

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.548 of 2023

Date of Decision: January 15, 2025

Yogesh Kochar, House No. C-52, Sushant Lok-1, Block C,
Sushant Apartment Gurgaon

Appellant.

Versus

1. Vatika Ltd., 4th and 7th Floor, Vatika Triangle, Mehrauli-
Gurgaon Road, Sushant Lok Phase-1 Gurgaon-122002

ii Vatika Seven Element Private Limited, 224A, SF Devika
Towers, 6 Nehru Place, New Delhi-110019

Respondents

Argued by: Mr.Yogesh Kochar appellant in person.

Mr. Kamaljeet Dahiya, Advocate for the
respondents.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

ORDER:

RAJAN GUPTA, CHAIRMAN

Appellant (hereinafter described as ‘the allottee’) is
aggrieved against the order dated 12.08.2022 passed by the
Authority¹, operative part whereof reads as under:

*“ i. The respondent is directed to return the amount of
Rs.46,29,519/- paid by the complainant/allottee after
forfeit of earnest money which shall not exceed the
10% of the basic sale price of the said unit i.e.
Rs.1,38,18,000/- as per statement of account and*

¹ Haryana Real Estate Regulatory Authority, Gurugram

shall return the balance amount to the complainant along with interest at prescribed rate from the date of cancellation till date of its realization.

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

2. The factual matrix of the case is that the allottee booked a unit in the project floated by the respondent (hereinafter described as ‘the promoter’) in Sector 89A, Gurgaon, total consideration for which was Rs.1,54,50,934/-. Out of this, the allottee remitted an amount of Rs.46,29,519/-. On 14.04.2015, BBA² was executed between the parties. As the allottee felt that there had been inordinate delay in completion of the project, he wrote to the promoter to refund amount of Rs.46,00,000/- to him. As the promoter failed to adhere to his request, he preferred instant complaint before the Authority in the year 2021.

3. During the course of arguments, it was contended before this Bench that the promoter was not entitled to deduct 10% of the basic sale price from the amount to be refunded by the promoter.

4. The stand of the promoter is that the allottee failed to make payments from very inception in accordance with the terms and conditions of the agreement. Various letters/reminders as well as notice for termination were sent to the allottee to make the outstanding payment to which he did not respond.

² Builder Buyer Agreement

5. We have heard the appellant in person, learned counsel for the promoter and given careful thought to the facts of the case. It is evident that the unit measuring 1280.26 square feet in Sector 89A, Gurugram was allotted to the allottee in the project. He made payments thereafter on various dates. It appears that reminders dated 19.09.2019 and 03.09.2020 were issued by the promoter to the allottee for payment of the balance amount. Vide letter dated 11.11.2020, the promoter cancelled the unit allotted to the allottee and retained the amount beyond 10% of the basic sale price.

6. A perusal of the record shows that that promoter, namely, Vatika Limited had not been granted any Occupation Certificate till the date of filing of the complaint. Despite the fact that the allotment of the unit was made in the year 2013 and the agreement was entered on 14.04.2015, the construction of the project appears to have been unduly delayed. The due date of possession was 14.04.2019. By that time, the allottee had already remitted a substantial amount to the promoter but not much progress appears to have been made on the project. The promoter sought to justify the delay on the ground of force majeure conditions, certain directions issued by NGT and delay occasioned due to laying of gas pipeline through the land of HUDA. However, all these contentions cannot justify the inordinate delay in development of the project and the allottee cannot be made to suffer on account of this. There is nothing on record to show that Occupation Certificate was ever granted in respect of the project in question. As the fault does not lie with the allottee,

deduction of 10% of the amount of basic sale price of the unit is not justified.

7. The appeal is, thus, allowed. The entire amount due to the allottee be refunded to him from the date of order passed by the Authority till realization.

8. Copy of the order be communicated to the parties/Authority for information.

9. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

January 15, 2025.
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