

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

Complaint no. : 1783 of 2022
Date of decision : 08.07.2025

Shallu Kapil

R/o: -H. No. 8/3, First Floor, Roop Nagar, Malka Ganj,
North Delhi, Delhi-110007

Complainant

Versus

M/s Vatika Limited

Regd. Office at: Flat No.621-A, 6th floor, Davika Tower,
6, Nehru Place, New Delhi - 110019

Respondent

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Sh. Sunil Kumar (Advocate)

Sh. Dhruv Dutt Sharma (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 17.05.2022 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 provisio of the Act or the Rules and regulations made there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	
1.	Project name and location	Vatika Professional Point, Sector 66, Gurugram, Haryana.
2.	Nature of the project	Commercial
3.	RERA registered/not registered	Not Registered
4.	Allotment in favour of Original Allottee	21.10.2010 (page no. 18 of complaint)
5.	Agreement to sell between Original allottee and the complainant	11.07.2011 (page no. 19 of complaint)
6.	Date pf endorsement in favor of the complainant	17.08.2011 (page no. 17 of complaint)
7.	Unit No.	112, 1 st floor, Tower A (page no. 30 of complaint)
8.	Unit admeasuring	500 sq. ft. (page no. 30 of complaint)
9.	Date of execution of the builder buyer's agreement with original allottee	21.10.2010 (page no. 27 of complaint)



10.	Possession clause	<p>"Clause 2-</p> <p>The Developer undertakes to complete the construction of the complex/building within 2 years from the date of execution of this agreement. Since the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment of RS.70/- per sq. ft. super area per month by way of committed return during construction period, which the allottee duly accepts. In the event of a time over run, the allottee shall continue receive the same assured return as mentioned herein until the building is ready for possession.</p> <p>(page 31 of complaint)</p>
11.	Due date of possession	21.10.2012
12.	Total consideration	Rs. 20,00,000/- (As page no. 30 of complaint)
13.	Total amount paid by the complainant	Rs.20,00,000/- (page no. 31 of complaint)
14.	Assured return paid to the original allottee w.e.f. October 2010 till July 2011	Rs. 3,50,000/- (page no.3& 4 of reply)
15.	Assured return paid to the Complainant w.e.f. August 2011 till October 2016	Rs. 22,05,000/- (page no.3& 4 of reply)
16.	Occupation certificate	29.10.2013 (page no. 47 of reply)
17.	Offer of possession	Not place on record
18.	Letter for intimation of completion on 36 months	10.10.2016 (page no. 49 of reply)

	minimum commitment/assured return payout post building completion"	
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B. Facts of the complaint

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

a. That on dated 21st October, 2010 BBA was executed in favour of Mr.

Kewal Prabhakar on account of Space in Project Vatika Professional Point, situated at Sector -66, Gurugram, Haryana unit admeasuring 500 Sq. Ft. (super Area) on First Floor, bearing unit 112 on a total sale consideration 20,00,000/- and the allottee paid total sale consideration Rs. 20,00,000/- one time settlement on account of execution of builder buyer agreement, Further, vide clause 2 (sale consideration), the respondent agrees and promise to handover physical offer of possession of said unit within 2 years from the date of execution of BBA.

b. That the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment of Rs. 70/- per sq. ft. super area per month by way of committed return during construction period, which the allottee duly accepts and agreed by both parties. Further the same assured return as mentioned herein, the allottee shall continue to receive as mentioned herein until the building is ready for possession.



- c. Further, the allottee ready to buy this space as promised by the respondent for lease assurance vide clause N of BBA the rent shall paid by the lessee/developer to the allottee. As per clause (k) return assurance on completion of the project and letting out of Space " that on the completion of the project, the space would be let out by the developer at his own cost to as bonafide lessee at a minimum rental of Rs. 70/- per sq. ft. per month less income tax at source. In the event, the developer committed to return at Rs. 70/- per sq. ft. per month to the allottee for the first 36 months after the date of completion of the project or till the date of said unit / space is out on lease.
- d. That on 11th July. 2011 agreement to sell & purchase executed between the first allottee Mr. Kewal Prabhakar and Mrs. Shallu Kapil and entire consideration was paid by the allottee Mrs. Shallu Kapil to the first allottee and further assignments and endorsement by name of first transfer executed by the respondent in favour of Mrs. Shallu Kapil vide dated 17th August, 2011 and even Rs. 50,000/- paid in lieu of transfer of unit in name of complainant. On 17th August, 2011 for assignment of Flat No. 112 admeasuring 500 Sq. Ft. at Vatika Professional point in favour of complaint issued by the respondent.
- e. That there is no assured return is paying by the respondent to the complainant and no delay possession offered and even there is no execution of conveyance deed executed by the respondent in favour

of complainant. Hence, the complainant seeking assured return, delay possession interest, demarcation and handover of physical and execution of conveyance deed in favour of complainant as per HRERA Act, 2016.

C. Relief sought by the complainants:

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

- I. To direct the respondent to pay delay interest possession from 20th October, 2012 as per BBA executed on 21st October, 2010.
 - II. To direct the respondent to execute the conveyance deed in favour of the complainant.
 - III. To direct the respondent to demarcation of unit space.
 - IV. To direct the respondent to pay assured return @Rs.70/- per sq. ft. per month to the allottee for first 36 months after the date of completion of project or till the date of said unit/space is put on lease, whichever is earlier.
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 contested the complaint on the following grounds: -
- a) That the complaint filed by the complainant before the Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected herself in filing the

complaint before this Authority as the relief being claimed by the complainant, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Authority.

