

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

Complaint no. 2871 of 2024  
Date of filing 13.06.2024  
Order pronounced on 22.05.2025

1. R. Koil Raj  
2. D. Georgilin Vanitha  
**Both R/o:** - CB-63 A, DDA Flats, Hari Nagar,  
New Delhi-110064.

**Complainants****Versus**

M/s Vatika Limited  
**Regd. Office at:** - Vatika Triangle, 4<sup>th</sup> floor,  
Sushant Lok- 1, Block-A, Mehrauli- Gurgaon  
Road, Gurugram, Haryana - 122002.

**Respondent no.1**

M/s Indiabulls Housing Finance Limited  
(Now known as M/s Sammaan Capital Limited)  
**Regd. Office at:** - 422, Udhog Vihar, Phase 4,  
Gurugram, Haryana - 122016.

**Respondent no.2****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Ms. Merlyn Rachel (Advocate)  
Shri Venket Rao (Advocate)  
Shri Gaurav Dua (Advocate)

Complainants  
Respondent no.1  
Respondent no.2

**ORDER**

1. This complaint has been filed by the complainants/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:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Turning Point" by Vatika Express City at Sector-88B, Gurugram.
2.	Project area	18.80 acres
3.	Nature of Project	Residential Group Housing Colony
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 Valid upto 25.10.2017
5.	Name of Licensee	M/s Vatika Limited
6.	Rera registered/ not registered and validity status	<b>Registered</b> Vide no. 213 of 2017 dated 15.09.2017 Valid upto 15.03.2025 (Promoter has made an application for deregistration of project)
7.	Unit No.	HSG-026-West End-7 (as mentioned in clause-F of BBA at page 22 of complaint)
8.	Unit area admeasuring	685.23 sq. ft. (Carpet Area) (as mentioned in clause-F of BBA at page 22 of complaint)
9.	Allotment letter	09.06.2017 (as mentioned in clause-F of BBA at page 22 of complaint)
10.	Date of execution & registration of buyer agreement	24.04.2018 (as per page no. 21 of complaint)
11.	Possession clause	<b>7. Possession of the Apartment</b> <b>7.1 A) Schedule for possession of the said apartment subject to timely payment amounts due by the allottee to the promoter as per agreed</b>



		<p><b>payment plan/schedule, given in schedule-D of the agreement.</b></p> <p>... The promoter assures to handover possession of the apartment along with parking as agreed terms and conditions unless there is delay due to "<i>force majeure</i>", Court order/ 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 allottee agrees that the promoter shall be entitled to the extension of time of delivery of possession of the apartment.</p> <p><b>[Emphasis Supplied]</b>          (page 28 of complaint)</p>
12.	Due date of possession	<b>15.03.2025</b> (Taken from similar cases of same project)
13.	Total sale consideration	Rs.69,42,125/- (as per BBA at page no. 23 of complaint)
14.	Amount paid against the allotted unit	<b>Rs.30,78,840/-</b> [Rs.7,34,589/- paid by complainants (plus) Rs.23,44,251/- paid by M/s Indiabulls Housing Finance Limited] (as confirmed during proceedings dated 22.05.2025)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Loan sanction letter (by Indiabulls Housing Loan for Rs.60,00,000/-)	20.08.2018 (as per page 42 of complaint)
18.	Agreement for Builder Subvention Facilities (Tripartite Agreement)	24.08.2018 (page 37-43 of reply by respondent no.2)
19.	Outstanding towards the loan account as on 13.05.2025.	Rs.23,18,715/- <b>balanced for closure of loan account</b> (as submitted by the counsel for respondent no.2 during proceedings dated 22.05.2025)

