issued by the Authority vide its final/ disposal order dated 02.08.2023 passed in complaint no. 1077 of 2019. Thus, there remains no ambiguity with regard to the fact that complainant- allottee has till date not received his hard-earned money back and is genuinely aggrieved by this act of non-compliances of the orders of the Authority by the respondent-promoter.





9. Now, the issue that is before the Authority is that in case a promoter fails to comply with the order of the Authority and does not pay the amount as directed, then what will be the appropriate remedy available to the aggrieved complainant- allottee, as per the Real Estate (Regulatory and Development) Act 2016 and the Rules and Regulation made thereunder.

In this regard, the Authority observes that Real Estate Regulatory Authority Act 2016 and Haryana Real Estate (Regulation & Development) Rules, 2017 provides for a mechanism for recovery of interest or penalty or compensation and enforcement of the order etc. Section 40 of the Real Estate Regulatory Authority Act 2016, provided that if a promoter or an allottee or real estate agent fails to pay any interest or penalty or compensation imposed on him by the Regulatory Authority under the Act or the Rules and Regulation made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner, as may be prescribed, as arrears of land revenue. In the present case, the promoter has failed to refund the amount along with the interest and the complainant – allottees are aggrieved by this fact. Thus an appropriate effective remedy to recover said amount lies under Section 40 of the Real Estate



Regulatory Authority Act 2016 read with Rule 27 of Haryana Real Estate (Regulation & Development) Rules, 2017.

Even complainant, in instant complaint has admitted the fact that he has his rights intact to recover the amount by filing execution application under Section 40 of Real Estate Regulatory Authority Act 2016 and he shall exercise the same as and how provided under the Act. Nevertheless, the complainant allottees have filed the present complaint seeking the relief of imposition of penalty under section 63 of Real Estate Regulatory Authority Act 2016 on the respondent promoter for non-compliance of the orders and directions issued by the Authority vide its order dated 02.08.2023 which they intend to claim as a parallel remedy to execution of the orders under Section 40 of the RERA Act 2016. **Lastly**, the issue before the Authority is whether aggrieved allottee can file a complaint under section 31 and seek a “parallel relief of” **imposition of penalty under section 63 of the Real Estate Regulatory Authority Act 2016** in addition to recover the directed amount by way of filing an execution petition.

In respect to this issue the Authority observes that the Real Estate Regulatory Authority Act 2016, Rules and Regulations made thereunder provides for various obligations of a promoter including but not limiting to obligations towards the allottees,



association of allottees and the competent authority. With respect to the allottees the Act provides that promoter shall:-

- A. Be responsible for all obligations, responsibilities and functions under the provision of the Act.
- B. To fulfil all obligations as per the agreement for sale.

In case a promoter fails to complete or unable to give possession of an apartment, plot or building in accordance with the terms of agreement to sale or duly completed by the dates specified there in, the complainant shall be entitled to either withdraw from the project and seek refund of the amount paid with interest at such rate as may be prescribed including compensation. Provided, where the allottee does not intend to withdraw from the project, he is entitled to interest at the prescribed rate for every month of delay till the handing over of the possession.

Further, in case promoter fails to discharge “ any other obligation” imposed upon him under this Act or the Rules or Regulations or in accordance with terms of agreement to sale made there under, the allottee is entitled to seek the relief of compensation in the manner provided under the Real Estate Regulatory Authority Act 2016. However, The Real Estate Regulatory Authority Act 2016, nowhere provides that an allottee,



aggrieved by an act of non-compliance of an obligation on part of promoter, shall entitle him or her to a "relief of" imposition of penalty.

The Authority observes that when an aggrieved person, who is an allottee in the present case, files a complaint under Section 31 of the Real Estate Regulatory Authority Act, 2016, the same is for adjudication of his rights that have accrued due to the violations committed by the respondent-promoter. By filing such complaints, the complainant seeks certain relief. The Authority observes that in the present complaint the rights of the aggrieved allottee visa-vis- the respondent with regard to violation of agreement for sale had already been adjudicated and the appropriate relief as provided under the Act had been granted vide order dated 02.08.2023 in complaint no. 1077 of 2019 as mentioned above and same has also been admitted by the complainants in complaint. Appropriate remedy/recourse in case of failure to repay the refund amount by the promoter lies under Section 40 of the Real Estate Regulatory Authority Act 2016 read with Rule 27 of Haryana Real Estate (Regulation & Development) Rules, 2017. In fact Section 40(1) of the RERA Act, 2016 deals with such situations where the promoter fails to pay interest as directed by the Authority and specifically provides that "If a



promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.” Since in the present case, promoter has failed to pay

refund amount including interest as directed by the Authority vide order dated 02.08.2023, the same can be recoverable only in the manner as prescribed as an area of land revenue.

