

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint No.2478-2023

Date of Decision: 30.04.2025

Sanjay Asri and Sandhya Asri, both residents of K-10/48, 1st Floor, DLF Phase-II, Gurugram, Haryana-122001.

.....Complainants

Versus

M/s. Vatika Limited, having its office at 4th Floor, Vatika Triangle, Mehrauli-Gurgaon Road, Sushant Lok Phase-I, Block A, Gurugram-122002.

.....Respondent

APPEARANCE

For Complainant: Mr. Garvit Gupta, Advocate

For Respondent Mr. Dhruv Dutt Sharma, Advocate

ORDER

1. This is a complaint, filed by Sanjay Asri and Sandhya Asri (allottees) under section 31 read with section 71 and 72 of the Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) and Rule 29

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of the Haryana Real Estate (Regulation and Development) Rules 2017 against M/s. Vatika Limited (promoter).

2. According to complainants, they are simple, law abiding and peace-loving persons and have throughout acted as per the terms of allotment, rules and regulations and the provisions laid down by law.

3. It (respondent) is an esteemed and well-known real estate developer. Same (respondent) advertised sale of flats in a building/project namely "Tranquil Heights", ~~for booking of residential project~~. They (complainants) visited the sales gallery and consulted with marketing staff of respondent. The staff painted a very rosy picture of the project and made several representations claiming world class facilities to be provided by the respondent in that project. They were assured timely delivery of the unit. Believing those promises, they (complainants) signed expression of interest on 16.06.2014, copy of which is Annexure C1. The unit was booked for Basic Sale Price + PLC of INR 1,82,74,400/-, which with the inclusion of extra charges of EDC/IDC/IFMS/escalation charges amounting to Rs.

1,91,17,100/-. Despite the request, respondent did not execute builder buyer agreement in time. It was executed ultimately on 10.08.2015. The terms of said agreement were wholly one sided, arbitrary and legally untenable which favoured the respondent.

4. That the respondent was obliged to complete and deliver the possession of their unit up-to 10.08.2019, however, same has miserably failed to do so. Constrained in this manner they (complainants) approached the Authority seeking refund of amount by filing a complaint bearing no. 2046/2021. The complaint was allowed by the Authority vide order dated 10.01.2023 and the respondent was directed to refund entire amount paid by them along with interest @ 10.60% p.a. as prescribed under Rule 15 of the Rules of 2017 from the date of each payment till the actual date of refund of amount.

5. The respondent inspite of using money paid by them in construction of project/unit, misused and converted the same to its own use. In this way, respondent cheated and defrauded them.

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6. Their children got admission on scholarship ⁱⁿ ~~from~~ DePaul University. They were not able to pay fee of their children. They were forced to take friendly loan of Rs.20 lacs for education of their children. Contending all this, complainants prayed for compensation as follows: -

1. To direct the respondent to make payment of Rs. 50.00 lacs as compensation towards mental harassment, trauma and distress caused to the complainants. Moreover, the said amount is also just on account of loan availed by the complainants to sponsor the educational expenses of the children of the complainants.
2. To direct the respondent to make payment of Rs. 10.00 lacs towards the compensation amount for misappropriate gain as per Section 72 (a) of the Real Estate Regulation & Development) Act, 2016.
3. To direct the respondent to make payment of Rs. 1,25,000/- towards the litigation cost.
4. To grant any other reliefs as may deem fit and proper in the facts and circumstances of the present case.

7. The respondent contested the complaint by filing a written reply. It is averred by the respondent: -

8. ~~It is submitted~~ ^{It is} that the complainants ^{had} approached the respondent through a third-party broker namely Investors Clinic, for the purpose of investment and

in furtherance to such interest expressed by the complainants, the form of expression of interest was executed by the complainants. It is also submitted that prior to approaching the respondent, the complainants have made extensive and independent enquiries regarding the project and only after being fully satisfied with regard to all aspects of the project including, but not limited to the capacity/capability of the respondent to undertake conceptualization, promotion, development and construction of the same, did the complainants take an independent and informed decision to purchase the said unit, un-influenced in any manner by the respondent.

9. It is submitted that the sale consideration amount was exclusive of the STP, Gas Pipeline, Stamp Duty Charges, VAT and other charges which were to be paid by the complainants at the applicable stage. It is denied that the complainants obliged with all their responsibilities. It is denied that the complainants requested the respondent for execution of an agreement for sale and that the respondent had exploited the complainants by taking 30% of the sale price without execution of agreement of sale.

