

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

**Complaint no.:** 4027 of 2024  
**Date of filing:** 29.08.2024  
**Date of order:** 28.08.2025

Hemlata Sharma

**R/o:** - Hemlata Sharma, Associate Professor, Department of Economics, Kurukshetra University, Kurukshetra, Haryana - 136119.

**Complainant**

Versus

M/s Vatika Limited

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

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Ms. Hemlata Sharma (complainant in person) along with Shri Balbir Singh Raghav (Advocate)  
Shri Anurag Mishra (Advocate) and Shri Lakshay (proxy counsel)

**Complainant**

**Respondent**

**ORDER**

1. This complaint has been filed by the complainant/allottee 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*.

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**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 Village Harsaru, Sector-88B, Gurugram.
2.	Project area	18.80 Acres
3.	Nature of Project	Residential (Group Housing)
4.	DTCP license no. and validity status	91 of 2013 dated 26.10.2013 Valid upto 25.10.2017
5.	Name of Licensee	M/s Vaibhav Warehousing Private Limited & 9 others
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.	Apartment no.105, Tower - West End-1 (as mentioned in clause F of BBA at page no.16 of complaint)
8.	Unit area admeasuring	936.77 sq. ft. (carpet area) (as mentioned in clause F of BBA at page no.16 of complaint)
9.	Booking application form	02.07.2019 (page 51-58 of complaint)
10.	Date of buyer's agreement	<b>No date is mentioned in BBA</b> <b>And</b> <b>17.01.2020</b> (As per the date mentioned in stamp paper attached with BBA at page 13 of complaint)
11.	Possession Clause	<b>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</b>

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		<p><b>plan/schedule, as given in Schedule D of the Agreement.</b></p> <p><i>..... 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/Tribunal/NGT 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 extension of time for delivery of possession of the Apartment....."</i></p> <p><b>(Emphasis supplied)</b></p> <p>(as per page no.22 of complaint)</p>
12.	Due date of Possession	<p><b>15.03.2025</b></p> <p>(Taken from previous cases decided by the Authority w.r.t same project also as mentioned in RERA registration certificate)</p>
13.	Total sale consideration	<p>Rs.85,87,924/-</p> <p>(as mentioned in clause 1.2 of BBA at page no.16 of complaint)</p>
14.	Amount paid	<p><b>Rs.17,60,000/-</b></p> <p>(as per SOA dated 04.04.2023 at page no.49 of complaint)</p>
15.	Occupation Certificate	Not obtained
16.	Offer for Possession	Not offered

### B. Facts of the complaint.

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

- I. That, in pursuant to the advertisements, assurances, representations and promises made by respondent in the brochure and believing the same to be correct and true, the complainant upon being persuaded, considered booking a unit i.e. HSG-026-WEST END-1-105 in the project "Turning Point (Phase-1)", situated in Sector 88B, Gurgaon, Haryana. It was represented by the respondent that the project including the unit of the complainant would be completed by 2022 along with its possession.

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- II. That, in order to further persuade the complainant to book a unit in the project, respondent-builder offered a scheme of 'Assured Rental-No EMI' till actual possession wherein it assured her that it would be provided with monthly rentals against the rent charge of his residence each month till possession of the unit.
- III. That, relying upon its representations and being assured that it would abide by the commitments, the complainant in good faith booked a unit on 02.07.2019 by paying a booking amount of Rs.1,00,000/-being a part payment of the total sales consideration of the unit.
- IV. That, pursuant to the booking of the unit, a builder-buyer agreement dated 17.01.2020 (ref. to date on stamp paper) was executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule, date of completion etc. under the said builder buyer agreement.
- V. That, thereafter, a declaration dated 06.02.2020 was signed by the complainant which mentioned that she would be provided with assured rental of Rs.14,500/- per month starting from October 2019 after a deduction of 10% TDS on the assured rental, till possession of the unit. However, it was only after the efforts and coordination of complainant over phone and emails dated 17.02.2020 that the assured rental was started, and she received first assured rental payment of Rs.78,300/- (after deducting 10% TDS on the due amount of Rs.87,000/-) in March 2020, a payment for assured rental of last 6 months from October 2019 until March 2020.
- VI. That, the respondent stopped paying the assured rental amount of Rs.14,500/- due every month after March,2020 to the complainant and further no payments were made for the same and also no substitute arrangements were made for her after March 2020.



- VII. That, the complainant was shocked and appalled when she visited the project site and saw no construction going on whatsoever and thereby giving the impression that it has abandoned the project completely. Even as per its own website, only excavation work is there.
- VIII. That, complainant and her family members have been trying to reach out the respondent via physical meetings in its corporate office, phones and emails enquiring about the status and future of the residential project, rent-free accommodation and directing it to refund the amount already paid to it but without any satisfactory response. That the complainant is working and residing in Kurukshetra and has a small kid to look after, so it is always a mental and physical torture to visit the respondent-builder office for so many years now for getting a resolution.
- IX. That, even at the time of the execution of the builder-buyer agreement, the respondent had represented to the complainant that it 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. Only, some excavation work has been done and since then, the site & the project have been abandoned by it. That it does not have necessary approvals from the DTCP for the project and this amounts to fraud being committed towards the complainant.
- X. That the respondent has not complied with the Section 4(2)(1)(0) of the Act 2016 for which several notices have been sent by this authority dated 18.11.2019, 24.12.2019, 25.01.2020, 23.01.2020, 20.07.2020 & 03.09.2020 respectively. Moreover, a penalty of Rs.25,000/- per day for till the date the default continues, with effect from 31.12.2019 was imposed on it by the authority for non-compliance. A show-cause notice was also issued to it in which promoter was required to comply with the directions of the authority

within one month from the date of receipt of the notice, otherwise it was directed to show cause as to why its registration certificate not be revoked under Section 7 of the Real Estate (Regulation and Development) Act 2016 and Rule 7 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

- XI. That the respondent has no intention of completing the above said project and till date, it has not filed any of the mandatory information with the authority, with regard to the completion of the project.
- XII. That the respondent has on its own, extended the date of the completion of the project to the year 2028 - 2029, which is absurd, arbitrary and unjust in nature.
- XIII. That the project has been at a standstill for several years. That the complainant has already made a total payment of Rs.17,60,000/-, to it towards the residential unit booked by her. Despite paying such a huge sum towards the unit, it has failed to stand by the terms and condition of the builder-buyer agreement and the promises, assurances, representations etc., which it made to her at the time of the booking the abovesaid unit.
- XIV. That the respondent-builder is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, but harassment of the complainant by misguiding her, keeping her in dark and putting her future at risk as all her savings have been exhausted in this booking making it impossible for her to book an alternate home property. Also, it is a fact that market rates are increasing day by day, so it will be very difficult for her to find a similar home with same savings in future.
- XV. That the complainant is constrained and left with no option but to cancel the allotment. Further, she is seeking and is entitled to full refund of the amount with interest as per Act, assured rental amount as agreed and



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.

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

4. The complainant has sought following relief(s):

- i. Direct the respondent to refund the paid amount of Rs.17,60,000/- with interest as per the RERA Act;
  - ii. Assured rental till date of filing of complaint @Rs.14,500/- per month starting from April, 2020 till the actual date of refund of the amount.
  - iii. Compensation against the physical and mental harassment that I had to go through all these years.
  - iv. Also, it should cover the difference amount which I will have to pay now on buying a similar property in the same location as the rates have increased significantly during these years.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

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

- 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. It is submitted that the License No.91 of 2013 and approval of building plan and other approvals granted for the "Turning Point Project" has been obtained on 26.10.2013 by Respondent and the construction whereof 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 Point" and the authority registered the said project vide its Registration No. 213 of 2017 dated 15.09.2017.

- c. That the complainant had booked a residential unit bearing No. HSG-026-WEST END-1-105 in the year 2019.
- d. That as per clause 7 of the agreement to sale executed with the complainant, 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. That the present complaint is pre-mature as it is the admitted position of the complainant that the respondent is required to handover the possession of the said unit 48 months from the date of execution of the builder buyer agreement and therefore filing a pre-mature complaint is not maintainable at all the same must be dismissed on the said ground.
- e. That the complainant has only made payment of Rs.17,60,000/- towards the booking of the said unit which is around 20% of the total sale consideration only. Also, the complainant has not made any further payment after the year 2020 till date. 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.
- f. That the respondent had offered "Payment Linked Plan" and "Construction Linked Plan" to its buyers. Few of the buyers had opted for "Payment Linked Plan" however most of the buyers in the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers including the complainant, in the Turning Point Project 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.

- g. That the complainant have delayed and defaulted in making timely payments of instalments to the respondent. The said delay by the complainant in payment of the timely instalments has also contributed to the delay in completion and possession of the apartment in addition to other factors beyond the control of the respondent. It is an established law, that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. A defaulter under an agreement cannot seek remedy for default against the other for delay. Needless to say, that obligation for payment of the instalments (consideration) was first on the complainant and then the obligation of the respondent was to complete and hand over the apartment. Therefore, the complainant cannot allege delay in completion under the camouflage of refined wordings and misuse of the process of law. Therefore, the complainant are not entitled to any relief under the Consumer Protection Act, under the camouflage of refine wordings for their own use, will end up getting relief if it is so granted by the Hon'ble commission. It is submitted that for the aforesaid reason itself this complaint initiated by the complainant should be dismissed as non-maintainable
- h. That the delay, if any, is on account of reasons beyond the control of the respondent, therefore, there is no breach whatsoever on the part of respondent. In any event, it is stated that the time stipulated for completion under the allotment/ agreement is not the essence and respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not



attributable to respondent. On the perusal of below submissions, it would be clear that the complaint of the complainant with regard to delay in completion of construction of the possession is misconceived particularly for the following reasons. That following were the reasons that halted the construction and development of the project as under:

S.N.	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.	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
3.	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
4.	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.
5.	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.
6.	Vatika Limited has filed an another application on 16.08.2021 for migration of 18.80 Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana
7.	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.
8.	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/-



9.	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.
10.	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
11.	Re-routing of high-tension wires lines passing through the lands resulting in inevitable change in layout plans.
12.	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
13.	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

- i. That most of the buyers in the said Group Housing Project has booked their residential units under the "construction linked plan" and has severally defaulted in making timely payment of instalments to the respondent.
- j. That beside the above major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated November 8, 2016 has also affected the pace of the development of the project. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wages labourers.
- k. That due to the above 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 and the above said proposal for de-registration of the project is filed in the interest of the allottees of the project.
- l. That the reliefs sought by the complainant are manifestly contradictory and legally untenable, as they are mutually exclusive in nature. The complainant has, on the one hand, sought a direction for the cancellation of the booking of the residential unit and the refund of the total amount paid, i.e.,



Rs.17,60,000/- with interest as per the applicable provisions of law until the date of actual refund. On the other hand, the complainant concurrently demands the payment of assured rentals at the rate of Rs.14,500/- per month, starting from April 2020 until the date of actual refund. These two claims are diametrically opposed, as the cancellation of the booking and the refund of the amount inherently terminate the contract and, thereby, any obligation to pay assured rentals. It is well-established in law that one cannot seek to annul a contract (via cancellation and refund) while simultaneously demanding performance of the same contract (through the payment of assured rentals). The dual reliefs sought by the complainant are therefore legally irreconcilable and demonstrate a fundamental inconsistency in the complainant's position. As such, the complaint is liable to be dismissed in toto on the grounds of inconsistency and legal incongruity.

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

**E. Jurisdiction of the Authority:**

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

**E.I Territorial Jurisdiction:**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this





authority has complete territorial jurisdiction to deal with the present complaint.

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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*Section 11(4)(a)*

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

*Section 34-Functions of the Authority:*

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it*



*is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.1 Objection regarding force majeure conditions:**

15. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.
16. 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.

17. 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.

**G. Findings on the relief sought by the complainant.**

**G.I Direct the respondent to refund the paid amount of Rs.17,60,000/- with interest as per the RERA Act;**

**G.II Assured rental till date of filing of complaint @Rs.14,500/- per month starting from April, 2020 till the actual date of refund of the amount;**

18. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

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 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.

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 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.

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 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."*

24. It is proved from the facts detailed above and not rebutted by the developer that the project has already been 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 complainant is entitled for refund of the paid-up amount i.e., Rs.17,60,000/- from the developer with interest at the rate of 10.85% 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 actual realization within the timelines provided in rule 16 of the Haryana Rules, 2017, *ibid*.

**G.III Compensation against the physical and mental harassment that I had to go through all these years;**

**G.IV Also, it should cover the difference amount which I will have to pay now on buying a similar property in the same location as the rates have increased significantly during these years.**

25. The complainant is also seeking relief w.r.t compensation against the physical and mental harassment. 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.

**H. Directions of the Authority**

26. 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/promoter is directed to refund the paid-up amount i.e., Rs.17,60,000/- received by it from the complainant against the allotted unit along with interest at the prescribed rate of 10.85% per annum from the date of each deposit till its actual realization.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
27. Complaint stands disposed of.
28. File be consigned to registry.

Dated: 28.08.2025

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