

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

Complaint no. : 1997 of 2024
Complaint filed on : 15.05.2024
Date of order : 14.02.2025

Dinesh Pathak

R/o - Kh No. 516/1 and 516/2, UGF-1, Shakti Enclave,
Panchvati Apartment, Burari, North Delhi-110084

Complainant

Versus

M/s. Vatika Limited

Office:- Vatika triangle, 4th floor, Sushant Lok, Phase-1,
Block-A, Mehrauli Gurugram Road, Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Arun Kumar, (Advocate)

Sh. Anurag Mishra, (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant 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 as provided under the provision of the Act or the Rules and regulations made there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Turning Point" by Vatika Express City at Village Harsaru, Sector-88B, Gurugram.
2.	Project area	18.80 Acres
3.	Nature of project	Commercial
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 Valid upto 25.10.2017
5.	Rera registered/ not registered and validity status	Registered Vide no. 213 of 2017 dated 15.09.2017, Valid upto 15.03.2025 (Promoter has made an application for deregistration of project)
6.	Unit no.	HSG-026, West End-1, 705
7.	Date of booking	21.02.2019 [as alleged by complainant at page 10 of complaint]
8.	Date of allotment	Not available
9.	Agreement for sale/ Builder Buyer Agreement	Not executed Unexecuted draft stamp paper dated 27.12.2018 (As alleged by complainant at page 5 of complaint)
10.	Possession clause	Not available
11.	Due date of possession	21.08.2022 (<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. As no builder buyer</i>

		<p>agreement has been executed, 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)</p> <p>In view of the above-mentioned reasoning, the due date for handing over the possession of the unit comes out to be 21.08.2022</p>
12.	Total sale consideration	<p>Rs.87,86,280/-</p> <p>[As per Tax Invoice dt.26.02.2019 at page 13 of complaint]</p>
13.	Amount paid by the complainants	<p>Rs.9,85,000/-</p> <p>[Rs.5,51,000/- as per bank statement dt.21.07.2020 at page 56 & 58 of complaint + Rs.4,34,000/- as per bank statement dt.21.07.2020 at page 60 of complaint]</p>
14.	Occupation certificate /Completion certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- i. That on 21.02.2019, complainant had booked one 3 BHK apartment, bearing number HSG-026, West End-1, 705, under the subvention scheme in the project Vatika Turning Point, situated at Sector-88B, Dwarka Expressway, Gurugram, Haryana of the respondent for a total sale consideration of Rs.87,86,280/- and have paid a booking amount of Rs. 51,000/- to the respondent.
 - ii. That the complainant further made a payment of Rs.5,00,000/- through RTGS to the respondent on 16.03.2019. The complainant further made a payment of Rs.4,34,000/- through RTGS to the respondent on 26.04.2019.

- iii. That the respondent promised to give possession of subject apartment within 3 years from the date of builder buyer agreement. However, the respondent never executed a builder buyer agreement with the complainant and gave lame excuses all the time to execute the Builder Buyer Agreement. The complainant visited the said project site but was in shock to find that there was no construction.
- iv. Further, the complainant approached the respondent several times at their office to request refund of the paid-up amount of Rs.9,85,000/, but the respondent has never provided satisfactory answers regarding when the complainant will receive refund of the said paid-up amount.
- v. That the vide order in case no. CR/4655/2022 dated 28.10.2022, case titled as "Ashish Kumar Dhiman and Anr. V. Vatika Limited", the Ld. Authority observed that the Respondent has filed a proposal for de-registration of project Vatika Turning Point on 30.09.2022 and it is evident that the project is abandoned. In the said case, this Ld. Authority has passed an order in favour of multiple allottees in a single order.
- vi. That the complainant is law abiding citizens of India and have suffered huge monetary losses, mental agony, trauma, and harassment due to irresponsible, unethical business practices towards its customers by the respondent. That after several requests, repeated reminders and correspondences from the complainant, the respondent did not adhere to respond, therefore, the complainant is left with no other option except to approach this Authority.
- vii. That the cause of action arose on 21.02.2022 when the complainant did not receive possession of the said apartment from the respondent. The cause of action is still continuing as the respondent has failed to refund the paid-up amount to the complainant.

C. Relief sought by the complainants:

4. The complainant has sought the relief as mentioned below:
 - i. Direct the respondent to refund the paid-up amount of Rs.9,85,000/- with 18 % p.a. interest to the complainant.
 - ii. Direct to the respondent to pay a sum of Rs.5, 00,000/- towards compensation for mental torture and agony from the hands of the complainant.
 - iii. Direct to the respondent to pay a sum of Rs.1,00,000/- towards the cost of litigation.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
 - i. That the complaint is liable to be dismissed as the complainant has come with unclean hands and has hidden facts with an attempt to mislead this Authority. The complainant has tried to mislead this Authority by false and frivolous averments.
 - ii. That vide 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 to construct and develop sector roads published in newspaper Dainik Jagran on 30.12.2014. However, it is pertinent to state that the even though the respondent has received license of the said land, however the land was not acquired by the Authority/Government for the purpose of development and utilization of sector roads and therefore there has been delay on the part of the state government for acquiring the land for more than 3 years i.e., till 23.12.2016.
 - iii. That admittedly, complainant booked a residential unit bearing no. HSG-026, West End-1, 705 in the project namely Vatika Turning Point.
 - iv. It is stated that the delay, if any, is on account of reasons beyond the

control of the respondent, therefore, there is no breach whatsoever on the part of respondent. In any event, it is stated that the time stipulated for completion under the allotment / agreement is not the essence and respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to respondent. On the perusal of below submissions, it would be clear that the complaint of the complainant with regard to delay in completion of construction of the possession is misconceived particularly for the following reasons:

