

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

Complaint no.: 5858 of 2023
Date of filing: 10.01.2024
Order pronounced on: 16.04.2025

Jyoti Swain and Sambit Swain

Both R/o: - Flat no. 156, EPDP Society, Plot
no. 19, Sector 4, Dwarka, Southwest Delhi,
New Delhi- 110078.

Complainants

Versus

M/s Vatika Limited

Regd. Office at: - Vatika Triangle, 4th floor,
Sushant Lok- 1, Block-A, Mehrauli-
Gurgaon Road, Gurugram- 122002.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Surbhi Garg Bhardwaj (Advocate)
Mr. Venket Rao (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant-allottees 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 provision 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:

Sr.No.	Particulars	Details
1.	Project name and location	"Turning Point", Sector- 88B, Village Harsaru, Gurugram, Haryana
2.	Project area	18.80 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 valid upto 25.10.2017
5.	Name of licensee	Vaibhav Warehousing Pvt. Ltd. And 9 others
6.	RERA registration details	Registered Vide registration no. 213 of 2017 dated 15.09.2017 valid up to 15.03.2025 for area admeasuring 93588.71 sq. mtrs.
7.	Unit no.	2801, West End- 1 along with one parking at basement (page 22 of complaint)
8.	Unit area admeasuring	684.44 sq. ft. (Carpet area) (page 22 of complaint)
9.	Date of execution of builder buyer agreement	17.05.2019 (page 21 of complaint)
10.	Possession clause	7.1 A) Schedule for possession of the said apartment subject to timely payment of amounts due by the Allottee to the Promoter as per agreed payment plan/schedule, as given in Schedule D of the Agreement. The Promoter assures to hand over possession of the apartment along with parking as per agreed terms and conditions unless there is delay due to "force majeure", Court/Tribunal/NGT Orders, Government Policy/guidelines, decisions affecting the regular development of the real estate project. If the completion of the project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to extension of time for delivery of possession of the Apartment....." (Emphasis supplied) (page 28 of complaint)

11.	Due date of Possession	17.11.2022 (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. 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) In view of the above-mentioned reasoning, the due date for handing over the possession of the unit comes out to be 17.11.2022.
12.	Basic sale consideration	Rs.66,37,500 /- (as per SOA dated 14.02.2024 at page 15 of reply)
13.	Amount paid by the complainant	Rs.28,37,587/- (as per SOA dated 14.02.2024 at page 15 of reply)
14.	Occupation Certificate	Not obtained
15.	Offer of Possession	Not offered

B. Facts of the complaint.

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

- I. That around 2018, the respondent advertised about its new project namely 'Vatika Turning Point' located in Sector-88B, District Gurgaon. The respondent painted a rosy picture of the project in its advertisements making tall claims and representing that the project aims at providing a residential community where homes have been created to fit one's budget without compromising on facilities and amenities.
- II. That the complainants visited the respondent's office wherein they were assured by the respondent that they would be provided a unit in the said

project at an alluring rate and the same would be provided as per the subvention scheme according to which no instalment has to be paid till possession is handed over. Accordingly, deposing faith in the assurances and representations of the respondent, the complainants agreed to book a unit in the said project.

- III. That thereafter, on 31.01.2019, the complainants booked an apartment bearing no. WEST END-1-2801 having carpet area of 684.44 sq. ft. in tower/building no. HSG-026-West End-1, for a total consideration of Rs. 67,50,000/- by paying an amount of Rs. 2,00,000/- vide instrument bearing no. 008991 dated 31.01.2019 towards the booking.
- IV. That prior to said booking, the complainants had clearly informed the respondent that they do not have the requisite finances in order to pay the huge amount of Rs.67,50,000/- as on the date of booking, to which the respondent had assured to provide the unit under subvention scheme with finance/loan facility from a financial institution under which the complainants were required to only pay some initial booking amount out of the total sale consideration and rest of the amount was to be paid after taking possession of the said unit. Accordingly, home loan amounting to Rs. 61,18,471/- was sanctioned by Piramal Capital and Housing Finance.
- V. That thereafter, the complainants received an invoice seeking payment of instalment along with a letter enclosing copy of the builder buyer agreement to be signed and sent back. Accordingly, the complainants signed the said agreement and sent it back to the respondent. Meanwhile, the complainants kept making payment in accordance with the demands raised by the respondent.
- VI. That subsequently, an agreement for sale dated 17.05.2019 was executed between the parties. The respondent omitted to mention any specific date

of handover of possession and upon pointing out, assured that the agreement is in accordance with the Act, 2016 and the unit would be handed over within 4 years, i.e. by 2022.

