

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

Complaint no.: 299 of 2025
Date of filing: 14.02.2025
Order pronounced on: 12.09.2025

Amit Gupta

R/o: - SCO 13, 2nd floor Omaxe World Street

Complainant

Versus

M/s Vatika Limited

Regd. Office at: - Unit A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next,
Gurugram-122012.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Vivek Aggarwal (Advocate)
Shri Abhijeet Gupta (Advocate)

Complainant
Respondent

ORDER

1. This complaint 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 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. No.	Particulars	Details
1.	Project name and location	"Turning Point", Sector- 88B, Village Harsaru, Gurugram, Haryana
2.	Project area	18.80 acres
3.	Nature of the project	Affordable 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	Vaibhav Warehousing Pvt. Ltd. And 9 others
6.	RERA registration details	Registered Vide registration no. 213 of 2017 dated 15.09.2017 valid up to 15.03.2025 for area admeasuring 93588.71 sq. mtrs.
7.	Unit no.	West End- 5-203 (page 80 of complaint)
8.	Unit area admeasuring	92.07 sq. ft. (carpet area) (page 80 of complaint)
9.	Allotment letter	11.02.2019 (page 67 of complaint)
10.	Date of execution of builder buyer agreement	20.03.2018 (page 77 of complaint)
11.	Possession clause	11. <i>6 YEARS from the date of signing this document</i> (page 83 of complaint)
12.	Due date of Possession	20.09.2024 <i>(as per possession clause + 6 months grace period on account of COVID 19)</i>
13.	Basic sale consideration	Rs.99,02,520/- (as per page 91 of complaint)
14.	Amount paid by the complainant	Rs.22,54,093/- (as per page 102 of complaint)
15.	Occupation Certificate	Not obtained
16.	Offer of Possession	Not offered

B. Facts of the complaint.

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

- i. That the respondent no. 1 is a limited company which is controlled by you respondent's no. 2 and 3, being the whole-time Director and Director of the respondent no. 1 company. It is placed on record that since respondent no. 1 company is an artificial person, you respondent no. 2 and 3 are in control of respondent no. 1 company and are responsible for the entire working of respondent no. 1 company.
- ii. That the complainant herein are the bona fide flat buyers in above named projects of the respondent no. 1, as mentioned in the preceding paragraph, namely, "One Express City" By Vatika Limited" at Gurgaon.
- iii. That the respondent no. 1 is builder and developers who has developed several real estate projects in Gurugram including "One Express City" By Vatika Limited" at Gurgaon, Haryana. The complainant herein is the allottee in the said projects.
- iv. That the respondent no. 1 published advertisements in various mass media and through its agents, offering lucrative schemes and stating that the company was initiating the construction of luxurious housing flats in Gurugram under the project name "One Express City" by Vatika Limited. The respondent no. 1, through its agents and advertisements, invited the general public to invest in the said project, promising substantial returns. While making these representations and assurances, the respondents no. 1 to 3 were fully aware that the promises made in the advertisements would not be fulfilled. Nevertheless, with the intent to unjustly obtain valuable sums of money from the public, the respondents no. 1 to 3 made such promises. Relying on these deceitful advertisements and assurances, the complainant was induced to invest in the project. Furthermore, the respondents no. 1 to 3 also falsely represented that all requisite licenses and regulatory compliances for the project's construction were in place.

- v. Based on the false assurances and misrepresentations made by the respondents, which the complainant reasonably relied upon as true and correct at the relevant time, the complainant entered into an agreement to purchase a residential unit in the aforementioned project. Consequently, the complainant booked and was allotted property no. 1104/Skypark-3 in the project "One Express City."
- vi. Since the respondents no. 1 to 3 presented an overly optimistic and misleading portrayal of the project, they induced the complainant to make substantial payments towards the purchase of the property. Consequently, the complainant paid a total sum of 122,54,093/- to the respondents for the aforementioned flat, property no. 104/Skypark-3 in the project "One Express City."
- vii. The complainant made various payments between 17th April 2014 and 4th June 2015, amounting 22,54,093/- as per the agreed terms of the project "One Express City" by Vatika Limited.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. To Direct the builder to provide possession as per builder buyer agreement.
 - ii. To Direct the builder to provide possession in any of its similar project, having ready to move inventory of equal worthed current market value of the proposed increased value of the flat, in the same vicinity.
 - iii. To grant relief in the form of compensation, along with the principal amount and interest, delayed interest, additional compensation for harassment and unfair trade practices as per the terms of the Agreement for Sale and applicable laws, decided cases by various authorities or as per the current market rate of similar project in the same vicinity, whichever is higher. As the rates of land parcel of that area are highly increased, as years have passed and rates of properties in that area have increased hundreds of times, and it's not possible to purchase the equivalent worthed property with the returnable amount proposed by the respondents.