10. Authority observes that “imposition of penalty” is actually the power entrusted upon the Authority under Section 63 of the Real Estate Regulatory Authority Act 2016. The Real Estate Regulatory Authority Act 2016, provides for extensive powers and mandate to the Authority including the power to impose penalty or interest.

Section 37 of Real Estate Regulatory Authority Act 2016, provides/ gives powers to the Authority for the purpose of discharging its function to issue directions, as it consider necessary and such directions are binding on all concerns. Meaning thereby that if any directions which have been passed



against promoter/ he shall be obligated to comply with the same. Further, Section 38 of Real Estate Regulatory Authority Act 2016, which deals with the powers of Authority provides that, if a promoter contravenes an obligation casted upon him which includes the obligations to abide by/ or to comply with the directions issued by the Authority. The Authority shall have the power to” impose penalty” or “interest” against such array promoter. Furthermore, Section 63 of the Real Estate Regulatory Authority Act 2016, also specifies the quantum of penalty that may be imposed in such circumstances.

However, nowhere does the Real Estate Regulatory Authority Act 2016 or the Haryana Real Estate (Regulation & Development) Rules, 2017, provides that in case of any non- compliance of the obligation towards the allottees, allottee can seek “relief of ” imposition of penalty or interest. Where ever the Act provides for relief of refund of amount with interest or interest including compensation it cast “**liability**” on the promoter and entitlement in favour of the allottee to seek the same.

11. A penalty imposed on the respondent cannot be considered as a "relief" for an aggrieved person i.e the complainant in this case. Penalty is imposed on the wrongdoer, meant to deter future



actions, while relief aims to provide compensation or redress to the person who suffered harm. Relief is a legal remedy that aims to restore the aggrieved person to their previous position, such as compensation for damages, protection orders, or injunctions.

12. Therefore, the Authority is of the considered view that “ **exercise of its own powers by the Authority under the Act cannot be sought as a “relief” by an aggrieved person/ allottee**”. A person may be aggrieved by contravention or violation of his rights and can seek relief to compensate itself in the best possible manner. The Act effectively deals with such violations of rights of the allottees and also provide adequate relief to the aggrieved complainant. However, by no stretch of imagination, it can be interpreted that the Real Estate Regulatory Authority Act 2016, which is a social piece of legislation and aimed at providing effective remedy and mechanism to compensate the allottee for violation of their rights, intend to provide for the relief of “**exercising of its powers by the Authority**” to the allottee for violation of their rights.

It is a general law that whatever is the entitlement can be granted as a relief. Here is no specific provision under the Act that provides that an allottee is aggrieved by the fact that the respondent-promoter fails to make payment of refund/



interest/compensation within the timeline as prescribed under the Rules, he shall be entitled to a “relief of imposition of penalty” on the promoter.

13. The Authority is conscious of its mandate and powers as entrusted under the Act and have been exercising them since its establishment in the interest of justice. It has to be understood that there is a wide difference between a relief that can be sought and the powers that can be exercised. In this instant case, the complaint of allottees regarding violation committed on the part of respondent have been adjudicated and relief had been granted vide order dated 02.08.2023.
14. In the present case, the interest of the complainant had been safeguard and entitled relief of refund along with interest had already been granted vide order dated 02.08.2023 in complaint no. 1077 of 2019. The interest of allottees further stand safeguard under the mechanism of recovery of such amount as provided in the Act. The complainant in the present complaint has failed to make a case/ convince the Authority as to how their interest i.e. recovery of refund amount along with interest would be protected by imposition of penalty on the respondent. In fact from the perusal of the content of the complaint, it appears that the complaint has not been filed by complainant seeking protection of





his rights, rather it hints that complainant is more intent to ensure that respondent is penalized.

15. Thus, the relief as claimed in the instant complaint i.e. “imposition of penalty” is not tenable. For the above stated reasons, present complaint is **disposed of as dismissed**.
16. File be consigned to record room after uploading of this order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
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DR. GEETA RATHEE SINGH  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]

  
.....  
PARNEET S SACHDEV  
[CHAIRMAN]