- VII. That till September 2019, the complainants had made a payment of Rs.28,37,587/- as against the total sale consideration of Rs.67,50,000/-, as and when demanded by the respondent. Around December 2019, the complainants visited the respondent's office in order to seek the processing status of subvention scheme and rental benefit offered to them. However, the representatives of the respondent gave false assurances that the payment scheme and rental benefit shall be processed soon.
- VIII. That post that, there was no communication from the respondent. Accordingly, in January' 2020, the complainants again visited the respondent's office in order to know about the scheme status and to have a look at the construction status at the project site. However, the project was still at excavation stage despite lapse of 1.5 years from the date of booking, they were informed that the respondent is no more offering subvention scheme and rental benefit scheme thereby violating the promises made earlier. Rather, the payment plan applicable to the unit in question has been revised to Instalment linked plan.
- IX. That it is pertinent to mention here that Schedule-D of the agreement for sale visibly specifies the payment plan for the unit in question to be subvention payment plan. While the Statement of account evidently shows that the payment plan has been revised to Instalment/Milestone linked plan, thereby establishing the fact that the respondent acted against the representations and assurances made by him to the complainants.
- X. That subsequently, the complainants approached the respondent to either revive the subvention scheme with rental benefit as promised at the time of

booking or to return back their money deposited towards the booking of the unit in question as the complainants were not in a financial position to continue in the project without subvention scheme, to which the respondent said that the payment plan cannot be changed and the complainants will have to continue with the revised payment plan and in the event of cancellation, entire amount paid will be forfeited as earnest money.

- XI. That thereafter, in February' 2020, the complainants again visited the site to see the construction status of the project but were stunned to see that no construction was going on at the project site as per the promises made by the respondent. After seeing the status of construction, the complainants felt duped as the respondent had taken the advance amount towards booking from the complainants in the garb of providing subvention scheme to the complainants.
- XII. That later, due to outbreak of COVID-19, the complainants could not visit the site or approach the respondent until mid-2021, when they visited the project site to look at the construction status and were shocked to know that the project had been abandoned by the respondent. To this, the complainants visited the respondent's office to seek a refund of the amount paid by them, but to no avail as the respondent assured that they will offer subvention scheme as they were in talks with financial institutions and misrepresented that the project had not been abandoned and was stalled due to COVID-19 as well as NHAI highway and road work and the construction would be resumed soon.
- XIII. That thereafter, to the utter shock of the complainants, they read regarding various judgments of the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram regarding the project in question being abandoned

and refunds being allowed to various buyers of said project. Upon further inquiry, the complainants came to know that the license bearing no. 91 of 2013 for the project in question had expired in 2017 itself and was never renewed thereafter.

- XIV. That the respondent himself acted against the representations made by him and has been wrongfully retaining the money despite protest by the complainants and demand to either act in accordance with representations made and promised at the time of booking or to return the money. Further, Clause 7.4 of the agreement which talks about earnest money clearly lays down that earnest money would constitute 10% of total sales price, where construction of the block/building in question has been raised upto 50% or 25% where construction has been raised over 50%. It is pertinent to mention here that the construction of the unit in question is nowhere nearing 50 or 25%. Accordingly, in any scenario earnest money cannot be forfeited.
- XV. That the complainants had paid a total sum of Rs.28,37,587/- towards the aforesaid residential flat in the project from January 2019 till date as and when demanded by the respondent against the total sale consideration of Rs.67,50,000/-. The complainants despite having requested several times neither cancelled the allotment of the said unit nor refunded back the entire paid amount of Rs.28,37,587/- to the complainants despite project being abandoned.
- XVI. That the aforesaid chain of events clearly highlight the ill will and misconduct of the respondent who defrauded the complainants of their hard-earned money and cheated them by causing wrongful loss to them. The respondent played fraud upon the complainants from day one and befooled them despite knowing that the license had expired in 2017 and

was never renewed thereafter, and the respondent had no intention to renew that. Had the respondent been virtuous on their part, at least some construction work would have been carried upon the site.

