

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

**Complaint no. : 2706 of 2024**  
**Order reserved on: 02.05.2025**  
**Order pronounced on: 11.07.2025**

Parag Gakhar  
R/o: - H.no. 976, Ward no. 19, Arya Nagar, Rohtak,  
Haryana.

**Complainant**

Versus

M/s Vatika India Ltd.  
**Address:** - Flat no. 621-a, 6<sup>th</sup> floor, Devika Tower, Nehru  
Place, New Delhi-110019

**Respondent**

**Coram:**  
Shri Arun Kumar

**Chairman**

**Appearance:**  
Shri Rahul Bhardwaj  
Shri Dhananjai Jain

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

2. The particulars of the project, the details of 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. No.	Particulars	Details
1.	Name of the project	"Seven Elements", Sector-89A, Gurugram.
2.	Total area of the project	14.30 Acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no.	41 of 2013 dated 06.06.2013 Valid up to 05.06.2029
5.	Rera registered/ not registered and validity status	<b>Registered [Phase-1]</b> 281 of 2017 dated 09.10.2017 Valid up to 31.03.2021
6.	RERA Extension	RC/REP/HARERA/GGM/ 281 of 2017/7(3)/39/2023/16 dated 24.11.2023 Valid upto 31.01.2026
7.	Expression of interest dated	30.04.2013 (But an amount of Rs. 8,00,000/- was paid on 30.04.2013) [Page 11 of reply]
8.	Allotment letter dated	27.02.2014 [Page 23 of reply]
9.	Unit no.	B-404, 4 <sup>th</sup> Floor, Sixth Court (As mentioned in Allotment Letter on page 23 of reply)
10.	Unit Admeasuring	1970 sq. ft. (super area) (As mentioned in Allotment Letter on page 23 of reply)
11.	Buyer's Agreement	Not executed
12.	Possession Clause as per expression of interest	N/A
13.	Due date of possession	27.02.2017

		(Calculated as per <b>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018- SC); MANU/SC/0253/2018</b> From the date of allotment letter i.e. 27.02.2014
14.	Total sale consideration	Rs.1,35,85,000/- (as mentioned in SOA dated 13.01.2014 at page 22 of complaint)
15.	Total amount paid	<b>Rs.8,00,000/-</b> (as mentioned in SOA dated 13.01.2014 at page 22 of complaint)
16.	Reminders sent by the respondent to the complainant	02.07.2013, 07.08.2013, 12.09.2013, 31.10.2013, 20.11.2013, 30.12.2013, 25.07.2014, 08.08.2014 [Page 13-21 and 24-25 of reply]
17.	Occupancy Certificate	Not known <b>(To be ascertained)</b>
18.	Offer of possession	Not known <b>(To be ascertained)</b>

### B. Facts of the complaint

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

- The complainant is a law-abiding citizen of the country who has been cheated by the malpractices adopted by the Respondent as stated to be a builder and is allegedly carrying out real estate development since many years. That the complainant is an "allottee" within the ambit of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016.
- The respondent M/S Vatika Limited is company incorporated under the provisions of Companies Act 1956, having its registered address at Vatika Triangle, 7th Floor, Sushant Lok, and Phase 1. Block-A, Mehrauli, Gurgaon 122002 and is inter-alia engaged in the business activities relating to the

construction, development, marketing & sales of various types of residential & commercial properties.

- iii. The respondent who is a "promoter" as per Section 2(zk) of the Act, under the guise of being a reputed builder and developer approached the complainant through its authorized representatives to dupe him of his hard-earned money in the name of development by the respondent by making several false promises.
- iv. The respondent launched its real estate project of residential apartments known as "Seven Elements" in Sector 89, Gurgaon, Haryana. The respondent advertised the aforesaid real-estate project as a one-of-kind development with impeccable facilities and further promised to complete the project within time. Induced by the attractive advertisements, assurances, representations and promises made by respondent and thus, believing the same to be correct and true the complainant agreed to same to be correct and true the complainant agreed to book a unit in the project.
- v. Lured by the advertisements and promotions of the project, the Complainant decided to invest in the said project of the respondent and accordingly on 30.04.2013 paid an initial token amount of Rs. 8,00,000/- in lieu of the booking for the allotment of a unit in the respondent's project. The said amount was paid by the complainant vide cash which is clearly exhibited in the account ledger of the respondent shared with the complainant dated 13.01.2014 acknowledging the same.
- vi. After receiving the aforesaid amount, the respondent issued a receipt acknowledging the same. Upon receiving the abovementioned booking amount, the respondent vide letter dated 13.04.2013 issued an Expression of Interest/Letter of Intent wherein, the complainant was allotted a unit bearing No. 3BHK+S/067 admeasuring 1900 sq. yds. It is



stated that the total consideration of the apartment was Rs. 22,69,207.81/- including all the miscellaneous expenses.

- vii. The respondent as per the terms and conditions of the expression of interest as well according to the promises and assurances made to the complainant, the former was ought to execute the allotment letter as well as builder buyer agreement consequently. However, to the utter shock and surprise the respondent never showed any interest and called upon the complainant to execute the allotment letter which would have enunciated the basic and preliminary rights to the complainant followed by the builder buyer agreement.
- viii. It would not be out of place to state that the respondent without issuance or execution of the allotment letter or any agreement giving preliminary rights to the complainant started demanding the future payments for the unit. The respondent vide e-mails started harassing the complainant to clear the future payments failing which the latter's token money would be forfeited by the respondent. Accordingly, the complainant made several requests by visiting personally numerous times to execute the agreements, but all the visits went into futile as the respondent never paid any heed and made assurances to the complainant for executing the agreement in next few weeks.
- ix. The purpose of the complainant of buying an apartment and peacefully living with his family was defeated due to the inability of the respondent to facilitate the agreement and demand the money in lieu of it. Furthermore, after not receiving any updates from the respondent regarding the progress of the project, the complainant was burdened with the huge financial stress due to which the complainant requested the respondent adjust the said amount in their FD scheme funds or requested for refund of the money along with the interest. To the



complainant utter shock, no response was received from the respondent even though the complainant had explained the entire situation to the respondent.

- x. However, nothing was transpired to the complainant regarding the refund of the amount paid by him. The complainant ran from pillar to post for the refund of his hard-earned money but all in vain as the respondent paid no heed to the requests of the complainant. Due to the gross deficiency in service of the respondent, clubbed with mental agony the complainant herein has suffered a lot. It is respectfully submitted that the innocent allottee cannot be left at the behest of unscrupulous organization like the respondent. The complainant thereafter, filed a criminal complaint against the respondent under sec 420 of IPC for cheating and usurping the money from the complainant on false promises and misrepresentations.
- xi. That left with no other options the complainant is forced to approach this Hon'ble Authority for justice for the refund of amount paid by the complainant along with applicable interest prescribed under the RERA Act r/w the HRERA Rules.

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

4. The complainant has filed the present complaint for seeking following reliefs:
  - i. Direct the Respondent for an immediate 100% refund of the total amount paid by the Complainant along with interest at a rate of 18% per annum from the date of receipt of payments made to the Respondent.
  - ii. Restraining the Respondent not to create third party rights on the allotted apartment to the Complainant till the realization of the amount.
  - iii. Direct the Respondent to pay a sum of Rs. 1,50,000/- to the Complainant towards litigation costs.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. The complainant had approached the respondent company with the intend to book 2 housing units in the project "Seven Elements".
- ii. The complainant had made an application of interest to invest in the said project and has made the payment of a token amount of Rs. 8,00,000/- only. However, no further payments have been made by the complainant even after repeated reminders of the respondent. That the complainant by his free will and choice had come to the office of the respondent to enquire about the project and has also visited the site of the project and it was only after due verification of all the documents and physical verification of the land the complainant was interested to book a flat in the project of the respondent.
- iii. It is pertinent to submit that the complainant has deliberately not annexed the expression of interest application that was filled by the complainant and duly signed by the complainant along with the complaint because the same would demonstrate that total sale consideration of the said flat in question is Rs.1,35,85,000/- which is more than 11 times than the total consideration as declared by the complainant in its complaint.
- iv. Further, as per the terms of the said expression of interest the respondent was supposed to offer the allotment of the residential unit within 12 months from the date of the said expression subject to the complainant making the payments as per the terms of the said

expression of interest. The complainant has also agreed to the payment plan in the said expression of interest according to which the complainant was required to make the payment of the 15% of the basic sale price within 90 days of the date of booking and further 10% of basic sale+ 25% of preferential location charges within 9 months of booking or allotment whichever is later. Thus, it is clear that the complainant was required to make the payment of 15% of the BSP within 90 days from the date of booking before the respondent allots the residential flat to the complainant.

- v. That the respondent issued letter dated 02.07.2013 to the complainant requesting for making the payment of a sum of Rs. 13,13,310/- as per the term of the said expression of interest. However, the said was not adhered to by the complainant.
- vi. Further, the respondent issued a reminder letter to the complainant requesting the complainant to make the payment of the instalment as agreed however, the complainant failed to adhere to the same as well.
- vii. It is also submitted that respondent issued a second reminder letter to the complainant requesting the complainant to make the payment of the second instalment as agreed however, the complainant failed to adhere to the same as well. It is clarified that the allotment of the said flat was pending only because of non-payment of the complainant.
- viii. The respondent issued final reminder letter dated 30.12.2013 to the complainant requesting the complainant to make the payment of the instalment so that the respondent can proceed further with the allotment process however, the complainant neither made the payment of the same nor had reverted to any of the repeated reminders of the respondent.



- ix. That even though the complainant had not come forward to make the payment of the agreed instalment the respondent on 27.02.2014 allotted flat no. sixth court B-404 to the complainant. It is evident from the said letter that the respondent is nowhere in any default in making the allotment of the unit to the complainant even when the complainant was in default in making the payment of the agreed instalment as per the terms of the expression of interest. It is clarified that all the allegations made by the complainant in the present complaint are false and baseless.
- x. Further, even though the respondent allotted the said flat to the complainant within 12 months from the date of the expression of interest the complainant failed to make the payment of the agreed part consideration and only after waiting for more than a year for the instalment the respondent issued final reminder letter dated 25.07.2014 to the complainant again requesting the complainant to make the payment of the pending dues. The complainant still did not make any effort to revert to the reminders and requests of the respondent nor made any payment.
- xi. Again, the respondent waiting for the complainant to make the payment and re-issued the final reminder letter dated 08.08.2014 requesting the complainant to make the payment of the instalment but the complainant did not give and heed to the requests and reminders of the respondent.
- xii. That even after repeated reminders and requested made by the respondent the complainant did not make the payment and instead made a fraudulent and frivolous police complaint against the respondent in 2017. The conduct of the present complainant is demonstrated from the fact that the complainant did not annex any of

these reminders and requests of the respondent alongwith its complaint only to prejudice this hon'ble authority and to harass and extort money from the respondent. The present complainant is deliberately not annexed any of this communication with the present complaint to suppress material facts of the case and therefore the complainant has come before this hon'ble forum with unclean hands and thus the present complaint be dismissed with heavy cost.

- xiii. That as per clause C of the said expression of interest the complainant had agreed that in the event the complainant fails to execute the requisite application form/BBA as required by the respondent, the respondent shall be entitled to forfeit the token amount paid by the complainant. The complainant therefore did not deliberately annex the said expression of interest along with the present complaint as entire case of the complainant would fall flat on the basis of the said document. The present complaint is absolutely baseless and the clear piece of harassment and extortion done by the homebuyer to the builder.
- xiv. It is submitted that the complainant has delayed and defaulted in making timely payments of instalments to 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 was first on the complainant and then the obligation of the respondent was to allot the apartment. Even though the respondent still fulfilled its obligation and allotted the flat to the complainant, it was the complainant who kept on defaulting in making the payment even

after the respondent waiting for more than 1.5 years for the instalment which was supposed to be made by the complainant with 90 days from the date of submission of expression of interest.

xv. Further the present complaint is barred by limitation as the complainant has not come before this hon'ble forum within limitation. Therefore, the complainants are not entitled to any relief under the RERA 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 Authority. It is submitted that for the aforesaid reason itself this complaint initiated by the complainants should be dismissed as non-maintainable.

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 submission made by the parties.

#### **E. Jurisdiction of the authority**

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as 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 Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with office 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**

10. Section 11(4)(a) of the Act 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) The promoter shall-**

- (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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

## **F. Findings on the objections raised by the respondent**

### **F.I. Objection regarding maintainability of complaint on account of complaint being barred by limitation.**

12. The respondent has filed the reply on 07.02.2025, which is taken on record and raised the preliminary objection in its reply that the complaint is not maintainable being barred by limitation. It is necessary to deal with the



preliminary objection before proceeding with the reliefs sought by the complainant.

13. On consideration of the documents available on record, the authority observes that the complainant made an "Expression of Interest" dated 13.04.2013 to invest in the project of respondent i.e. "Seven Elements" and made the payment of an amount of Rs.8,00,000/-. Further, as per the terms of said "Expression of Interest" the respondent was supposed to offer the allotment of the residential unit within 12 months from the date of the said expression of interest. The complainant herein was allotted a unit bearing no. B-404, Sixth Court in project of the respondent named "Seven Elements" situated at Sector 89A, Gurugram vide allotment letter dated 27.02.2014. The total sale consideration of the said unit was Rs.1,35,85,000/- and the complainant has only paid the amount of Rs.8,00,000/- and no further payments have been made by the complainant even after repeated reminders on 02.07.2013, 07.08.2013, 12.09.2013, 31.10.2013, 30.12.2013 and 08.08.2014 to make the payment of the instalment so that the respondent can proceed with further allotment process. However, the complainant neither made the payment of the same nor had reverted to any of the repeated reminders of the respondent.
14. In the present matter, the complainant is seeking the refund of the total amount paid by the complainant as a token amount i.e. Rs. 8,00,000/-. That the complainant did not make the timely payments of the dues and outstanding as per the terms of the said Expression of Interest. That as per 'Clause C' of the said "Expression of Interest" the complainant had agreed that in the event the complainant fails to execute the requisite application form/ BBA as required by the respondent, the respondent shall be entitled to forfeit the token amount paid by the complainant. Therefore, the token amount paid by the complainant i.e. Rs. 8,00,000/- stands forfeited.

15. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate (Regulation and Development) Authority Act of 2016. However, the Authority under section 38 of the Act of 2016 is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
16. In the present matter the cause of action arose when the respondent issued the reminders letters dated 07.08.2013, 12.09.2013, 31.10.2013, 20.11.2013, 30.12.2013 and final reminder on 08.08.2014 for making timely payments of instalments to the respondent. That the complainant did not make any effort to revert to the reminders and requests of the respondent nor made any payment. The complainant has filed the present complaint on 12.06.2024 which is 9 years 10 months and 4 days from the date of cause of action. Therefore, the limitation period of three years was expired on 08.08.2017 and accordingly, the period between 15.03.2020 till 28.02.2022 as excluded by the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 shall not be excluded while calculating the period of limitation as the limitation expired prior to the beginning of the said period. The present complaint seeking refund was filed on 12.06.2024 i.e., beyond three years w.e.f. 08.08.2014.
17. 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 of 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.

18. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. 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. Moreover, the Authority in case bearing no. ***2480 of 2023 titled as Mrs. Ritu Lal Vs M/s Emaar India Limited decided on 10.12.2024***, has also dismissed the complaint being barred by limitation on the ground that they have approached the Authority after unreasonable delay despite offer of possession and execution of conveyance deed.
19. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time. It is a fundamental principle of natural justice that no party should suffer due to inaction or delay of another. Where a litigant has failed to act within a reasonable time and has not provided any sufficient justification for the prolonged inaction, such a party cannot claim equitable relief or invoke the discretionary jurisdiction of the authority. 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. Accordingly, the complaint is hereby dismissed.

20. Complaint as well as applications, if any, stands disposed of accordingly.

21. File be consigned to registry.

**Dated: 11.07.2025**



**(Arun Kumar)**

Chairman

Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**