

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

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| Complaint no. | : | 2568 of 2024 |
| Date of complaint | : | 21.06.2024 |
| Date of order | : | 23.12.2025 |

1. Anish Kumar Singh
2. Ankan Gupta

Both R/o: J-214, DLF Park Place, DLF Phase-V.
Sector-54, Gurugram, Haryana-122009.

Complainants

Versus

M/s Vatika Limited

Regd. Office at: - Unit No. A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India Next,
Gurugram, Haryana-122012.

Respondent

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Dhruv Rohatgi (Advocate)

Complainants

Shri Anshul Sharma (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants 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 provisions 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 complainants, 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 and location of the project | Proposed project - "Vatika India Next-2" at Sector-88B, Gurugram, Haryana |
| 2. | Nature of the project | Residential Plotted Colony |
| 3. | Project area | Not Known |
| 4. | DTCP license no. | Not Known |
| 5. | RERA Registered/ not registered | Registered VATIKA INDIA NEXT (PHASE-II) [Sector-81-85] GGM/561/293/2022/36 DATED 16.05.2022 Valid up to 31.03.2029 VATIKA INDIA NEXT 2 [Sector-88A & 88B] GGM/847/579/2024/74 DATED 08.07.2024 Valid up to 30.06.2030 |
| 6. | Unit no. and area admeasuring | A-3/3d having 132.76 sq. yds. (As mentioned in EoI at page 24 & 25 of complaint) |
| 7. | Expression of interest | Undated (As per page no. 23-26 of the complaint) |
| 8. | Allotment letter | Not allotted/ Not provided |
| 9. | Date of agreement for sale | Not executed |
| 10. | Possession clause | BBA Not executed |
| 11. | Due date of possession | Cannot be ascertained |
| 12. | Sale consideration | Rs.74,34,560/- (As mentioned in EoI at page 24 of complaint) |
| 13. | Amount paid by the complainants | Rs.6,00,000/- (As mentioned in EoI at page 24 of complaint) |
| 14. | Completion certificate | Not obtained |
| 15. | Offer of possession | Not offered |
| 16. | Legal Notice to respondent | 08.02.2024 (As per page no. 27-29 of complaint) |

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a. That the complainants are law abiding citizens and are a resident of J-214, DLF Park Place, DLF Phase-5, Sector 54, Gurgaon, Haryana-122009.
- b. That the respondent, Vatika Limited is a company incorporated under the Companies Act, 1956 having a registered office at INXT City Centre, Ground Floor, Tower-A, Sector 83, Vatika India Next, Gurgaon – 122009 has developed a residential group housing colony by the name of “Vatika INXT-2” in Sector 88B, Gurgaon comprising of various residential units therein, with suitable infrastructural facilities including parking.
- c. That as per Section 2(zk) of the Real Estates (Regulation and Development) Act, 2016, the respondent falls under the category of “Promoter” and is bound by the duties and obligations mentioned in the Act and is under the territorial jurisdiction of this Authority.
- d. That as per Section 2(d) of the Real Estates (Regulation and Development) Act, 2016, the complainants fall under the category of “Allottee” and have the rights and obligations under the Act.
- e. That the respondent represented to the complainants that it had obtained licenses from the appropriate authorities for setting up/constructing a residential colony, by the name of “Vatika INXT-2” in Sector 88B, Gurgaon.
- f. That the complainants after believing representations and assurances of the respondent, decided to make a booking of a residential plot admeasuring 136.76 sq. yard, in the above said project, vide an “expression of interest for plot” form dated 11.03.2021.
- g. That pursuant to the same, the complainants then issued a cheque dated 11.03.2021 for a sum of Rs.6,00,000/- towards the booking of the said

plot. Subsequently, the complainants awaited a copy of the builder buyer agreement from the respondent.

- h. That the complainants were not issued any receipt by the respondent, against the encashment of the abovementioned cheque.
- i. That subsequent to the booking of the above-mentioned plot in the said project and the payment of the booking amount, the respondent, to the utter shock and surprise of the complainants, completely vanished in thin air for reasons best known to them. There was neither anything to be heard from the respondent, nor was a copy of the builder buyer agreement ever received by the complainants from the respondent's office.
- j. That the complainants reached out to the respondent on several occasions and made several and repeated requests to the respondent to get the builder buyer agreement executed. However, these repeated requests have been conveniently ignored by the respondent.
- k. That due to the unprofessional conduct of the respondent, the complainants have been deprived of their hard-earned money. Furthermore, the respondent has been reaping benefits of the booking amount paid by the complainants since the last 33 months.
- l. That subsequent to the failure of non-execution of builder buyer agreement and seeing no progress in the booking, construction and development of the plot in the said project, the complainants once again repeatedly requested the respondent to send a copy of the buyer's agreement for execution and proceed further towards the allotment of the plot, booked by the complainants. However, these requests also fell on deaf ears as the respondent never bothered to comply or even revert

to the above-mentioned requests of the complainants showcasing their malafide intentions and unprofessional conduct.

- m. That it is evidently clear from the questionable and evasive conduct of the respondent that they have been procrastinating from their responsibility and liability to allot a plot in favor of the complainants against the booking amount paid by the complainants.
- n. That is also evident that the respondent is playing fraud with the complainants and have deceived and cheated them. Furthermore, the respondent has fraudulently and dishonestly induced the complainants and caused financial damage and harm to them by enriched themselves. The respondent has made wrongful gain to themselves and has cheated the complainants with the knowledge and intention of causing loss to the complainants.
- o. That the respondent had also duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the unit, size/super area of the unit etc., were clearly mentioned in the said application.
- p. That it must be noted by the Authority that despite of default by the respondent in fulfilling his obligations of executing the builder buyer agreement, the complainants are still willing to honour their obligations and perform their part of the contract by adhering to the payment terms and conditions.
- q. That aggrieved by the non-responsive attitude of the respondent, the complainants were constrained to send a legal notice dated 08.02.2024 calling upon the respondent to immediately send a copy of the builder buyer's agreement to the complainants.

- r. That the complainants are entitled to file the present complaint under Section 11 of the Act which provides for the rights and duties of the promoter, read with Section 31 of the Act.
- s. That the complainants who have been regularly contacting the respondent for the execution of the builder buyer agreement for the allotment and subsequent possession of the unit in question, but all in vain.
- t. That being highly aggrieved and frustrated by the entire circumstances and faced by the malafide and miserable attitude on part of the respondent, the complainants are left with no other option but to approach the Authority, praying for adequate reliefs and payment of remaining dues.
- u. That considering the above facts, the respondent has defaulted in contractual obligations casted upon and thus, the complainants are entitled to seek the remedy as provided under the Act by approaching this Authority.
- v. That the complainant has clear apprehension that now in order to dissuade the complainants or to somehow compel the complainants to withdraw from the booking, the respondent may alter/ modify the standard terms and conditions of the buyer's agreement and/ or add illegitimate and illegal charges in the cost of the plot, that may severely prejudice the rights and contentions of the complainants. The respondent may even illegally cancel or terminate the booking of the complainants, for protection of which, the directions of this hon'ble authority are prayed.
- w. That the cause of action to file the present compliant is still continuing as respondent has failed to execute the builder buyer's agreement till this

date. Further cause of action also arose when despite repeated follow-ups by the complainants and the complainant having performed its obligations, the respondent withheld the due performance of their contractual obligations.

- x. That this Authority has jurisdiction to entertain the present complaint since the project is situated in Gurugram within the jurisdiction of this Authority. That the complainants have not filed any other complaint or suit of similar nature in any court of law. That the present complaint is within the limitation period as prescribed under law.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. To execute the buyer's agreement with the respondent.
 - ii. To give possession of the said unit after completion of all formalities as per buyer's agreement, including the payment of all outstanding dues and execute the conveyance deed in respect to the said unit.
5. On the date of hearing, the authority explained to the respondents/promoters 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 filed a supplementary application on 23.01.2025 and made the following submissions: -
- a. That the respondent, Vatika Limited, respectfully submits this application before this Authority in connection with the matter RERA-GRG-2568-2024 filed by the complainants, Mr. Anish Kumar Singh and Mr. Ankan Gupta, regarding the refund of the booking amount deposited by them.
 - b. That the complainants deposited an amount of Rs.6,00,000/- as booking charges for a property offered by the respondent. It is relevant to note

that no additional payments have been made by the complainants toward the said property. Furthermore, no builder-buyer agreement (BBA) has been executed between the complainants and the respondent to date.

c. That the respondent, Vatika Limited, unequivocally expresses its readiness and willingness to refund the entire amount of Rs.6,00,000/- deposited by the complainants as booking charges. In furtherance to this, the respondent assures this Authority that the refund will be processed promptly and without any unnecessary delay.

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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

8. The respondent raised a preliminary submission/objection that the Authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes 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, 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 allottees 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Maintainability of the present complaint:

12. The Authority observes that the present complaint is based on an undated expression of interest, wherein as per the complainants, they have been allotted a plot bearing no. A-3/3d admeasuring 132.76 sq. yds. The complainants in total had paid an amount of Rs.6,00,000/- as stated in their facts.

13. During proceedings dated 23.12.2025, the counsel for the respondent has stated that the complainants have paid an amount of Rs.6-00 lacs as booking amount through an expression of interest. Further states that the expression

of interest annexed with the complainants is undated and also it does not pertain any stamp/ signature of respondent company and unit no., area and sale consideration mentioned in expression of interest are in hand written format, which were never provided by the respondent. Neither any allotment letter mentioning any unit number is issued nor any BBA has been executed between the parties.

14. However, as per record, neither any formal allotment has been made in favour of the complainants nor any buyer's agreement has been executed between the parties till date. Thus, the transaction between the parties never progressed beyond the stage of expression of interest and did not culminate into allotment of any plot, apartment or building.
15. The authenticity of the alleged receipts/ is in dispute. Determination of:
- Whether money was paid or misappropriated,
 - Whether there was cheating or forgery,
- requires detailed evidence, cross-examination, and investigation – all outside the scope of this Authority.
16. Therefore, the Authority cannot adjudicate on issues requiring forensic or criminal assessment. In these circumstances, this Authority cannot adjudicate upon disputed questions relating to the alleged payment or the veracity of the document relied upon by the complainants i.e., the expression of interest. The issues of such disputes would require a detailed examination of evidence, including the assessment of allegations of misrepresentation, cheating, forgery, and criminal breach of trust. These issues fall beyond the statutory competence of the Authority and can only be adjudicated upon by the competent civil and criminal courts in accordance with law.
17. In the absence of a defined allotment, the complainants cannot be treated as an "allottee" within the meaning of Section 2(d) of the Act. A mere expression of interest, without crystallization of rights in a specific unit, does not confer

the status of an allottee. However, before examining the merits of the case, it is necessary to determine whether the complainants fall within the definition of allottee or not under the Real Estate (Regulation and Development) Act, 2016.

Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:

"2 In this Act, unless the context otherwise requires-

*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, **has been allotted**, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes **the person who subsequently acquires the said allotment through sale, transfer or otherwise** but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

[Emphasis supplied]

18. After considering the contentions advanced by the parties, one issues further arises before the Authority for consideration:

- i. Whether the complainants herein falls within the definition of allottee as per Section 2(d) of the Act of 2016 and;

19. As per Section 2(d) of the RERA Act, 2016, an "allottee" means a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. In the present case, admittedly no allotment of any unit was ever made in favour of the complainants. A mere cost sheet and payment of an amount, in the absence of any allotment letter or agreement for sale, does not confer the status of an allottee upon the complainants.

20. Accordingly, following are allottees as per this definition:

(a) **Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

(b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

21. However, as per the documents available on record, neither any formal allotment has been made in favour of the complainants nor any buyer's agreement has been executed between the parties till date.
22. Since no concluded contract was formed and no allotment was made, the dispute raised by the complainants relating to possession, execution of buyer's agreement & conveyance deed pursuant to a mere undated expression of interest, falls outside the scope and jurisdiction of this Authority under the RERA Act, 2016.
23. Moreover, Section 29 of the Indian Contract Act, 1872, provides that agreements whose meaning is not certain, or cannot be made certain, are void and therefore not legally enforceable. This Authority further observes that, for a legally enforceable contract to come into existence, there must be consensus ad idem on the essential terms, such as the identification of the unit, area where the unit is located, consideration, payment schedule, and the rights and obligations of the parties. These essential terms are ordinarily crystallized through an allotment letter and an agreement for sale. In the absence of such documents, no concluded contract for sale came into existence between the parties.
24. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint w.r.t seeking possession, execution of buyer's agreement & conveyance deed, is not maintainable **firstly**, the Authority only adjudicate the matters which are undisputed in nature and **secondly**, the complainants does not fall under the definition of Allottee. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. 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 justifiable cause.

25. In view of the foregoing facts and applying aforesaid principles, this Authority holds that the complainants herein does not fall within the definition of "allottee" as provided under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Thus, the present complaint is not maintainable under the provisions of the Act, 2016 and is hereby dismissed with liberty to the complainants to seek appropriate remedies before the appropriate forum, in accordance with law.
26. Complaint as well as applications, if any, stands disposed off accordingly.
27. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025

HARERA
GURUGRAM