

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

Complaint No. : 157 of 2018
Date of First
Hearing : 16.05.2018
Date of Decision : 13.11.2018

1. Mr. Inder Singh Rana
2. Mr. Ravinder Rana
3. Mrs. Rajbala Rana

R/o Rana Properties, Opp. Sector 15A
Shopping Complex, Kaimari Road, Hisar,
Haryana – 125001.

...Complainants

Versus

M/s Vatika Limited
Vatika Triangle, 5th Floor, Sushant Lok,
Phase-I, Block A, M.G. Road,
Gurugram, Haryana – 122002.

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sandeep Tomar

Power of attorney holder on
behalf of complainants

Shri Kamal Dahiya

Advocate for the respondent

Shri Vipin Marya

Sr. Manager(Legal) on behalf of
the respondent



ORDER

1. A complaint dated 11.04.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Inder Singh Rana, Mr. Ravinder Rana and Mrs. Rajbala Rana, against the promoter M/s Vatika Limited on account of violation of clause 9 of the plot buyer agreement executed on 30.10.2010 for plot no. 3, Park B1, West Street, Sector 85-B, Vatika India Next plots in the project "Vatika India Next" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Vatika India Next" in Park B1, West Street, Sector 85-B, Vatika India Next plots, Gurugram
2.	Plot no.	3, Park B1, West Street, Sector 85-B, Vatika India Next plots
3.	Project area	281.577 acres (182.796 + 98.781 acres)
4.	RERA Registered/ not registered	Not registered



5.	Nature of real estate project	Residential plots
6.	DTCP license	113/2008
7.	Date of booking	30.08.2010
8.	Date of plot buyer agreement	30.10.2010
9.	Total consideration	Rs. 1,00,63,562.50/- (as per account statement dated 16.06.2015)
10.	Total amount paid by the complainant	Rs. 54,89,880/-
11.	Payment plan	Development linked plan
12.	Date of delivery of possession	Clause 9 – 3 years from date of execution of agreement i.e. 30.10.2013
13.	Delay of number of months/ years upto 30.10.2018	5 years
14.	Penalty clause as per builder buyer agreement dated 30.10.2010	Clause 14- Rs. 15/- per sq. yard per month

3. The details provided above have been checked as per record of the case file provided by the complainants and the respondent. A plot buyer agreement dated 30.10.2010 is available on record for plot no. 3, Park B1, West Street, Sector 85-B, Vatika India Next plots according to which the possession of the aforesaid plot was to be delivered by 30.10.2013. The promoter has failed to deliver the possession



of the said plot to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 16.05.2018. The case came up for hearing on 16.05.2018, 27.06.2018, 18.07.2018, 26.07.2018, 18.09.2018, 05.11.2018 and 13.11.2018. The reply has been filed by the respondent on 13.06.2018.
5. A rejoinder was filed by the complainants re-asserting the facts submitted in the complaint apart from the fact that the respondent is arbitrarily trying to re-allot the plot of complainants at some inferior location or to get profit by charging high price for allotting the same at a similar location as the respondent seemingly has changed the map and till now has not given any information regarding it to the complainants.



Facts of the complaint

6. On 30.08.2010, the complainants booked a unit in the project

“Vatika India Next” in Park B1, West Street, Sector 85-B, Vatika India Next plots, Gurugram by paying an advance amount of Rs 9,96,000/- to the respondent. Accordingly, the complainants were allotted a plot of size 300 sq. yards bearing no. 3, Park B1, West Street, Sector 85-B, Vatika India Next plots.

7. On 30.10.2010, a plot buyer agreement was entered into between the parties wherein as per clause 9, the construction should have been completed within 3 years from the date of execution of agreement, i.e. by 30.10.2013. However, till date the possession of the said plot has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 54,89,880/- as against total consideration of Rs. 1,00,63,562.50/-.

8. The complainants submitted that despite making several telephonic enquiries about the status of project, they did not receive any positive reply. On 13.03.2016 they visited the site for taking photographs and video of the site along with



newspaper of that day. However, till 13.03.2016 no work was done on the site.

9. From this, the complainants came to know that 3 instalments of Rs.9,98,160/each i.e. total Rs.29,94,480 taken from them was illegally demanded because:

- (i) Levelling work at site was not done.
- (ii) Alignment work for the roads of the block was not done.
- (iii) Demarcation work of the plot cluster in which the plot would be located was not done.