- a) It is submitted that the respondent has indefatigably strived and made best efforts possible to ensure that its endeavor to complete the construction is achieved. Had it not been for the shortage of funds on account of huge defaults by the buyers in the project including the complainants, the respondent would most certainly have succeeded in its endeavor.
- b) The complainant has failed to show in its complaint that the alleged delay was on account of willful delay in construction of the apartment unit which is solely attributable to the respondent herein.
- c) The factors which materially and adversely affected the project are being set out herein under:
 - It may be noted that most of the buyers in the said Group Housing Project has booked their Residential units under the 'construction linked plan' and has severally defaulted in making timely payment of instalments to the respondent. The pace of construction and timely delivery of units in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. If the buyers of Units in such projects delay or ignore to make timely payments of demands raised then the inevitable consequence is that the pace of construction activities gets affected and it becomes difficult to complete the project within the stipulated time.
 - That beside the major default in non-payment of instalments by



majority of buyers, the demonetization of currency notes of Rs.500 and Rs.1000 announced by Government of India vide its executive order dated November 8, 2016 has also affected the pace of the development of the project. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wage's labourers. 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/ various media. Capping on withdrawal and non-availability of adequate funds with the banks had further escalated this problem many folds.

- 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.
- 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 be developed & constructed by the NHAI.
- 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.
- 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.
- Vatika Limited has filed another application on 16.08.2021 for migration of 18.80 acres 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.
- No motorable access to site as the 26 acres land parcel adjoining the

project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W.

- Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
- The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2016 to December 2019. These partial and unplanned bans have also become a factor for delay in construction of the project. In addition to the same the government has imposed various restrictions on the construction sites as follows:
 - 1) No construction activities between 6 p.m. till 6 a.m. (174 days)
 - 2) Stop the usage of diesel generator sets (128 days).
 - 3) Stop entry of Truck Traffic into Delhi.
 - 4) Close brick kilns, Hot Mix plants and stone crushers.
 - 5) Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects.
- The world at large has witnessed COVID-19 pandemic and the Government of India imposed a lockdown on all commercial activities in the light of the ongoing pandemic situation from 22nd March 2020. Due to uncertainty and fearing sickness and the epidemic, most of the construction workers left for their home towns. Although our contractors received the permission to commence work on site during the Month of May, the non-availability of manpower impacted the productivity very severely. The above has resulted in delays in construction of the project, for reasons that essentially lie beyond our control. Further, to increase the misery of the respondent, the Laborers started migration towards their hometown. Post lockdown, the labourers have not returned full-fledged till date. Surge of covid second wave and apprehension of Covid third wave also affected the return of labourers to work sites.



- Declaration of Gurgaon as notified area for the purpose of ground water & restrictions imposed by the state government on its extraction for construction purposes.
- Due to the above-mentioned reasons the respondent had no option left but to make a request for withdrawal of application for grant of license for mix land use under (TOD) policy due to change in planning. 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/-.
- v. Further, 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.
- vi. That due to the said loss suffered by the respondent in the said project, the respondent had no other option but to apply for de-registration of the said project.
- vii. That the intention of the respondent is bonafide and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project as the project could not be delivered due to various reasons beyond the control of the respondent as stated above.
- viii. All the averments made in the complaint were denied in toto.
- 7. Copies of all the documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

- 8. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

- 9. 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

10. 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) 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;

11. 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.
12. 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."

13. 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.

F. Findings on the relief sought by the complainants.

F.I. Direct the respondent to refund the paid-up amount of Rs.9,85,000/- with 18 % p.a. interest to the complainants.

14. 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 allottees(s) on various dates.
15. In present case, the booking of the unit in the said project was made by the complainant on 21.02.2019. However, no buyer's agreement was

executed inter se parties. The due date of handing over of possession is calculated as per *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.

16. In the present case, the due date is calculated from 21.02.2019 i.e., the date of booking. Thus, three years from 21.02.2019 comes out to be 21.02.2022. **Further, 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 21.02.2022 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 **21.08.2022.**
17. Though, the due date for completion of the project and offer of possession of the allotted unit comes out to be 21.08.2022, 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. The authority decided to appoint Shri. Ramesh Kumar DSP (Retd.) as an enquiry officer to enquire into the affairs of the promoter regarding the project and the enquiry officer submitted the report on 18.10.2022 wherein it was stated that the project has been abandoned by the promoter. Even a letter dated 30.09.2022 was 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 Id. Authority in the present matter and to decide the same in the manner as the Id. 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.

18. 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 the respondent/promoter 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:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (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:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
(Emphasis supplied)

19. 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, the complainant is entitled for refund of the paid-up amount i.e., Rs.9,85,000/- from the respondent/promoter 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 Rules, 2017 from the date of deposit till its realization within the timelines provided in rule 16 of the Haryana Rules, 2017, *ibid.*

F.II Direct to the respondent to pay a sum of Rs.5, 00,000/- towards compensation for mental torture and agony from the hands of the complainants.

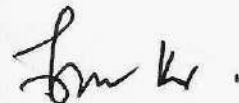
F.III Direct to the respondent to pay a sum of Rs. 1,00,000/- towards the cost of litigation.

20. The complainant in the aforesaid reliefs bearing no. F.II and F.III are also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 of the Act and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the authority:

21. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent is directed to refund the paid-up amount of Rs.9,85,000/- received by it from the complainant against the subject unit along with prescribed rate of interest @11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of 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.
22. Complaint stands disposed of.
23. File be consigned to registry.

Dated:14.02.2025


(Arun Kumar)
Chairman

HAREERA
Haryana Real Estate Regulatory
Authority, Gurugram
GURUGRAM