

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

Complaint no.: 5244 of 2024
Date of filing: 12.11.2024
Order pronounced on: 02.07.2025

Sh. Sunil Garg and Mrs. Kajal Garg
Both R/o: - House no. 505, Sector-9A,
Gurugram- 122001

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)

Complainants
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.	Invitation for Offer of Allotment of Unit Letter	24.07.2017 (page 22 of complaint)
8.	Priority no.	2BHK/068 (page 22 of complaint)
9.	Date of execution of builder buyer agreement	Not Executed
10.	Letter sent by respondent to complainants for execution of builder buyer agreement	31.08.2018 (page 22 of complaint)
11.	Amount paid by the complainants	Rs.7,21,088/- (as pleaded by complainants at page 6 of complaint and agreed to by the respondent at page 3 of reply)
12.	Reminder Letters sent by respondent to complainants to clear the outstanding dues	19.11.2018 and 07.02.2019 (page 61 and 62 of complaint, respectively)
13.	Legal notice sent by complainants to the respondent asking for refund of paid-up amount	08.07.2024 (page 69 of complaint)

14.	Occupation Certificate	Not obtained
15.	Offer of Possession	Not offered

B. Facts of the complaint.

3. The complainants have made the following submissions in the complaint: -

- I. That the complainants trusting upon respondent through advertisement in newspaper/electronic media, has jointly booked a residential apartment bearing no. 1601, measuring carpet area of approx. 685.23 sq. ft., in HSG-026-West End-1 in the project of the respondent namely "Vatika Turning Point", situated at: Sector-88-B, Gurugram, Haryana with the basic sale consideration of Rs.59,06,250/- plus other charges Rs.10,92,125/- and total sales consideration of Rs.69,98,375/- for which building plans were originally sanctioned by Director-General, Town and Country Planning, Chandigarh (DGTCP), Haryana (India) under Licence No. 91 of 2013.
- II. That at the time of booking an amount of Rs. 3,00,000/- was paid by complainants, however no receipt was given by the respondent to complainants in regard to the said payment .
- III. That as on July, 2017 complainants paid an amount of Rs. 7,21,088/- for aforesaid unit bearing no. 1601, measuring carpet area of Approx. 685.23 sq. ft. in HSG-026-West End-1 as demanded by the respondent from time to time (As Per T & C of Agreement to sale) for which till date respondent haven't provide any payment receipt to complainants. After paying the said amount an amount Rs.62,21,037/- remains payable by the complainants which shall be paid towards construction linked plan. The details of payments made to respondent are hereunder:-

S. No.	DATE	CHEQUE No.	DRAWN BY	AMOUNT
001.	11.05.2017	000071	HDFC BANK	1,50,000/-
002.	25.05.2017	000072	HDFC BANK	1,50,000/-
003.	04.07.2017	ONLINE	HDFC BANK	4,21,088/-
		TOTAL		7,21,088/-

- IV. That upon receipt of above payments the respondent has issued a letter dated 24.07.2017 called as Invitation for Offer of Allotment of Unit Priority No.2BHK/068.
- V. That after a long gap over a 1 year period on 31.08.2018 respondent has issued a letter along with the copy of agreement to sale to the complainants for signing of the same but complainants clearly refused to sign because respondent has not mentioned the time for handover of possession of the said project {refer clause no. 7 of page no. 8 of the agreement to sale} and there after respondent ask the complainants to visit their office and give assurance to disclose the time for handover the possession of said project .
- VI. That the complainants, thereafter, visited the office of the respondent on various occasions and requested their concern officials multiple times to disclose the exact status of the completion of the construction of the said project but respondent didn't given any proper information about the possession period for the said flat. The officials of the respondent kept on evading the queries raised by the complainants on one pretext or the other. The respondent was striving for keeping the status of construction at the site shrouded in secrecy further the complainants, Consequently, visited the site of the said project in order to ascertain the status of construction of the same. However, the complainants were completely shocked at the state of affairs prevailing at the site.
- VII. It is submitted that no construction has taken place in this project as on Date of filing of present complaint. In fact, it was revealed to the complainants that the respondent had deceived them by demanding money ahead of the stage of construction achieved at the site. the complainants were dismayed and dejected by the lack of professionalism and deceitful conduct adopted by the respondent. The respondent was liable to fairly and transparently

make available and disclose complete information to the complainants about the status of construction and also for refund of entire amount. however, the respondent has failed to do so for reasons best known to it. The latest photographs project clearly and indisputably establish that the construction of the said project had not started in any manner. It further seems that respondent always collect, cheat and defraud the complainants of demanding of their hard-earned money.

- VIII. That a legal notice dated 08.07.2024 has been sent to the respondent but no response received as on date of filing of this complaint.
- IX. That the subject matter of claim falls within the Jurisdiction of this Authority. The said project is registered with this Authority (vide memo bearing no. HRERA 213 Dated 15.09.2017). The Registration Certificate is appended here to furthermore, the said project is situated and cause of action has arisen within the ordinary territorial jurisdiction of this Authority. Hence, this Authority has got the jurisdiction to try and decide the present complaint.
- X. That aggrieved by the failure of the respondent to provide the date of handed over the said project and honour the terms of the agreement to sale. The complainants had no other option but to approach this Authority.
- XI. That the respondent has deliberately failed to fulfill its obligations nor has it complied with the terms and conditions as laid down in the agreement to sale. The respondent did not have the means, capacity and capability to complete construction at the spot on time. Furthermore, the respondent has fraudulently demanded money in advance without achieving the required construction milestone
- XII. That cause of action for filing the present complaint is a recurring one and it accrued to the complainants each time the respondent failed to disclose

/provide the date of handover of the said project and to refund the amount taken by it to the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Refund the principal amount of Rs.7,21,088/- as on date along with interest at the prescribed rate from the date of payment.
 - II. Award pendente lite and future interest as per HRERA Rules/Act in favour of the complainants and against the respondent till recovery of the total due amount.
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:

- I. That from the conjoint reading of Rule 8 and Rule 15 Form and Annexure 'A' of the Haryana RERA Rules, 2017, it is evident that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure 'A', which is required to be executed inter se the promoter and the allottee.
- II. That it is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainants.
- III. That after having keen interest in the said project launched by the respondent, the complainants upon its own examination and investigation desired to purchase an apartment and on 11.05.2017, booked an apartment in the said project through application form.

- IV. That in around 2017, 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.
- V. That, after having keen interest in the above said project launched by the respondent, the complainants upon their own examination and investigation desired to purchase an apartment and on 11.05.2017, booked an apartment in the said project through application form.
- VI. That in around 2018, the respondent called upon the complainants for execution of buyer's agreement for the unit bearing no. HSG-026, tower West End-1, having carpet area of 685.23 sq. ft., for a total sale consideration of Rs. 69,98,375/- including car parking, club membership, EDC/IDC, electric meter charges, gas pipeline and IFMS. It is, however, pertinent to mention here that the Complainants did not come forward for execution of the Builder Buyer Agreement for the reasons best known to them.
- VII. That the complainants have paid an amount of Rs. 7,21,088/- against the total sale consideration of the unit.
- VIII. 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.

IX. 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

- X. 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.
- XI. 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.
- XII. 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 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 "Invitation for Offer of Allotment of Unit" Letter and observed that no specific time period with respect to handover of possession of the allotted unit to the complainants 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. The buyer's agreement had not been executed between the parties. Thus, the due date of possession has to be calculated from the date of Invitation for Offer of Allotment of Unit Letter. Therefore, the due date comes out to be 24.07.2020. **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 24.07.2020 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 **24.01.2021**. 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 Refund the principal amount of Rs.7,21,088/- as on date along with interest at the prescribed rate from the date of payment.

G.II Award pendente lite and future interest as per HRERA Rules/Act in favour of the complainants and against the respondent till recovery of the total due amount.

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*.

H. Directions of the authority

24. 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.7,21,088/- 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.



HARERA
GURUGRAM

Complaint No. 5244 of 2024

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.

25. Complaint stands disposed of.
26. File be consigned to registry.

Dated: 02.07.2025



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

HARERA
GURUGRAM