**B. Facts of the complaint.**

3. The complainants have made the following submissions: -
- a) That, in pursuant to the elaborate advertisements, assurances, representations, and promises made by the respondent no.1 in the brochure circulated by it about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the complainants upon being persuaded, consider booking a unit in the project 'Turning Point' vide an application dated 09.06.2017. That the respondent no. 1, who is the promoter i.e., Vatika Limited started a project namely, Vatika Turning Point (Group Housing Colony), being developed in Sector 88B, Gurugram land Phase - 1 in the Revenue Estate of Village Harsaru, Sub Tehsil Harsaru and District Gurugram, Haryana which is 1.4 million sq. ft. spread across 4 towers project.
  - b) That the respondent no.1 assures that the project including the unit of the complainants would be completed by 2022 along with its possession.
  - c) That, in order to further persuade the complainants to book a unit in the project, the respondent no.1 offered a scheme of 'Assured Rental-No EMI' till actual possession wherein it was assured to the complainants that it would be provided with monthly rentals against the rent charge of their residence each month till possession of the unit.
  - d) That, the respondent no.1 also persuaded the complainant to avail of a home loan specifically from respondent no.2, i.e. Indiabulls Housing Finance Limited wherein which the respondent no.2 is tied up with the respondent no.1 in order to make timely payments for the unit.
  - e) That, the complainants in good faith booked a unit on 09.06.2017 by paying an amount of Rs.1,00,000/- vide bearing cheque no.897175 dated 17.05.2017, Rs.5,00,000/- bearing cheque No. 897176 dated 1.06.2017 drawn from Indian Bank, New Delhi. Thereafter, the respondent no.2



adjusted Rs.3,00,000/- from the payment being a part payment of the total sales consideration of the unit at the time of the application.

- f) That the complainants made another payment of Rs.1,34,589/- on 17.08.2017 vide a cheque draft bearing no. 841391 drawn on Indian Bank, New Delhi and the receipt of the same was given by the respondent no.1 thru a receipt voucher bearing no. P/C17-08-759005 dated 17.08.2017 to the complainants acknowledging the receipt of the amount of Rs.1,34,589/-.
- g) That the complainants and the respondent no. 1 entered into a builder buyer agreement bearing No. 218 whereby an agreement for sale was executed on 24.04.2018 which included all the details of the project such as amenities promised, site plan, payment schedule, date of completion, etc. under the builder buyer agreement.
- h) That the loan amount of Rs.60,00,000/- sanctioned to the complainants dated 20.08.2018 with the rate of interest at 8.80% along with the processing fee of Rs.1180/- and the balance of processing fee paid amounts to Rs.10620/-.
- i) That the respondent no.1 sent a payment plan details dated 02.04.2018. That the complainants received a letter dated 05.04.2018 concerning the reminder for payment of Rs.23,67,850.96/- of installment for unit No. HSG-026-start of excavation due in respect of apartment No. 909/9HSG-026-West End-7-901 allotted to the complainants.
- j) That on 06.03.2022, the complainants were shocked and appalled when they visited the office of the respondent no.1 at Sector 88B, Gurugram, and saw no construction going on whatsoever and thereby giving the impression that it had abandoned the project completely, and after confirming it, the complainants came to know that the above-stated project was stopped owing to some legal issues.

- k) That the complainants sent a mail dated 23.03.2022 to the respondent no.1 raising their query regarding the refund of the money for unit no.HSG-026-West End-7-901 was booked by them in the Vatika Turning Project on account of getting no status as to the completion of the project and its possession. That the complainants, sent another mail dated 12.04.2022 to the respondent no.1 asking to revert to their mail dated 23.03.2022 sent to it and also for a meeting in their office with regard to the refund of the money.
- l) Thereafter, the complainants received a mail dated 14.04.2022 from the respondent no.1 regarding the cancellation and refund of the unit in Turning Point asking the complainants to submit the attached documents and further informing them that the payment will be released in six equal monthly instalments and further stating that the payment made regarding the Rera registration of Rs.23,600/- will not be refunded.
- m) On 27.04.2022, the respondent no.2 sent a letter to the complainant stating that the principal outstanding loan of Rs.23,44,251/- has been discharged vide account no. HHLGRG00474739 and linked account no. HHLGRG00470310 and requested to pay the Interest of Rs.12,580/- for the month of April.
- n) That the respondent no.1 sent a mail dated 25.05.2022 to the complainants asking for the documents with signatures of both the complainants and signature verification from the bank.
- o) That the complainants sent a mail dated 04.07.2022 in response to the mail dated 25.05.2022 by the respondent no.1 asking for the documents and signatures for verification from the complainants. That the complainants informed that the document signed and signature verification form from the bank has been submitted by them, therefore, the process of refund may have proceeded swiftly.