- iv. To grant additional compensation, to cover the irreparable loss of the petitioner to reach at the amount at par to invest in the similar option in the same vicinity.
- v. That the Complainant further claims the total receivable amount as requested above, should carry interest on the decided amount, up to the date of credit of final payment in the bank account of the petitioner.
- vi. To impose penalty upon the respondents as per the provisions of Section 61 of the RERA for contravention of Section 11(4) (f) read with Section 17 of the RERA Act.
- vii. To cancel the license of developer builder or to black list the developer builder even for the future projects, to stop future fraud with any other genuine home buyer to avoid the defraud played by him.
- viii. Impose penalty on the Respondent-Developer for violation of the mandate contained in Section 11(4)(f) read with Section 17 of RERA Act?
- ix. Impose penalty on the Respondent-Developer for violating the mandate contained in Section 15 of RERA Act?
- x. Impose penalty on the Promotor, in personal capacity, who is the ultimate beneficiary for violating the mandate contained in RERA Act?
- xi. Direct the Respondent-Developer to pay the cost of litigation in advance to carry on this fight for justice.

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:

- i. That, the present complaint has been preferred by the complainant before the Ld. Haryana Real Estate Regulatory Authority, Gurugram, under Section 31 read with section 15, 35, 36, 37 and Section 38 of Real Estate (Regulation and Development) Act, 2016, without any concrete or credible contentions and hence liable to be dismissed as it is filed without any cause of action.
- ii. That, the contents of the complaint herein, deliberately failed to mention the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant is raising false,

frivolous, misleading, and baseless allegations against the respondent with intent to acquire unlawful gains.

- iii. That, the complainant has not approached the Ld. Authority with clean hands and has suppressed/concealed the relevant facts with the intent to mislead this Ld. Authority through the representation of the one-sided facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- iv. That the respondent, herein launched a group housing project titled as "One Express City", situated and located at Sector-88B, Gurugram, Haryana.
- v. That, in year 2014, the complainant herein learned about the project and repeatedly approached the respondent; to know the details of the said project. 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.
- vi. That, after having keen interest in the above said project launched by the respondent, the complainant upon its own examination and investigation desired to purchase a flat, and subsequently booked a flat in the said project.
- vii. That, the respondent on 18.03.2015, vide allotment letter, allotted unit no. 1104/SKY PARK-3.
- viii. That, the complainant herein has paid an amount of Rs. 22,54,093/- against the sale consideration of the previous unit.
- ix. That, the respondent, had launched another group housing project titled as "Turning Point", situated, and located at Sector-88B, Gurugram, Haryana.
- x. That, the complainant after this repeatedly approached the respondent, to know the details of the said project. The complainant again inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project and sought allotment from the respondent in this project vide booking application form

dated 29/09/2017 and paid the booking amount of Rs. 1,00,000/-, after which the respondent allotted apartment no. HSG-026- West End-5-203 at second floor to the complainant for a basic sale consideration of Rs. 86,10,000/-.

- xi. Thereafter, the complainant himself asked the respondent to transfer the amount paid by him against the previous unit in the project Turning Point. That, after several requests from the complainant the respondent transferred the amount of Rs. 22,54,093/- to the said unit in the new project namely "Turning Point".
- xii. That, it is pertinent to mention here that the complainant has paid an amount of Rs. 23,54,093/- as total amount against the said Unit.
- xiii. That, pursuant to which the builder buyer agreement dated 20.03.2018, was executed between the complainant and the respondent, for the unit, for a basic sale consideration of Rs. 86,10,000/-.
- xiv. It is pertinent to bring into the knowledge of this Hon'ble Authority that as per the agreement so signed and acknowledged by the respondent herein provided and estimated time period of 90 months for completing of the construction for the project i.e., "Turning Point", and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project, which were unavoidable and purely beyond the control of the respondent.
- xv. 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.	<p>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.</p> <p>(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)</p>
3.	<p>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</p>
4.	<p>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</p>
5.	<p>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.</p>
6.	<p>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.</p>
7.	<p>Vatika Limited has filed an another application on 16.08.2021 for migration of 18.80Acres of existing group housing colony bearing license no.91 of 2013 to setting up mix use under (TOD) policy situated in village-Harsaru, Sector-88B, Gurugram, Haryana</p>
8.	<p>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.</p>
9.	<p>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/-</p>

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 26 acre 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, N.G.T, Environment Pollution Control Authority regarding ban on construction activities every year for a period of 50-75 days 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

xvi. 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.

xvii. That due to the loss suffered in the said project, the respondent no. 1 had no option but to apply for de-registration of the said project.

xviii. 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 Hon'ble Authority in the interest of justice.

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 observes that it 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, 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:

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 complainant at a later stage.

12. 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."

13. 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.I Objection regarding force majeure conditions:

14. 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.

15. Further, the authority has gone through the possession clause of the agreement and observed that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018***, the Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

16. In the present case, the due date comes out to be 20.03.2024. ***That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 20.03.2024 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to ***20.09.2024***. Moreover, the circumstances detailed earlier did

not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

G. Findings on the relief sought by the complainants.

G.I. To Direct the builder to provide possession as per builder buyer agreement.

G.II. To Direct the builder to provide possession in any of its similar project, having ready to move inventory of equal worthed current market value of the proposed increased value of the flat, in the same vicinity.

G.III. To grant relief in the form of compensation, along with the principal amount and interest, delayed interest, additional compensation for harassment and unfair trade practices as per the terms of the Agreement for Sale and applicable laws, decided cases by various authorities or as per the current market rate of similar project in the same vicinity, whichever is higher. As the rates of land parcel of that area are highly increased, as years have passed and rates of properties in that area have increased hundreds of times, and it's not possible to purchase the equivalent worthed property with the returnable amount proposed by the respondents.

G.IV. To grant additional compensation, to cover the irreparable loss of the petitioner to reach at the amount at par to invest in the similar option in the same vicinity.

G.V. That the Complainant further claims the total receivable amount as requested above, should carry interest on the decided amount, up to the date of credit of final payment in the bank account of the petitioner.

G.VI. To cancel the license of developer builder or to black list the developer builder even for the future projects, to stop future fraud with any other genuine home buyer to avoid the defraud played by him.

17. 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.

18. In the present matter the complainant was allotted the unit bearing no. West End-5-203 admeasuring 96.07 sq. ft. carpet area at sector 88B, Gurugram in the project turning point. Thereafter a builder buyers' agreement was executed between the parties on 20.03.2018 for a total sale consideration of

₹99,02,520/- The complainant has filed the present complaint on 14.02.2025 seeking delay possession charges as per proviso to section 18 (1) of the Act, 2016.

19. However, 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 of the allotted unit comes out to be 20.09.2024, 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 Shr. 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 propcsal/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 and there is no progress at the spot. The developer used the monies of the allottees for a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. So, in such situation complainants are entitled for refund of the paid-up amount i.e., Rs. 22,54,093/- 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 realization within the timelines provided in rule 16 of the Haryana Rules, 2017, ibid.

G.VII. Direct the respondent to pay the complainant on account of litigation costs and harassment.

25. The complainant is seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)**, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

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 is directed to refund the paid-up amount i.e. Rs. 22,54,093/- 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 deposit till its realization.

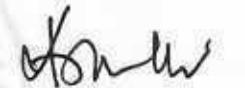
ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

iii. The respondent is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 12.09.2025



(Arun Kumar)

Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram