

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

Complaint No. : 156 of 2018
First date of hearing : 16.05.2018
Date of Decision : 13.11.2018

Mr. Sandeep Tomar
R/o. C-3/146, Janakpuri
New Delhi-10058

Complainant

Versus

M/s Vatika Ltd. & others,
Regd. Office: Vatika Triangle, 5th floor
Sushant Lok- I, Block- A,
Mehrauli, Gurugram-122002

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sandeep Tomar Complainant in person
Shri Shri Sudesh Goyal Advocate for the complainant
Shri Dheeraj Kapoor Advocate for 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 complainant Mr. Sandeep



Tomar, against the promoter M/s Vatika Pvt. Ltd., on account of violation of the clause 9 of the plot buyer's agreement executed on 03.09.2010 of the unit/plot no. 1 I park B1, west street, admeasuring 300 sq. ft., in the project 'Vatika India Next' for not fulfilling the obligation of the delivery of possession of the apartment within 3 years from the date of execution of the agreement which got due on the 03.09.2013, which is an obligation under section 11(4)(a) of the Act ibid. Thus, the promoter has failed to deliver the possession of the said unit to the complainant.

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

1.	Name and location of the Project	"Vatika India Next," near Manesar, Sector -85-B, Gurugram
2.	Nature of real estate project	Group housing residential project
3.	DTCP License no	113 of 2008
4.	Flat/Apartment/Unit No.	1 I Park B1, West Sreet
5.	Flat measuring	300 Sq. Ft.
6.	RERA Registered/ Un registered.	Unregistered
7.	Booking date	30.08.2010
8.	Date of execution of apartment buyer's agreement	03.09.2010
9.	Payment plan	Construction linked/ development payment plan
10.	Basic Sale Price	Rs.99,81,600/-
11.	Total amount paid by the complainant till date	Rs. 54,89,888/-
12.	Percentage of consideration amount	55 % approx.
13.	Date of delivery of possession as	03.09.2013



	per clause 9 of apartment buyer's agreement	
14.	Delay of number of years / month	5 years and 2 months.
15.	Part occupation certificate received	31.05.2017
16.	Date of completion	31.12.2021
17.	Penalty Clause as per Apartment Buyer's Agreement (clause 14 of the agreement)	@ Rs.15/- per sq. ft. of the super area of the apartment per month

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A plot buyer's agreement dated 03.09.2010 is available on record for the aforesaid plot according to which the respondent as per in clause 9 of the agreement was supposed to deliver the possession of the flat to complainant within a period of 3 years from date of the execution of the plot buyer's agreement. Neither the respondent has delivered the possession of the said unit till date to the purchaser nor they have paid the penalty amount as stipulated in the agreement. 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 appearance. The respondent appeared on 16.05.2018, 27.06.2018, 18.07.2018, 26.07.2018, 18.09.2018, 30.10.2018, 05.11.2018 and



13.11.2018. The case came up for hearing on 16.05.2018. The respondent has supplied the details and status of the project along with the reply. The respondent has submitted an affidavit dated 13.06.2018 wherein the respondent has denied that the complainant has faced any harassment or he has suffered financially or that he needs to be compensated for every month delay. The complainant has filed rejoinder dated 21.06.2018.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that in August 2010, the Complainant booked the plot of super area 300 sq. yds. with Vatika Ltd. project "Vatika Next" situated in sector-85-B, Vatika India Next Plots, Tehsil and District Gurgaon, Haryana. The complainant and respondent on 03.09.2010, entered into plot buyer's agreement, according to which, the complainant would get the possession of the house within 3 years from the date of the execution of the agreement. That also, the respondent wilfully accepted the money from time to time, while assuring the timely delivery of possession which fell due on 03.09.2013 and till date have not delivered the possession.



6. The complainant paid total amount of Rs.54,89,888/- since 2010 and there has been no intimation from the respondent side about the delivery of the possession. The complainant via calls and emails inquired about the status of the project and the date of delivery the respondent replied on the same day i.e. on 08.06.2015 that the possession of the plot will be given to him in first quarter of 2016. The respondent failed to deliver the possession by the above mentioned year and is also not paying the compensation as stipulated in the agreement.
7. That the complainant had invested his hard earned money with a hope of having residential flat which they could use for personal space. It is also submitted that the modus operandi of the respondent has caused tremendous financial pressure upon the complainant for which the complainant is entitled to be reimbursed as well as for the mental agony and the one word conduct of the respondent has caused wrongful loss to the complainant and wrongful gain to the respondent. Further, the act of respondent giving false assurances since 10 years and till date amounts to cheating, criminal breach of trust, for which appropriate proceedings must be initiated against them.



8. The complainant sent another mail to the respondent requesting for the site visit but the respondent turned down his request citing flimsy grounds. On 13.03.2016 complainant visited the site for taking photographs and video of the site along with newspaper of the day, as clearly visible in the photographs no work was done on the site. Initially, the respondent assured that possession of the plot shall be given within 3 years of booking. Believing, this assurance they booked the plot and made the payment as demanded by M/s. Vatika Ltd., despite making repeated requests, complainants were never informed about the actual status of the plot and date of handing over of possession of these flats. The complainant was made to pay STP charges which were not mentioned in the booking form/agreement. Then, complainant was told that re-allotment is to be done within 2 months but thereafter no information is been provided to them. complainant never gave their permission for re-allotment. complainant feels cheated by the respondent.

Issues for adjudication on behalf of the complainant

- i. Whether the respondent is to give the physical possession of booked plot to the complainant?
- ii. Whether the respondent is liable to pay 24% interest on illegal demand of 3 instalments of Rs.9,98,160/- each



from date of deposit in January, 2011 and February, 2011?

- iii. Whether the respondent is liable to pay 24% interest on earnest money of the plot which is equal 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?
- iv. Whether to wave back STP charges with interest?

Reliefs sought:

- i. Direct respondent to provide the possession of the unit to complainant as per allotment along with the penalty of 24 % interest on illegally demanding 3 instalments of Rs.9,98,160/- from the date of deposit in Jan and Feb of 2011.
- ii. To direct opposite party to pay 24% interest on earnest money of the plot which is equal to 25 % of the total cost of the plot i.e. Rs.24,95,400/- from the due date of possession of the said flat.
- iii. To direct the respondent to wave back STP charges with interest.

Respondent's reply

9. The respondent contends that the complaint filed by the complainant before this authority is untenable, erroneous



and misconceived. The relief claimed by the complainant does not fall within the realm of jurisdiction of this authority. That as per the sections 12, 14, 18 and section 19 of the RERA Act, 2016 this authority does not have the jurisdiction to deal with this complaint. As according to the above mentioned provisions only the adjudicating officer have the jurisdiction to deal with the complaint and not this authority. That without prejudice to the aforementioned, the complainant cannot get his claims adjudicated under the provisions of 2016 Act, keeping in view the fact that the project in respect whereof the complaint has been made, does not fall under ld. authority, till the time project gets registered with ld. authority, no claim or complaint can be adjudicated upon.

10. As per the section 34 of the RERA Act, 2016 the authority has the function to regulate the affairs only of the projects which are registered with the Authority. The present project is not registered with the authority so it has no jurisdiction to entertain the complaint. The complaint is liable to be dismissed. A reference may also be made to section 72, which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section



71 of 2016 Act, and also section 18 which provides for return of amount and compensation.

11. That the complainant who is already the owner and resident of C-3/146, Janakpuri, New Delhi is an investor who never had any intention to buy the plot for his own use and kept on avoiding the performance of his contractual obligations of making timely payments and has now filed the present complaint on false and frivolous grounds. That this authority has no jurisdiction to entertain the present complaint as the complainant has not come with clean hands.
12. 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 families are already residing at the project. The respondent will be able to complete the project not later than 31.12.2021. The complainant on many occasions failed to make payments in time. Having failed to resell the said plot due to general recession, the complainant could not make the payments in time and now has developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, frivolous litigation. It is denied that STP charges were not



mentioned in the agreement or complainant has been charged illegally anywhere.

Rejoinder

13. It is again stated that the list of dates filed by the complainant has deemingly been admitted by the respondent. As per section 3 of RERA Act, 2016, it is mandatory for every promoter to get their project registered. There is no escape from these binding and mandatory provisions. The reply filed by the respondent is a bundle of lies seemingly filed to run away from performing their legal and contractual liability. The reply and affidavit are not correct and maintainable as the same have not been signed by a duly authorized person. The complainant has nowhere asked for refund of payment and for any compensation but the respondent has repeatedly raised the issue of compensation and refund. Section 2 (d) of RERA mentions only one class i.e. allottee. The respondent is trying to further classify this definition into consumer and investor, due to its mala fide intentions and motives.

14. It is stated that the parties entered into the agreement in 2010 and it is now mid 2018 but the respondent has failed to perform his part of contract. Respondent is still not giving a fixed time frame for completion of project. The respondent is



duty bound to provide such information to the allottee. Respondent is guilty of unfair trade practices as it failed to honor its commitments made with the complainant. It's stated that the complainants have not come with a false story but is the respondent who has come up with a false story to hide its own lapses and defaults. Without prejudice and without admitting anything asserted by the respondent, it is submitted that when an allottee booked a plot and paid the desired installments, no question could be raised about his intention for the usages of the plot.

15. The complainant further states that it was the responsibility of the respondent to enter into fresh agreement to sell in accordance with RERA but as per its own admissions, the respondent have not yet registered its project under the RERA till date and as per the provisions of the RERA the respondent could not escape its liability legal as well as contractual by taking the plea that agreement to sell dated 30.11.2010 was executed much prior to coming into force of provisions of Real Estate (Regulation and Development) Act, 2016 and hence, respondent is liable to be punished for its continuing defaults.



Determination of issues

- i. Regarding the **first issue**, the respondent is liable to deliver the possession of the flat as it has already delayed by 5 years and 2 months from the promised date of delivery of possession and due to which the complainant is under constant pain and mental agony.
- ii. Regarding the **second issue**, the respondent asked for the installments as per the requirement under the construction linked plan and hence, it does not amount to extortion/demanding money illegally.
- iii. Regarding the **third issue**, the respondent is liable to pay appropriate interest on the earnest money of the plot from the due date of possession as per clause 9 of the agreement dated 03.09.2010

“ 9. HANDDING OVER POSSESSIONOF THE SAIDPLOTTO THE ALLOTTEE

The company based on its present plans and estimated and subject to all just exceptions, contemplates to complete the development of the said plot within a period of three years from the date of execution of this agreement

till the actual delivery of possession in terms of section 13 of the Act.



“ 13 (1). A promoter shall not accept a sum of more than 10 percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

- iv. Regarding the **fourth issue**, the STP charges are unreasonably high, moreover it is nowhere stated in the agreement dated 03.09.2010 and are required to be waived off from the payment plan of the complainant.

Findings of the authority

16. The respondent admits as the concerned project is situated in Sector- 85-B ,Gurgaon and as the nature of the project is Residential colony and thus the authority has complete territorial as well as subject matter jurisdiction .
17. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to 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 complainant at a later stage.

18. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to register its project under the Real Estate Regulatory Authority Act 2016 and hence has violated section 3 of the Act, ibid attracting penalty under section 59 of the said Act and penalty which may extend to 10 % of the total cost of project.

Decisions and Directions of the Authority

19. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following order in the interest of justice :

- i. Keeping in view the insistence of the complainant to get possession of the plot, the respondent is directed to file an affidavit giving reasons for not handing over the possession of the plot.
- ii. 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, the



invested amount of the complainant may be refunded alongwith prescribed rate of interest i.e. 10.75% per annum from the due date of possession dated 30.08.2013 till realization of the amount.

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

20. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act by the registration branch.

21. Order is pronounced.

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



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 13.11.2018

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 13.11.2018
Complaint No.	156/2018 case titled as Mr. Sandeep Tomar V/s M/s Vatika Ltd.
Complainant	Mr. Sandeep Tomar
Represented through	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, the 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