- p) That the respondent no.1 sent another mail on 04.07.2022 acknowledging the receipt of the pending documents for cancellation and refund from the complainants.
- q) That the respondent no.1 sent a mail dated 06.09.2023 to the complainants in reference to the property bearing No. HSG-026-Wst End-7- 901 in Project Vatika Turning Point attaching the documents to be signed by the complainants for initiating the refund which shall be paid in 6-8 instalments to the complainants.
- r) That the complainants vide mail dated 13.09.2023 sent the copy of the cancelled cheque for refund process and further asked the respondent no.1 to close the loan taken from the respondent no.2 and give NOC for the same.
- s) That the complainants sent a mail dated 09.10.2023 to the respondent no.1 regarding the initiation of the refund process and that the respondent no.1 in reply to the above-stated mail dated 09.10.2023 sent a mail dated 10.10.2023 to the complainants informing them regarding the refund which is in process and shall release the first instalments by 25.11.2023.
- t) Thereafter, the complainants sent numerous mails dated 28.11.2023, 11.12.2023, and 08.01.2024 to the respondent no.1 to know the status of their refund but to of no avail.
- u) That, even at the time of the execution of the builder-buyer agreement, the respondent no.1 had represented to the complainants that he was in possession of the necessary approvals from the DTCP, Haryana to commence with the construction work of the residential project. However, till date, no construction whatsoever has taken place at the site That as per the agreement, the complainant was allotted apartment no. 901 having a carpet area of 685.23 sq. ft. in building no.HSG-026-West End-7. That the total



consideration for the built-up apartment along with parking based on the carpet area was Rs.69,42,125/- as per Schedule 'C' of the agreement.

- v) That the complainant already had one ancestral property in Hari Nagar at Delhi where the joint family lives and had a plan to buy another house in Vatika Private Limited for their future settlement. But due to un-avoidable circumstances the complainant purchased another property for the immediate settlement in the year 2020 Hari Nagar, Delhi by availing a loan of Rs.30,00,000/- for 10.25% under the category of home loan commercial real estate. Later, the complainant came to know that the project of "Turning point" got abandoned in the year 2022. As per the RBI guidelines, home loan for third dwelling units onwards to an individual is treated as HLCRE exposure. Hence, That the bank automatically charged the interest rate of 10.25 percent under the category of home loan commercial real instead of interest rate of 8.40 percent from the year 2020 till date. An extra amount of 1.85% which amounts to Rs.3,00,000/- approximately for 52 months (Jan 2020 to May 2023) was paid by the complainant at the cost of the deficiency in service by the respondent no.1.
- w) That the respondent no.1 has no intention of completing the above-said project till date. That it is unambiguously lucid that no force majeure was involved, and the project has been at a standstill for several years.
- x) That the respondent no.1 is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, and mental torture, but harassment of the complainants by misguiding him, keeping the complainants in the dark and putting their future at risk by rendering them homeless.
- y) That the complainants are constrained and left with no option but to cancel the allotment. Further, the complainants are seeking and are entitled to a full



refund of the amount including but not limited to all the payments made in lieu of the said unit, as per the terms and conditions of the builder-buyer agreement executed by it.

- z) That the complainant has filed a complaint before this Authority on 24.01.2023 as a party-in-person without knowing the legal knowledge and unknowingly failed to furnish the legal documents related to the case herein above, the Authority dated 12.04.2024 gave liberty to file a fresh complaint by withdrawing the complaint bearing No. 144 of 2023 filed by the complainant.

**C. Relief sought by the complainants:**

4. The present complaint was filed by the complainants on 13.06.2024 seeking the following relief(s):
- I. Direct the respondent no.1 builder to cancel the booking of the residential unit booked by the complainants & refund the total amount paid i.e., Rs.7,34,589/- with interest as per Act.
  - II. Direct the respondent no.1 builder to compensate the amount of Rs.2,28,218/- paid by the complainant against the Home Loan Commercial Real Estate category at the rate of interest of 10.25 % instead of the rate of interest of 8.40%.
  - III. Direct the respondent no.1 to refund the amount of Rs.27,000/- which was persuaded by the respondent no.1 as a scheme under the process of RERA registration.
  - IV. Direct the respondent no.2 Indiabulls to not deduct the EMI's from the account of the complainants till the finalization of the complaint or till the subvention period.
  - V. Direct the respondent no.1 builder to pay interest at the rate of 18% on the amount paid to the respondent no.1, since, the initial allotment was given to the complainants.
  - VI. Direct the respondent no.1 builder to pay compensation of Rs.10,00,000/- for the inordinate delay and under stress and harassment caused to the complainants by the acts of the respondent no.1 along with the litigation cost of Rs.2,00,000/-.

5. Thereafter, on 24.02.2025, the complainants had filed an application for amendment in relief and prayed for the following reliefs. No reply to the said application was filed by the respondents. Same is allowed. Accordingly, the Authority is proceedings against the said relief(s) sought by the complainants as under:

- I. Direct the respondent no.1 builder to refund the total amount paid i.e., Rs.30,78,840/- (Rs.7,34,589/- paid through cash and Rs.23,44,251/- paid via loan from respondent no.2) along with interest as per Act.
  - II. Direct the respondent no.1 builder to honour its obligation of paying the pre-EMIs to respondent no.2 & directing it not to harass and deduct the aforesaid pre-EMIs from the account of the complainants till the finalization of the complaint or till the subvention period.
  - III. Direct the respondent no.1 builder to pay the assured rentals to the complainant till the disposal of the complaint or till subvention period.
  - IV. Direct the respondent no.1 builder to compensate the amount of Rs.2,28,218/- paid by the complainant against the Home Loan Commercial Real Estate category at the rate of interest of 10.25 % instead of the rate of interest of 8.40%.
  - V. Direct the respondent no.1 builder to pay interest at the rate of 18% on the amount paid to the respondent no.1, since, the initial allotment was given to the complainants.
  - VI. Direct the respondent no.1 builder to pay compensation of Rs.10,00,000/- for the inordinate delay and under stress and harassment caused to the complainants by the acts of the respondent no.1 along with the litigation cost of Rs.2,00,000/-.
6. 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 respondents:**

**D1 Reply by the respondent no. 1**

7. The respondent no. 1 has contested the complaint on the following grounds:
- a) That in the year 2016, the complainants learned about the project 'Vatika Turning Point' situated at Sector 88B, Gurgaon, Haryana. 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 flat and on 09.06.2017, booked a flat in the said project through booking applicable form.
- c) That the respondent on 09.06.2017, vide application for, allotted unit no.901, HSG-026-West End-7, admeasuring 685.23 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 24.04.2017 was executed between the complainants and the respondent for a basic sale consideration of Rs.69,42,125/-. That the complainants herein have paid an amount of Rs.7,34,589/- against the sale consideration of the unit.
- e) That the respondent also paid Pre-EMI amount on behalf of the complainants against the loan taken by the complainants and the same can be proved from the loan account statement of 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. The respondent was constrained stop the development work in the mid-way due to various hindrances in construction of the project, which were unavoidable and purely beyond the control of the respondent.

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

S.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 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 15.09.2017 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. Same was in the interest of the allottees of the project.

- 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 Authority in the interest of justice.

**D2 Reply on behalf of respondent no.2.**

8. The respondent no.2 has contested the complaint on the following grounds:
- a) That the present complaint is not maintainable qua the respondent no.2 as it is neither the promoter nor developer nor real estate agent. The respondent no.2 is a financial institution registered under the provisions of National Housing Bank Act 1987 and presently governed by the Reserve Bank of India. That this Authority has no jurisdiction to deal with the financial institutions. Hence the present complaint qua the respondent no.2 is bad in law and is liable to be dismissed on this ground alone.
- b) That the present complaint is not maintainable in view of the legal provisions as relied upon by the complainant in the complaint which only raises the obligations and responsibilities of the respondent no.1 being the promoter. Hence, the present complaint is liable to be dismissed qua the respondent no.1 on this ground alone.
- c) That the present complaint is not maintainable as the same is totally false, frivolous and devoid of any merits against the respondent no.2. The complaint under reply is based on assumption, presumption, conjuncture



and surmises. The present case is blatant misuse of the process of law. Thus, the present complaint is liable to be dismissed on this ground alone.

- d) That the present complaint is not maintainable as it is a case of clever drafting that reflects the complainants' mala fide intentions, who have erroneously and without any basis implicated respondent no.2. The main alleged dispute in the complaint pertains the complainant and respondent no.1 as to delay in construction and possession of the unit. The relief sought against respondent no.2 is not only misconceived but also impermissible before this Authority. Furthermore, granting such relief would effectively alter the terms and conditions of the loan and tripartite agreements, contravening fundamental principles of contractual agreement. Therefore, the complaint is liable to be dismissed on this ground alone.
- e) That the respondent no.2 has an independent contact regarding loan taken by the complainants for purchasing the unit in question and the same has nothing to do with the promoter. The complainants approached the respondent no.2 for availing loan facility against the mortgage of property in question. Consequently, based upon the representations and loan documents as furnished by the complainants, the respondent no.2 sanctioned the loan in the name of the complainants for an amount of Rs.60,00,000/- vide loan sanction letter dated 31.08.2018 against the mortgage of the property being residential flat having no.901, 9th Floor, Tower Westend 7, Vatika Turning Point, Sector 88B, Gurugram, as security for the aforesaid loan facility and amount based upon the terms and conditions as mentioned in the Loan Agreement executed by the parties respectively.
- f) That thereafter the parties entered into the builder subvention facility agreement dated 24.08.2018, wherein recorded the understanding of the parties and it has been agreed that there would be no default in repayment

of loan amount for any reason whatsoever including but not limited to any concern/issues by and between the complainants and respondent no.1. That the complainant's obligation to repay the loan facility shall be a distinct and independent of any dispute of whatsoever nature between the complainants and the respondent no.1.

- g) That it was only upon the terms and conditions of the loan agreement having being agreed and accepted by the complainant that the loan was processed by the respondent no.2 and consequently, the respondent no.2 acceded to granting the loan facility in question to the complainant. The loan agreement/sanction letter were duly signed by the complainant as a token of acceptance of the terms and conditions clearly stated in the loan agreement which duly bind the parties. The complainants expressly declared and confirmed in the tripartite agreement that the respondent no.1 is of his choice and he is confident of the builder's capability for quality construction and timely completion of the said project. They further declared that they shall be solely responsible and shall continue to repay the loan amount in terms of the loan agreement irrespective of the stage of construction/delay or failure to develop/construct the said project by builder within the stipulated period.
- h) That the dispute is only between the complainants and respondent no.1 with which the respondent no.2 has no concern. That the respondent no.2 has granted loan to the complainants and at present total outstanding is of Rs.23,37,471.67/- as on 12.09.2024 with future interest and other charges, etc. against the complainants which they are jointly and/or severally liable to pay to the respondent no. 2.
- i) That in case this Authority allows the refund of the amount paid to the respondent no.1 then first the outstanding loan amount of the respondent



no.2 be paid off and then balance if any be ordered to be given to the complainants in terms of the builder subvention facility/tripartite agreement dated 24.08.2018.

9. All other averments made in the complaint were denied in toto.
10. 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. Written submissions by the complainants:**

11. The complainants have filed the written submissions on 14.05.2025. No additional fact apart from the complaint have been stated in the written submissions.

**F. Jurisdiction of the Authority:**

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

**F.I Territorial Jurisdiction:**

13. 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.

**F.II Subject-matter Jurisdiction:**

14. 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.*

15. 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 complainants at a later stage.
16. 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."*

17. 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.

**G. Findings on the objection raised by the respondent.**

**G.I Objection regarding force majeure conditions:**

18. 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.
19. It is contended on behalf of respondent/builder that due to various circumstances beyond the control of respondent. It could not speed up the construction or the project, resulting in its delay such as various orders passed by NGT hon'ble Supreme court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI, re-routing of high-tension lines passing through the land of the project, impact on the project due to policy of NIPL and TOD issued on 09.02.2016 and outbreak of covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR region

during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden. Thirdly, due to Covid-19 there may be delay but the same has been set off by the govt. as well as authority while granting extension in registration of project, the validity of which expired from March 2020 for a period 6 months.

20. The due date of possession in the present case as per clause 7.1 is 15.03.2025, So, any situation or circumstances which could have an effect on the due date should have before fixing a due date. 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.

**H. Findings on the relief sought by the complainants.**

- H.I Direct the respondent no.1 to refund the total amount paid i.e., Rs.30,78,840/- (Rs.7,34,589/- paid by the complainants and Rs.23,44,251/- paid via loan from respondent no.2) along with interest as per Act and Rules.
- H.II Direct the respondent no.1 to honour its obligation of paying the pre-EMIs to respondent no.2 & directing it not to harass and deduct the aforesaid pre-EMIs from the account of the complainants till the finalization of the complaint or till the subvention period.
- H.III Direct the respondent no.1 to pay the assured rentals to the complainants till the disposal of the complaint or till subvention period.
- H.IV Direct the respondent no.1 to pay interest at the rate of 18% on the amount paid to the respondent no.1, since, the initial allotment was given to the complainants.
21. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
22. 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 15.03.2025, 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.

23. 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.

24. 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.

25. On the basis documents available on record and submissions made by both the parties the Authority observes that the complainants herein had filed an earlier complaint bearing no. CR/144/2023, before this Authority, and the



same was dismissed as withdrawn and liberty to file fresh complaint was given to the complainants vide order dated 12.04.2024.

26. 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.

27. 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."*

28. It is proved from the facts detailed above, that the project is abandoned as 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 i.e., Rs.30,78,840/- from the developer 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*.

29. Out of total amount so assessed, the amount paid by the financial institution i.e., respondent no.2 be refunded first to the financial institution and the balance amount along with interest will be refunded to the complainants. Further, the respondent no. 1 is directed to get the NOC from respondent no.2 and give it to the complainants within a period of 30 days of this order.

**H.V Direct the respondent no.1 to compensate the amount of Rs.2,28,218/- paid by the complainant against the Home Loan Commercial Real Estate category at the rate of interest of 10.25 % instead of the rate of interest of 8.40%.**

**H.VI Direct the respondent no.1 builder to pay compensation of Rs.10,00,000/- for the inordinate delay and under stress and harassment caused to the complainants by the acts of the respondent no.1 along with the litigation cost of Rs.2,00,000/-.**

30. The complainants are also seeking relief w.r.t compensation and litigation costs. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* (supra) has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and litigation cost.

#### **I. Directions of the authority**

31. 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 no.1 is directed to refund the paid-up amount i.e., Rs.30,78,840/- received by it against the allotted unit along with interest

at the prescribed rate of 11.10% per annum from the date of each deposit till its actual realization.

- II. Out of the total amount so assessed, the outstanding amount of the financial institution i.e., respondent no.2 be refunded first to the financial institution and the balance amount along with interest will be refunded to the complainants after adjustment of Pre-EMI's paid by the respondent no.1, if any.
  - III. The respondent no.1 is directed to get the NOC from respondent no.2 and give it to the complainants within a period of 30 days of this order.
  - IV. A period of 90 days is given to the respondent no.1 to comply with the directions given in this order and failing which legal consequences would follow.
32. Complaints as well as applications, if any, stand disposed off accordingly.
  33. File be consigned to registry.

**Dated: 22.05.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram**HARERA**  
GURUGRAM