BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision:	11.04.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		TURNING POINT	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/987/2024	Bhopinder Singh Tony and Amit Tony V/s Vatika Limited	Swaralipi Deb Roy, Adv. (Complainants) Anurag Mishra and Dhananjay Jain, Advocates (Respondent)
2.	CR/989/2024	Rajan Muglani and Nikunj Muglani V/s Vatika Limited	Swaralipi Deb Roy, Adv. (Complainants) Anurag Mishra and Dhananjay Jain, Advocates (Respondent)
3.	CR/996/2024	Mundresh Malik and Narayan Singh Malik V/s Vatika Limited	Swaralipi Deb Roy, Adv. (Complainants) Anurag Mishra and Dhananjay Jain, Advocates (Respondent)

CORAM:	
Shri. Arun Kumar	**Chairman**

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainants in the above referred matters are allottees of the projects, namely, 'TURNING POINT' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"Turning Point", Sector- 88B, Village Harsaru, Gurugram, Haryana.
Nature of the project	Affordable Group Housing
Area of the project	18.80 acres
DTCP License no.	91 of 2013 dated 26.10.2013 Valid up to 25.10.2017
RERA registered or not	Registered Vide registration no. 213 of 2017 dated 15.09.2017 Valid up to 15.03.2025 Registered area- 93588.71 sq. mtrs.

Possession clause as per BBA	*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 agrees and understands that timely delivery of possession of the Apartment along with parking to the Allottee(s) and the common areas to the association of Allottee's or the Competent authority, as the case may be, as provided under rule 2(1)(f) of Rules, 2017, is the essence 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 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 the extension of time for delivery of possession of Apartment".*

Complaint no.	**CR/987/2024**	**CR/989/2024**	**CR/996/2024**
Complaint filed on	01.04.2024	01.04.2024	01.04.2024
Reply filed on	05.07.2024	05.07.2024	05.07.2024
Date of booking	21.03.2017 [Page 33 of complaint]	31.03.2017 [Page 46 of complaint]	21.03.2017 [Page 37 of complaint]
Date of builder buyer agreement	28.12.2018 [Page 32 of complaint]	17.12.2018 [Page 44 of complaint]	24.11.2017 [Page 36 of complaint]
Unit no. and carpet area	605, 6th floor, HSG-026-WEST END 7 admeasuring 936.89 sq. ft.	405, WEST END 7 admeasuring 936.89 sq. ft. [Page 46 of complaint]	505, 5th floor in HSG-026-WEST END 7 admeasuring 936.89 sq. ft.

	[Page 33 of complaint]		[Page 37 of complaint]
Due date of possession	28.06.2022	17.06.2022	24.05.2021
Total Sale Price	₹66,33,535/- [As per BBA at page 34 of complaint]	₹ 66,33,535/- [As per BBA at page 48 of complaint]	₹ 66,33,535/- [As per BBA at page 38 of complaint]
Paid up amount as per BBA	₹ 12,79,000/- [As alleged by complainants on page 23 of complaint]	₹ 12,82,655/- [As alleged by complainants on page 23 of complaint]	₹ 12,38,220/- [As alleged by complainants on page 17 of complaint]
Occupation certificate	Not obtained	Not obtained	Not obtained
Offer of possession	Not offered	Not offered	Not offered
Relief sought	- Refund along with interest - Compensation	- Refund along with interest - Compensation	- Refund along with interest - Compensation

4. The facts of all the complaints filed by the complainant/ allottee are also similar. Out of the above-mentioned cases, the particulars of lead case ***CR/987/2024 titled as Bhopinder Singh Tony and Amit Tony V/s Vatika Ltd.*** are being taken into consideration for determining the rights of the allottees qua refund of the amount paid by the complainants along with interest and compensation.

A. Unit and project related details

5. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/987/2024 titled as Bhopinder Singh Tony and Amit Tony V/s Vatika Ltd.