10. The complainants further submitted that in March 2017, they received an invoice from M/s Vatika Limited for payment of Rs. 18,766/- towards STP charges which were earlier not mentioned in any form or agreement. Earlier, on all the correspondences or invoices received from M/S Vatika Limited, address of their plot was always mentioned but in this last invoice, address of their plot was missing.

11. On 30.10.2017, the complainants received another e-mail from M/s Vatika Limited informing that they were working on for options for re-allotment and same is expected



tentatively within 2 months time. But no correspondence was received.

12. The complainants submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.

13. As per clause 9 of the plot-buyer agreement dated 30.10.2010, the company proposed to hand over the possession of the said unit by 30.10.2013. The clause regarding possession of the said unit is reproduced below:

“ 9-The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said plot within a period of 3 years from the date of execution of this agreement unless there is a delay or failure due to reasons mentioned in causes (11), (12) and (30) or due to failure of the allottee.....”



14. Issues raised by the complainants

- I. Whether M/s Vatika Ltd. is liable to give the physical possession of complainant's booked plot?
- II. Whether the respondent is liable to pay 24% interest on illegally demanded 3 instalments of each i.e. total Rs. 29,94,480/- taken from the petitioner from the date of deposit in Jan & Feb 2011?
- III. Whether the respondent is liable to pay 24% interest on earnest money of the plot which is equal to 25% of total cost of the plot i.e. Rs. 24,95,400/- from due date of physical possession of the said plot i.e. 30.08.2013.

15. Relief sought

- I. Pass an order directing M/s Vatika Ltd. to give possession of the unit in question.
- II. Pass an order to pay us 24% interest on illegally demanded 3 instalments of Rs. 9,98,160/- each i.e. total Rs. 29,94,480/taken from the complainants from the date of deposit in Jan and Feb of 2011.



- III. Pass an order to pay 24% interest on earnest money of the plot which is equal to 25% of total cost of the plot i.e. Rs. 24,95,400/- from the due date of physical possession of the said plot.
- IV. Pass an order not to charge STP charges.
- V. Appropriate legal action be taken against M/s Vatika Group for their various continuing defaults and non-compliance of the provisions of RERA.

Respondent's reply

16. The respondent submitted that the complaint filed by the complainants is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the Adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Act, 2017 read with section 31 and section 71 of the said act and not before this hon'ble



authority under rule- 28.

17. The respondent submitted that the statement of objects and reasons as well as the preamble of the said act clearly states that RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector.

RERA is not enacted to protect the interest of investors. As the said act has not defined the term consumer, therefore the definition of consumer as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer as he is already the owner and resident of Rana Properties, Opp. Sector-15A, Shopping Complex, Kaimari road, Hisar, Haryana.

18. The respondent submitted that the complainants have not come before the authority with clean hands and have concealed the material fact that the complainants have been a defaulter having deliberately failed to make the payment of various instalments within the time prescribed, which resulted in interest on overdue amounts, as reflected in the



statement of account dated 16.06.2015. The current outstanding amount as on 04.05.2018 is Rs 18,746/-.

19. The respondent further submitted that despite several adversities, the respondent has continued with the development of the project and has already obtained the part completion certificate dated 31.05.2017 for a part of the project and has handed over the possession of more than 750 plots out of 945 plots till date and several families are already residing at the project. The respondent is also in the process of completing the development of the balance project and should be able to apply the completion/ part completion certificate for the balance project, including the plot in question at the earliest but not later than 31.12.2021(as the date to be mentioned at the time of registration of the project with RERA).

20. The respondent submitted that the plot buyer agreement dated 30.10.2010 was executed much prior to coming into force of the said act or rules. Thus, the adjudication of the complaint has to be in reference of the agreement for sale



executed in terms of said act and said rules and no other agreement.

21. The respondent denied that the three instalments of Rs.29,94,480/- were taken illegally. All the payment requests were raised as per the agreed payment plan and the above mentioned three instalments were required to be raised at the commencement of a) levelling work, b) alignment work and c) demarcation work and were raised accordingly.

22. Further, it is submitted that the STP charges were duly clarified, however, despite repeated requests and reminders, the complainant failed to pay the same till date.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

23. With respect to **first issue** raised in the complaint, the authority came across that as per clause 9 of the plot buyer agreement, the construction should have been completed



within 3 years from the date of execution of agreement dated 30.10.2010. As the possession of the plot was to be delivered by 30.10.2013 as per the clause referred above, the authority is of the view that the promoter is liable to handover the possession and has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

24. With respect to **second issue**, the respondent has submitted in his reply that the three instalments amounting to a total of Rs 29,94,480/- taken from the complainants legally on account of the commencement of a) levelling work, b) alignment work and c) demarcation work. Thus, these instalments cannot be said to have been charged illegally and the complainants are not entitled to any interest on these.

25. With respect to **third issue**, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate of 10.75%, for every month of delay till the handing over of possession.



26. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainants requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation.

27. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

28. **Jurisdiction of the authority-** The project “Vatika India Next” is located in Park B1, West Street, Sector 85-B, Vatika India Next plots, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real



estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

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.

29. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that during the proceedings on 13.11.2018, the complainants insisted for taking possession of the plot. However, the builder insisted that they are not in a position to hand over the possession on account of the fact that there is a change of sector plan, as a result, builder is ready to refund the amount invested by the complainants along with prescribed rate of interest i.e. 10.75% per annum. However, keeping in view the insistence of the complainants to get possession of the plot,



respondent is directed to file an affidavit giving reasons for not handing over the possession of the plot. Besides this, the respondent is also directed to give an alternative offer of plot to the complainants by giving specific number. If it is not accepted by the complainants, invested amount of the complainants shall be refunded along with prescribed rate of interest i.e. 10.75% per annum.

Decision and directions of the authority

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

- (i) Respondent is directed to file an affidavit giving reasons for not handing over the possession of the plot.
- (ii) Respondent is also directed to give an alternative offer of plot to the complainants by giving specific number. If it is not accepted by the complainants, invested amount of the complainants shall be refunded along with prescribed rate of interest i.e. 10.75% per annum.



(iii) Respondent is directed to deposit an amount of Rs. 30,000/- as penalty imposed vide orders dated 30.10.2018 and 05.11.2018.

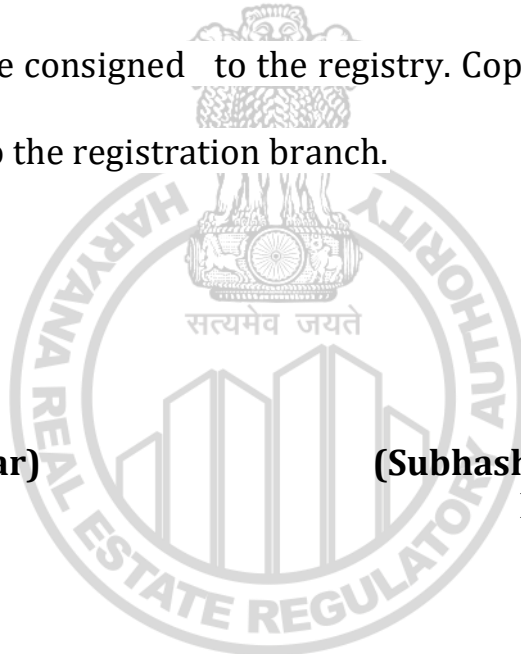
31. The complaint is disposed of accordingly.

32. The order is pronounced.

33. 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

HARERA
GURUGRAM



Dated: 13.11.2018

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 13.11.2018
Complaint No.	157/2018 case titled as Mr. Inder Singh Rana & others Vs. M/s Vatika Ltd.
Complainant	Mr. Inder Singh Rana & others
Represented through	Shri Sandeep Tomar, power of attorney holder of the complainant in person
Respondent	M/s Vatika Ltd.
Respondent Represented through	Shri Vipin Marya, Senior Manager (Legal) on behalf of the respondent-company with Shri Kamal Dahiya, Advocate.
Last date of hearing	5.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana
Proceedings	
Arguments heard.	
Complainant is insisting for taking possession of the plot. However, the builder has explained that they are not in a position to hand over the possession on account of the fact that there is a change of sector plan, as a result, builder is ready to refund the amount invested by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum. However, keeping in view the insistence of the complainant to get possession of the plot, respondent is directed to file an affidavit giving reasons for not handing over the possession of the plot. Besides this, the respondent is also directed	

to give an alternative offer of plot to the complainant by giving specific number. If it is not accepted by the complainant, invested amount of the complainant may be refunded alongwith prescribed rate of interest i.e. 10.75% per annum.

Respondent is directed to deposit an amount of Rs.30,000/- as penalty imposed vide orders dated 30.10.2018 and 5.11.2018.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
13.11.2018