- XVII. That the present complaint has been filed in order to seek refund of the principal amount paid by the complainants along with interest at the prescribed rate as per the RERA, 2016 read with HARERA Rules, 2017 from the date of receipt of payment till the date of refund, along with compensation for the mental stress and torture as well as financial loss suffered by the complainants due to the fraudulent acts of the respondent.
- XVIII. That as per section 11 (4) of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to abide by the terms and agreement of the sale. That the buyer's agreement clearly specifies that time is of essence for the buyer, similarly, it is of essence for the developer as well.
- XIX. That as per section 18 of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to refund back the amount paid by the allottees in case of failure in handing over of such possession as per the terms and agreement of the sale. That, accordingly, the complainants are entitled to below mentioned reliefs in accordance with the Real Estate (Regulation and Development) Act, 2016 read with Haryana Real Estate (Regulation and Development) Rules, 2017. The complainants also reserve their right to file a separate complaint seeking compensation from the respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Return the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate from the date of payment till the date of actual receipt.
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.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:

- a. That in the year 2019, the complainants learnt about the project 'Vatika Turning Point' situated at Sector 88B, Gurgaon, Haryana. The complainant repeatedly approached the respondent to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- b. That after having keen interest in the project launched by the respondent, the complainants upon its own examination and investigation desired to purchase a unit
- c. That the respondent on 12.06.2019, vide Allotment Letter, allotted Unit no. 2801, West End-1, admeasuring 1125 sq. ft. with a condition that the allotment is tentative and may be altered due to alteration of Unit numbering scheme.
- d. That the builder buyer agreement dated 17.05.2019 was executed between the parties for a basic sale consideration of Rs.67,50,000/-, The complainants herein have paid an amount of Rs.28,37,587/- against the sale consideration of the unit.
- e. That the respondent herein have paid an amount of Rs.7,03,876/- as Pre-EMI on behalf of the complainant against the loan taken by the complainants.
- f. That as per clause 5 of the agreement, the respondent was under obligation to handover the possession to the complainants as per the timelines as disclosed at the time of registration of the project. As per the project registration no. 213 of 2017, the respondent was to complete the project within 90 months from the date of grant of RERA registration i.e.,

15.09.2017 as per which the due date of possession comes out to be 15.03.2025.

g. That following were the reasons that halted the construction and development of the project as under:

Sr. No.	Particulars
1.	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 of construct and develop sector roads published in newspaper Dainik Jagran on 30.12.2014.
2.	Award No.56 on dated 23.12.2016 passed by the Land Acquisition Collector Sh. Kulbir Singh Dhaka, Urban Estates, Gurugram, Haryana for purpose of development and utilization of land for sector roads in sectors 88A,88B,89A,89B,95A,95B & 99A. (Important Note: We have got license no.91 on 26.10.2013 but till 23.12.2016 land was not acquired by the authority/Govt for purposes of development & utilization of sector roads. Delay for the acquiring process was 3 years two months)
3.	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
4.	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 develop & construct by the NHAI
5.	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.
6.	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.
7.	Vatika Limited has filed an 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
8.	Vatika Limited has made a request for withdrawal of application for grant of license for mix land use under (TOD) policy on 03.03.2022 due to change in planning.

9.	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/-
10.	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.
11.	No motorable access to site as the 26acre land parcel adjoining the project was taken on lease by L&T, the appointed contractor for Dwarka Expressway & NH 352W
12.	Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
13.	Various Orders passed by the Hon'ble Supreme Court, NGT, Environment Pollution Control Authority regarding ban on construction activities every year for a period of 50-75days in the best months for construction
14.	Due to outbreak of Covid 19 pandemic, there was a complete lockdown on two instances, 1. In 2020 GOI nearly for 6 months which was extended for another 3 months. 2. In 2021, for two months at the outbreak of Delta Virus

- h. That the project could not be completed and developed on time due to various hindrance such as government notifications from time to time and force majeure conditions, breakdown of Covid-19 pandemic and other such reasons, which miserably affected the construction and development of the project as per the proposed plans and layout plans, which were unavoidable and beyond the control of the respondent.
- i. That Haryana RERA, Gurugram granted registration certificate bearing no.213 of 2017 dated 15.9.2017 for a period of 90 days, i.e., till 15.03.2025. The respondent upon failure to continue the development work of the project as per the proposed plan and layout plan due to reasons stated above, filed a proposal bearing "In Re: Regd. No. 213 of 2017 dated 15.09.2017, for De- Registration of the project Turning Point" and settlement mechanism with existing allottees before the registry of this Authority on 30.09.2022.
- j. The complainants have made false and frivolous allegations against the respondent, suppressing facts and raising baseless, vague, and incorrect

grounds. None of the reliefs prayed for by the complainants are sustainable before this Hon'ble Authority in the interest of justice.

7. All other averments made in the complaint were denied in toto.
8. 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 on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

9. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.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.

E.II Subject-matter Jurisdiction:

11. 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)(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 complainant 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 case 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 objection raised by the respondent.

F.I Objection regarding force majeure conditions:

15. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.
16. Further, the authority has gone through the possession clause of the agreement and observed that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of ***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.
17. In the present case, the due date comes out to be 17.05.2022. ***That 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 complainants is 17.05.2022 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 **17.11.2022**. Moreover, the circumstances detailed earlier did not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to refund the entire amount of Rs.37,47,551/- paid by the complainant to the respondent along with interest.

18. 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 persons on vide dates and that too for various sale considerations. Though, the due date for completion of the project and offer of possession of the allotted unit comes out to be 17.11.2022, 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. Thirdly, the allotment was made under subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

19. During the proceedings held on 12.08.2022, the authority observed & directed as under:

- a. Interim RERA Panchkula issued a registration certificate for the above project being developed by M/s Vatika Limited in the form REP-III prescribed in the Haryana Real Estate (Regulation and Development) Rules, 2017 vide registration no. 213 of 2017 on 15.09.2017 valid up to 15.09.2025 under section 5 of the Act *ibid*. But in spite of lapse of more than 4 years since grant of registration, It was alleged by the counsel of complainant that there is no physical work progress at site except for some digging work and appears to be abandoned project. No quarterly progress report is being filed by the promoter giving the status of work progress required under section 11 of the Act, 2016.
- b. The license no. 91 of 2013 granted by DTCP has expired on 26.10.2017 and the same is not yet renewed/revived, while BBA has been signed declaring the validity of license. It becomes amply clear that the promoter is not only defaulting/omitting in discharge of its obligations under the Real Estate (Regulation and Development) Act, 2016 but at the same time, violating the provisions of the Haryana Development and Regulation of Urban Area, Act 1975 also.
- c. The authority directed the respondent to furnish the details of bank account along with the statements of all the accounts associated with these promoters.
- d. In order to safeguard the interest of the allottees and keeping in view the above facts, the authority exercising its power under section 36 of the Act, directs the promoter's M/S Vatika limited to stop operations from bank accounts of the above project namely "Turning Point".
- e. Therefore, the banks are directed to freeze the accounts associated with the above-mentioned promoters in order to restrict the promoter from further withdrawal from the accounts till further order.

20. It was also observed that work at the site is standstill for many years. So, 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. It was also directed that the enquiry officer shall report about the compliance of the obligations by the promoter with regard the project and more specifically

having regard to 70% of the total amount collected from the allottee(s) of the project minus the proportionate land cost and construction cost whether deposited in the separate RERA account as per the requirements of the Act of 2016 and Rules 2017. He was further directed to submit a report on the above-mentioned issues besides giving a direction to the promoter to make available books of accounts and other relevant documents required for enquiry to the enquiry officer in the office of the authority. The company secretary and the chief financial officer as well as the officer responsible for day-to-day affairs of the project were also directed to appear before the enquiry officer. They were further directed to bring along with them the record of allotment and status of the project.

21. In pursuance to above-mentioned directions passed by the authority and conveyed to the promoter, the enquiry officer submitted a report on 18.10.2022. It is evident from a perusal of the report that there is no construction of the project except some excavation work and pucca labour quarters built at the site. Some raw material such as steel, dust, other material and a diesel set were lying there. It was also submitted that despite issuance of a number of notices w.e.f. 17.08.2022 to 18.10.2022 to Mr. Surender Singh director of the project, none turned up to join the enquiry and file the requisite information as directed by the authority. Thus, it shows that despite specific directions of the authority as well as of the enquiry officer, the promoter failed to place on record the requisite information as directed vide its order dated 12.08.2022. So, it shows that the project has been abandoned by the promoter. Even a letter dated 30.09.2022, 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.

22. 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 he 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:

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

(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."

23. 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 complainants are entitled for refund of the paid-up amount from the respondent 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 Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of deposit till its realization within the timelines provided in Rule 16 of the Haryana Rules, 2017, *ibid*.
24. Further, during the course of proceedings dated 16.04.2025, the respondent submitted that they had made some payment of Pre-EMI to Piramal Capital and Housing Finance Limited on behalf of the complainant-allottees. Hence, the Authority is of the view if the respondent has paid any pre-EMIs on behalf of the complainants to the financial institution, same shall be adjusted/deducted from the refundable amount.

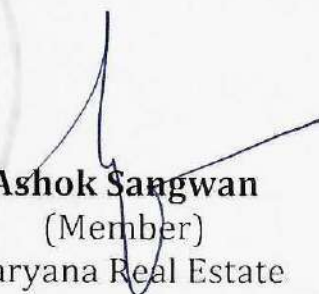
H. Directions of the authority

25. 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 respondent is directed to refund the paid-up amount i.e., Rs.28,37,587/- received by it from the complainants against the allotted unit along with interest at the prescribed rate of 11.10% per annum from the date of each deposit till its realization.
 - ii. The pre-EMIs paid by the respondent to the financial institution on behalf of the complainants shall be adjusted/deducted from the refundable amount.
 - 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.
26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 16.04.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM