

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 06.09.2018
Complaint No.	359/2018 Case titled as Ms. Shagufta Yasmin V/s M/s Vatika Ltd.
Complainant	Ms. Shagufta Yasmin
Represented through	Complainant in person with her husband.
Respondent	M/s Vatika Ltd.
Respondent Represented through	Shri Venket Rao, Advocate on behalf of the respondent
Last date of hearing	26.7.2018

Proceedings

The project is registered.

Arguments advanced on behalf of the parties heard. It has been submitted by the complainant that he has booked a floor in project named "Expressions By Vatika in Sector-88-B, Gurugram and deposited an amount of Rs. 2 Lakhs vide Cheque No.648968 dated 20.7.2015 with the respondent against total sale consideration of Rs.84,51,003/-. He has further paid a sum of Rs.1,94,723/- on 15.9.2015 by way of Cheque. Thereafter he did not make any payment despite repeated demands raised by the respondent. Accordingly, the respondent cancelled his allotted floor vide termination - cum-recovery letter dated 15.3.2017. The complainant now wants to refund the deposited amount.

The counsel for the respondent submits that despite several requests made by them, the complainant failed to deposit further payment prompting the respondent to cancel his allotted floor. The respondents have cancelled the booking and forfeited the 10% of total sale balance

consideration and raised demand for balance earnest money of Rs.10,82,656,97 but no payment was made by the complainant.

On being heard the arguments advanced by the parties, the authority is of the considered opinion that the complainant has miserably failed in his commitments to make timely payment to the respondents so that respondents can proceed with the construction work at site.

Since the complainant has not come with clean hands before the authority and failed to convince the authority, the complaint filed by the complainant has no merits and the same is dismissed. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Dr. K.K. Khandelwal
(Chairman)
6.9.2018

Subhash Chander Kush
(Member)

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

Complaint No. : 359 of 2018
**Date of First
Hearing : 26.07.2018**
Date of Decision : 06.09.2018

Ms. Shagufta Yasmin
R/o E-173, Paramount Golfcourse, Greater
Noida-201311

Complainant

Versus

M/s Vatika Ltd
Vatika Triangle, 5th floor, Sushant Lok, Phase-I,
Block A, MG Road, Gurugram- 122001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Ms. Shagufta Yasmin Complainant in person with her
husband
Shri Venket Rao Advocate for the respondent



ORDER

1. A complaint dated 30.05.2018 was filed under section 31 of the Real Estate (Regulation & Development Act, 2016 read with rule 28 of The Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Ms. Shagufta Yasmin, against the promoter M/s Vatika Ltd. on account of refund of the deposited amount.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Expressions by Vatika", Sector-88B, Gurugram
2.	Unit no.	403, 4th floor, tower B-5
3.	Registered/ not registered	Registered
4.	Date of flat buyer agreement	Cannot be ascertained
5.	Total consideration amount as per agreement	Rs. 84,51,003/-
6.	Total amount paid by the complainants	Rs. 3,94,723/-
7.	Date of delivery of possession from the date of execution of flat buyer agreement	Cannot be ascertained (There is no possession clause in the flat buyer agreement)

3. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 26.07.2018. The case came up for hearing on 26.07.2018 and 06.09.2018.



Facts of the complaint

4. Briefly stating the facts of the complaint the respondent at the time of booking assured that the project has received all the necessary approvals and sanctions from the competent authorities. The complainant submitted the duly filled application form for booking of a residential floor and deposited an amount of Rs. 2,00,000/- dated 20.07.2015. The booking of the floor was confirmed by respondent's office vide welcome letter dated 21.07.2015. As per the demand raised by the respondent, complainant deposited a further amount of Rs. 1,94,723/- dated 01.09.2015.
5. The complainant approached the respondent through an email dated 18.10.2015 and requested him to furnish all the details and documents with regard to the permissions and sanctioned approvals, to which the respondent only with the intention to escape liability issued an email dated 20.10.2015 assuring that all the documents would be handed over to the complainant when the allotment procedure would start.
6. Time and again complainant called on respondent's office by several personal visits, telephonically as well as through numerous letters and emails and requested them to make



available all the copies of all the necessary permissions, approvals by the competent authorities.

7. In reply to the complainant's email dated 16.02.2017, respondent vide reply e-mail dated 27.02.2017 stated that all the necessary approvals, permissions with respect to subject project had been already obtained from the competent authorities but they declined to supply the copies of the said approvals, permissions sanctioned granted to the said project by the competent authorities.

8. At the time of booking the builder was not holding the certificates and other related documents with regard to the approvals, permissions and sanctioned granted to the project by the competent authorities as it is an admitted fact that as on the date of booking i.e 21.07.2015 when the complainant submitted the duly filed application form for booking and also deposited booking amount which was received by the respondent. The building plan for construction had not been approved by the concerned district town planning department, Gurgaon as from the perusal of the builder buyer apartment sent on 11.03.2016 by the respondent.

9. The complainant thereafter on 15.03.2017 received an illegal and cryptic letter from the respondent illegally informing that



the allotted unit of the complainant has now been cancelled and further demanded an amount of Rs. 10,82,656/-from the complainant towards illegal recovery without any justification.

10. Issues raised by the complainant

- I. Whether the developer defaulted in not providing the necessary documents to the complainant in despite of repeated requests with regard to sanctioned plans and approvals from the competent authority?
- II. Whether the demand of developer to deposit money without providing necessary documents with regard to sanctioned plans and approvals from the competent authority was justified in the eyes of the law?
- III. Whether the project was initiated by the developer without getting approvals and sanctioned plans from the competent authority?
- IV. Whether the complainant is liable for compensation for mental agony, harassment faced by him only because of illegal actions of the respondents?



11. Relief sought

- I. Direct the respondent to pay the complainant an amount of Rs. 3,94,723/- along with an interest @18%

per annum calculated from the date of each deposit till the date of actual realizations.

- II. Pass such other and further order(s) as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.

Respondent's reply

Preliminary Objections:

12. The respondent submitted preliminary objections upon the maintainability of the complaint and the complainant has not approached the authority with clean hands and is trying to suppress the material facts.
13. The respondent stated that the present complaint is not maintainable in law or facts and the Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain the present complaint and there was no existence between the parties at the time of RERA came into effect.

Reply on merits:

14. The respondent submitted that the complainant has voluntarily with his free will and consent approached the respondent through a broker India World Technologies Pvt. Ltd. and booked a floor by signing application for provisional



registration on 21.07.2015. The complainant at the time of booking paid Rs. 2,00,000/-. The raised demand of Rs. 1,94,723 was raised as per payment plan with a due date on 04.09.2015.

15. There was no email sent by the respondent to the complainant confirming that they will be provided with the certified copy of approvals of the project.

16. The respondent submitted that the complainant has always been updated that the certified copy of the approvals would not be provided as it is not the policy or obligation of the respondent company to provide copy of approvals of the authorities to the buyers.

17. The complainant submitted that the complainant was given several opportunities to make the payment of due instalments. The respondent issued letter dated 19.05.2016 to the complainant giving him final opportunity to make the payment but complainant did not give any heed to the said letter and choose not to make the payment.

18. The respondent was constrained to terminate the allotment, accordingly issued termination cum recovery letter dated 25.03.2017 and cancel the allotment of the complainant and



raised a demand of Rs. 10,82,656.97/- in accordance with terms of the booking. The terms of the application form, earnest money constitutes 10% of the total sale consideration and the booking can be withdrawn/cancelled as per the terms of the application form. The complainant made a payment of Rs 3,94,723/- till date i.e 4% of the total sale consideration of the unit which constitutes part payment of the earnest money failed to make any further payments or abide by the terms of the booking or payment schedule.

19. The respondent submitted that the complainant has not stated or has been clear or has been able to establish violation of any provision of RERA on the part of respondent and is merely making concocted stories to cover his own failure to meet his obligations and abide by booking terms/payments schedule etc which are a clear violation of section 19 of the Act.

Determination of issues

In regard to the issues raised by the complainant has become infructuous as the complaint filed by the complainant is devoid of merits. So there is no question of determination of issues.



Findings of the authority

20. The project 'Expressions by Vatika' is located in Sector-88B, Gurugram, thus the authority has territorial jurisdiction to entertain this complaint

21. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

Decision and directions of the authority

22. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The complainant despite several requests failed to deposit further payments to the respondent. The respondent have cancelled the booking and forfeited the 10% of the total sale balance consideration.



- (ii) Since the complainant has not come with clean hands before the authority, therefore the complaint filed by the complainant has no merits and the same is dismissed.

23. The complaint is disposed of accordingly.

24. The order is pronounced.

25. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 06.09.2018

HARERA
GURUGRAM