S.No.	Particulars	Details
1.	Name of the project	Vatika Turning Point, Sector-88B, Gurugram, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	18.80 acres
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 Valid up to 25.10.2017
5.	RERA Registered/ not registered	Registered Vide registration no. 213 of 2017 dated 15.09.2017 Valid up to 15.03.2025 Registered area- 93588.71 sq. mtrs.
6.	Unit no.	605, 6th floor, HSG-026-WEST END 7 [Page 33 of complaint]
7.	Carpet area of the unit	936.89 sq. ft. [Page 33 of complaint]
8.	Date of booking	21.03.2017 [Page 33 of complaint]
9.	Date of BBA/Agreement for Sale	28.12.2018 [Page 32 of complaint]
10.	Payment Plan	Construction Linked Plan
11.	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 agrees and understands that timely delivery of possession of the Apartment along with parking to the Allottee(s) and the common areas to the association of Allottee's or the Competent authority, as the case may be, as provided under rule 2(1)(f) of Rules, 2017, is the essence 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 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 the extension of time for delivery of possession of Apartment." [Page 39 of complaint]
12.	Due date of possession	28.06.2022 **(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 28.06.2022.
13.	Total sale consideration	Rs.66,33,535/- [As per BBA at page 34 of complaint]
14.	Amount paid by the complainants	Rs.12,79,000/- [As alleged on page 23 of complaint]
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint:

a. That on the basis of oral representations of the respondent, the complainants, booked a 3 BHK residential apartment with one parking, for their own personal use, *i.e.,* flat no. HSG-026-WEST END 7-605, 6th Floor *admeasuring* 1445 *sq. ft.* super area in the 'Group Housing Project', namely 'Vatika Turning Point', located at Sector-88B, Gurugram, Haryana. The Respondent Company *vide* letter dated 21.03.2017 agreed that the Basic Sale price of the flat would be Rs.4,100/- per *sq. ft.* of super area amounting to a total cost of Rs. 66,33,535/- and in lieu of the agreed terms, the complainants paid a total sum of Rs. 12,79,000/- until 28.09.2017 as 20% of the cost of the total cost of flat.

b. On assurance of the respondent that the construction work will start soon, the complainants and the respondent entered and executed upon a Builder Buyer Agreement on 27.12.2018. As per clause no. 7.1 of the BBA, the possession of the said flat shall be as per the agreed terms and conditions in the Application Form issued on 21.03.2017 i.e., within a period of 48 months from the date of execution of the Builder Buyer Agreement unless there is a delay due to *'force majeure'*. The respondent company however kept assuring the complainants that the construction would start shortly, and the project would be completed very soon. The possession of the said flat was due on 27.12.2022.

c. The project is duly registered with the HRERA registration number RERA-GRG-502-2019 *[Previously registered vide Registration No.*

213/2017 of dated 15.09.2017] as per the agreement issued to the allottee/ complainant(s). Now it has come to the notice of the complainants, that the respondent unconditionally admitted before this Hon'ble Authority that it has abandoned the project and has applied for deregistration of the same project from the counsel statement recorded in order dated 10.01.2024 in CR/3473/2023 case titled as Aditya Tyagi and Geet Tyagi Vs. Vatika Ltd. Since it is now admitted position by the respondent that it has abandoned the project and being in default of handing over the possession until today, the respondent be directed to pay the entire amount of Rs. 28,30,492/- [i.e., Actual amount paid & interest calculated @ 18% p.a.].

C. Relief sought by the complainants:

7. The complainants have sought the following relief(s):

a. Direct the respondent to refund the entire amount of Rs. 28,30,492/- paid by the complainants along with interest @ 18% *p.a.*, calculated from the date of first payment until the date of actual refund.

b. To award the *pendent lite* interest on the amount paid by the complainants from till the date of order passed by this Ld. Authority.

c. To award a compensation of Rs. 5,00,000/- for undue hardships, mental and physical agony and tension to the complainants due to non-delivery of possession of the flat by the respondent.

d. To award the cost of the complaint to the complainants.

e. To provide any other relief that may be deemed fit and proper in the facts and circumstances of the present case.