10. It is submitted that all the demands were raised by the respondent as per the payment plan agreed between the parties. It is denied that the respondent has cheated, dishonestly induced or made false statements and commitments or violated the provisions of RERA Act, 2016 and IPC and that respondent has deceived the complainants or misappropriated and siphoned off the money.

11. That in view of above circumstances, the complainants do not deserve any relief whatsoever.

12. Contending all this, the respondent prayed that the complaint may be dismissed, in the interest of justice.

13. Both of parties filed affidavits in support of their claims.

14. I have heard learned counsels appearing on behalf of both of parties. My findings are as under: -

15. During deliberations, it remained undisputed that complainants booked a residential unit in project being developed by the respondent i.e. Tranquil Heights, Gurugram and paid Rs.89,81,864/-. The Builder Buyer

Agreement (BBA) was executed between the parties on 10.08.2015 and as per said BBA, the respondent was obliged to complete the construction and to deliver possession till 10.08.2019. Undisputedly the respondent failed to complete the construction till this time, which constrained the complainants to approach the Authority, seeking compensation of the amount. Their complaint was allowed by the Authority vide order dated 10.01.2023 and respondent was directed to refund the amount along with interest @ 10.60% p.a. from the date of each payment till the actual date of refund of the amount.

16. It is contended by learned counsel for the respondent that when relief of refund has already been allowed to the complainants, same are not entitled to claim any compensation.

17. As per Section 18 (1) of Act of 2016, if promoter fails to complete or 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, (b)-----, 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 or 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.**

18. From aforesaid provision, it is very much clear that when promoter fails to complete the project in accordance with the terms of the agreement, same is liable not only to refund the amount received by the same along with interest but to pay compensation also in the manner as prescribed under the Act of 2016.

19. As described earlier, the respondent failed to complete the project as per BBA and hence, same was liable to pay refund of amount as well as to pay compensation. The relief of refund of amount has already been allowed by the Authority, along with interest.

20. Section 72 of ^{the} Real Estate (Regulation and Development), Act of 2016 provides [✓] ~~the~~ the following factors

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which are to be taken into account by the Adjudicating Officer, while determining amount of compensation: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

21. At the cost of repetition, complainants have prayed for a sum of Rs.10 lacs towards the compensation amount for misappropriate gain by the respondent. Apparently, the respondent used money paid by complainants and did not complete the construction as per agreement. Same is presumed to have got unfair advantage on the amount paid by the complainant, consequently causing loss to the allottees-complainants. The complainants claimed to have taken loan for the study of their children, ~~and forced to pay interest on it~~. The amount of Rs.10 lacs as claimed by the complainants appears to be excessive. As per agreement (BBA) the respondent was

obliged to complete the construction and to hand over possession till 10.08.2019. ^{When the} ~~While when~~ complainants found that construction was not completed in time, they approached the Authority by filing a complaint on 27.04.2022. According to complainants, there remained delay of 2 years and 9 months on the part of respondent. The amount of Rs.10 lacs as compensation appears to be excessive.

22. Keeping in view of the facts of the case and circumstances of the complaint described above, ^{complainants} ~~they~~ are awarded a sum of Rs.5 lacs as compensation for undue gain received by the respondent and loss caused to the complainants.

23. The complainants claimed Rs.50 lacs towards mental harassment and agony. Apparently, the complainant did not get possession of unit despite making huge payment, same suffered mental harassment and agony. The amount of Rs.50 lacs appears to be excessive. The complainants are awarded a sum of Rs.2,00,000/- as compensation for mental harassment and agony.


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24. The complainants have also prayed a sum of Rs.1,25,000/- towards the litigation expenses. However, no receipt of payment of fee to the Advocate is submitted by the complainants, ^{by} from the record, it is apparent that they were representing ^{by} by an Advocate during proceedings of this case. A sum of Rs.50,000/- is allowed to them as litigation expenses.

25. The respondent is directed to pay the aforesaid amounts to the complainants along with interest at rate of Rs.10.50% per annum, from the date of this order till the date of realization of amount.

26. File be consigned to record room.

Announced in open Court today i.e. 30.04.25.

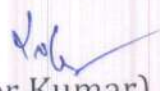

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.30.04.2025

Sanjay Asri etc. vs Vatika Ltd. CR/2478/2023

Present: Mr. Garvit Gupta, Advocate for complainants.
Mr. Dhruv Dutt Sharma, Advocate for respondent.

Order is not ready. I require some clarification
from the complainants.

To come on 30.04.2025.


(Rajender Kumar)
Adjudicating Officer,
20.01.2025