- b) That the conjoint reading of the sections/ rules, form and annexure 'A', 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.
- c) That no such agreement as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainant. The agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the builder buyer's agreement, executed much prior to coming into force of 2016 Act and 2017 Haryana Rules
- d) That no relief much less as claimed can be granted to the complainant. The complaint, as filed, is not maintainable before this Authority.
- e) That the complainant by way of present complaint is also seeking the relief of recovery of alleged pending committed/ assured return amount. However, the Authority does not have jurisdiction to decide upon the amount of committed/assured return. Therefore, the complaint does not fall within the purview of the Authority, thus, liable to be dismissed on this ground only.
- f) That initially the unit was booked by one Mr. Kewal Prabhakar (original allottee) and the builder buyer agreement was signed

between the original allottee and respondent on 21.10.2010. Thereafter the original allottee transferred the unit to the complainant in July, 2011 and accordingly the endorsement was done on the builder buyer agreement in favor of the complainant. The complainant is a subsequent allottee, the period for calculating the date of completion has to be done from the date of endorsement.

- g) That the respondent has paid committed return amounting to Rs. 3,50,000/- to the original allottee from October, 2010 till July, 2011. The respondent has paid committed return @ Rs. 70/- per sq. ft. amounting to Rs. 22,05,000 to the complainant w.e.f. August, 2011 till October, 2016
- h) That status of the construction of the building in which the unit allotted to the complainant is located is complete and the respondent has already received the Occupation Certificate vide Memo No. ZP-394/SD(BS)/2013/55656 dated 29.10.2013. The Respondent has received the Occupation Certificate much before the coming of the RERA Act, 2016, therefore this Authority does not have the jurisdiction to try and entertain the present complaint. As per clause N(k) of the BBA, the respondent was supposed to pay committed return till 36 months after the date of completion of the project.
- i) That the respondent duly informed the complainant vide letter dated 10.10.2016 that it has received the Occupation Certificate for the project on 29.10.2013 and shall not be liable to pay the committed Return w.e.f. 29.10.2016. The respondent despite its best efforts has not been able to let out the said unit on lease and as

soon as the same is let out, the respondent shall pay the lease rental to the complainant.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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.

G. Findings on the relief sought by the complainants.

- G. I. To direct the respondent to pay to pay delay interest possession from 20th October, 2012 as per BBA executed on 21st October, 2010.**
- G.II To direct the respondent to demarcation of unit space.**
- G.III To direct the respondent to pay assured return @Rs.70/- per sq. ft. per month to the allottee for first 36 months after the date of completion of project or till the date of said unit/space is put on lease, whichever is earlier.**
- G.IV To direct the respondent to execute Conveyance deed.**

12. On consideration of the circumstances, documents, submissions made by the parties, the Authority observes that the unit in question was allotted to the erstwhile allottee vide buyer's agreement dated 21.10.2010 and agreement to sell was executed with subsequent allottee on 11.07.2011 and same was endorsed in favor of complainant vide 17.08.2011. As per clause 2 of the buyer's agreement, the possession of the subject unit was to be offered within 2 years i.e.

21.10.2012. However, Occupancy Certificate was issued by Competent Authority on 29.10.2013.

13. The respondent submitted that the complaint is barred by limitation as Occupancy Certificate was issued by Competent Authority way back on 29.10.2013 i.e. much prior to the enactment of Act, 2016, thus the Authority does not have jurisdiction to entertain the present complaint.
14. The complainant remained dormant of their rights for more than 12 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.
15. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the Authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the Authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the Authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

16. Further, as observed in the landmark case i.e., ***B.L. Sreedhar and Ors. Vs. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.
17. In the light of the above stated facts and applying aforesaid principles authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed

G.II To direct the respondent to execute the conveyance deed in favour of the complainant.

18. The complainant is seeking relief of execution of conveyance deed. The Authority observes that the conveyance has been subjected to all kinds of terms and conditions of agreement and the complainants not being



in default under any provisions of agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

"Section 17: - Transfer of title

17(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws; Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

19. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondent is directed to execute the conveyance deed within one months from the date of this order.

H. Directions of the authority

20. 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):

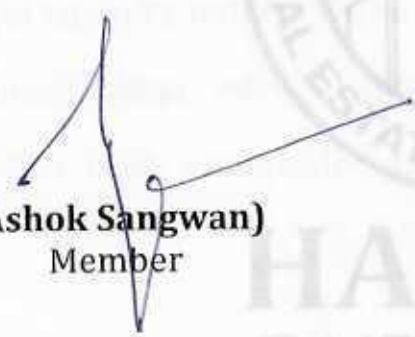
- i. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section

19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

- ii. Since the Occupation Certificate was obtained from Competent Authority on 29.10.2013, the respondent is directed to get the conveyance deed executed within a period of 30 days from the date of this order.
- iii. It is further directed that no stamp duty charges shall be payable by the complainants in case the same has already been paid to the respondent.

21. Complaint stands disposed of.

22. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2024