8. On the date of hearing, the authority explained to the respondent /promoters 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

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

a. That the "Turning Point" is a residential group housing project being developed by the respondent on the licensed land admeasuring 18.80 acres situated at Sector 88B, Gurugram. License No.91 of 2013 for the "Turning Point Project" has been obtained on 26.10.2013 by respondent and the construction was started in terms thereof.

b. Further, after establishment of the Haryana Real Estate Regulatory Authority the respondent applied for registration of its project "Turning Points" and the authority registered the said project vide its Registration No. 213 of 2017 dated 15.09.2017. Despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of Turning Point project was undertaken by the respondent in right earnest and the same proceeded in full swing.

c. That the complainants had booked residential unit bearing no.HSG-026-West End-7- 605 having area of 1145 sq. ft. vide Agreement to Sale dated 28.12.2018. As per clause 7 of the Agreement to Sale dated executed with the complainants, the construction of the project was contemplated to be completed subject to force majeure circumstances mentioned in clause 9 thereof which provided for extension of time. It is further submitted that the present complaint

is pre-mature as it is the admitted position of the complainants that the respondent is required to handover the possession of the said unit in 48 months from the date of execution of the builder buyer agreement. Therefore, filing a pre-mature complaint is not maintainable at all the same must be dismissed on the said ground.

d. That it is the admitted position that the complainant has only made payment towards the booking of the said unit which is around 10% of the total sale consideration only. Thus, the complainant has defaulted in making the payment as per the terms of the said Agreement and therefore such frivolous complaint must be dismissed on the said ground itself. Most of the flat buyers including the complainants have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.

e. That factors which materially and adversely affected the project are being set out herein 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.	Delay in payments by majority of the buyers of the said group housing project

4.	Demonetization of currency notes having affect of pace of construction
5.	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
6.	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.
7.	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.
8.	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.
9.	Vatika Limited has filed an another application on 16.08.2021 for migration of18.80Acres 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
10.	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. 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/-.
11.	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.
12.	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
13.	Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
14.	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 50-75 days in the best months for construction
15.	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.
16.	Delay in supply of cement & steel due to various agitations and covid-pandamic - 2019
17.	Declaration of Gurgaon as notified area for the purpose of ground water & restrictions imposed by the state government on its extraction for construction purposes

f. 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. 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.

10. Rejoinder filed by the complainants is also taken on record and considered by the authority while adjudicating upon the relief sought by the complainants. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of

Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

13. Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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)*** *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."*

14. 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.*** (Civil Appeal no. 6745-6749 of 2021) 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."

15. So, in view of the provisions of the Act quoted above and authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I. Objection regarding force majeure conditions.

16. 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.

17. 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.

18. In the present case, the builder buyer agreement was executed on 28.12.2018, thus the period of 3 years from the date of execution of BBA expires on 28.12.2021. ***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 28.12.2021 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 **28.06.2022**. 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. 28,30,492/- paid by the complainants along with interest @ 18% *p.a.*, calculated from the date of first payment until the date of actual refund.

G.II To award the *pendent lite* interest on the amount paid by the complainants from till the date of order passed by this Ld. Authority.

19. 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 28.06.2022, 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.

20. 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.

21. 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.

22. 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 pacca 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 contains 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 ld. Authority in the present matter and to decide the same in the manner as the ld. 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.

23. 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 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 respondent-promoter 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.

24. A reference to Section 18(1)(b) of the Act is necessary which provides 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) .....*
> *(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."*

25. 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.

G.III. To award a compensation of Rs. 5,00,000/- for undue hardships, mental and physical agony and tension to the complainants due to non-delivery of possession of the flat by the respondent.

G.IV. To award the cost of the complaint to the complainants

26. In the above-mentioned relief, the complainants are 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.*** (Civil Appeal no. 6745-6749 of 2021), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation under sections 12,14,18 and section 19 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority

27. 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):

a. The respondent is directed to refund the entire amount paid by the complainants along with interest @ 11.10% per annum from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

b. 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.

28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of amount paid by the complainants-allottees and other necessary details have been mentioned in each of the complaints.

29. The complaints as well as applications, if any, stand disposed of.

30. True certified copies of this order be placed on the case file of each matter.

31. Files be consigned to registry.

Dated: 11.04.2025

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram