

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

Complaint no. : 6028 of 2019
First date of hearing: 06.02.2020
Date of decision : 19.11.2020

Smt. Ashima Ahlawat
R/o:- A-103, Alaknanda Apartment, Sector-56,
Gurugram

Complainant

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 5th floor, Sushant
Lok-I, Block A, MG Road, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav Advocate for the complainant
Shri Vipin Kumar AR with Advocate for the respondent
Shri Venket Rao Advocate

ORDER

1. The present complaint dated 26.11.2019 has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

2. The particulars of the project, the details of 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.	Heads	Information
1.	Name and location of the project	"Vatika INXT City Centre", Gurugram
2.	Nature of the project	Commercial Colony
3.	Area of the project	10.718 acres
4.	DTCP License	122 of 2008 dated 14.06.2008 valid up to 13.06.2016
5.	RERA registered/ not registered	Not registered
6.	Date of execution of builder buyer's agreement	24.09.2019
7.	Unit no.	E-003, GF, Block-E
8.	Plot measuring	1330 sq. ft.
9.	Total consideration	Rs. 93,10,000/- (As per SOA dt. 04.02.2019 at pg. no. 17 of the complaint)
10.	Total amount paid by the complainant	Rs. 97,28,950/- (As per SOA dt. 04.02.2019 at pg. no. 17 of the complaint)

11.	Assured return	Rs. 112.50/- per sq. ft. per month till completion of building (As per clause 3 of the allotment letter)
12.	Due date of delivery of possession	Cannot be ascertained as there is no possession clause in the agreement.
13.	Specific reliefs sought	Direct the respondent to pay the outstanding assured return of Rs. 20.94 lacs which was supposed to be credited as per clause 3 of the allotment letter.

3. Due date of handing over the possession cannot be ascertained as there is no possession clause in the builder buyer agreement.
4. The complainant submitted that she was promised an assured return of Rs. 112.50/- per sq. ft. per moth till the completion of the building. The respondent has paid the assured return on time since 16.02.2017 and it has stopped the payment of assured return since October 2018.
5. The complainant submitted that she has **contacted** the respondent several times to execute the BBA **which** is in HRERA format.

6. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
7. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at crm@vatikagroup.com, the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
8. 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.
9. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.



10. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. Since, there is no possession clause in the agreement executed inter se parties, the due date of handing over the possession cannot be ascertained.
11. According to the clause 3 of the allotment letter it has been stipulated that a payment as "assured return" will be given to the complainant per month @ Rs. 112.50/- per sq. ft. till the completion of construction.
12. The applicant has paid more than 100% of the value of the unit. The authority in this regards observes that Section 11 of RERA lays down the functions and duties of the promoter, one such duty under Section 11(4) is that
"the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act, 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 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”.

13. The authority herein refers to the judgment passed by the Apex Court in **M/s Motilal Padampat Sugar Mills Vs. State of Uttar Pradesh & Ors.** wherein, it has been observed that the true principle of promissory estoppel is that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relationship effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not. Equity will be given case where justice and fairness demand, prevent a person from insisting on strict legal rights even where they arise, not under any contract, but on his own title deeds or under statute.

14. Further, in **Bikram Kishore Parida Vs. Benudhar Jena**, the court held that the test of an intention to create legal relations is an objective one. It may be that the promisor never anticipated that his promise would give rise to any legal obligation but, if a reasonable man would consider that he intended to enter into a contract, then he will be bound to make good on his promise.
15. Another relevant judgment in this context being **Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors.** wherein the Apex Court has rightly pointed that RERA is the appropriate forum to approach in case construction was delayed or in case allottees wanted compensation and other reliefs. It was held that RERA is to be read harmoniously with the Code (i.e. The Insolvency and Bankruptcy Code, 2016). It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code. The Court also held that the RERA was the appropriate forum to approach in case construction was delayed or in case allottees

wanted compensation (para 24 page 80). There seems to be no conflict in this case since the subject matter in dispute is a real estate property wherein the relief sought by the complainant is delayed possession charges. Hence, the Authority has complete jurisdiction to entertain and adjudicate this complaint.

16. The government passed the banning of Unregulated Deposit Schemes Ordinance on 21 February, 2019 prohibiting all deposit schemes (with or without interest) except those with regulatory approval on 31.07.2019 wherein it has been provided that Incentive or assured return schemes of builders will be permitted only if the money is provided against specific immovable property to be transferred to the buyer. If the builder has to return the money with or without interest other than for situations allowed under the ordinance, it may be treated as an unregulated deposit.
17. During the proceedings, the authority finds that as per clause 3 of the allotment letter the respondent was duty bound to pay an assured return of Rs.112.50 per sq. feet per month till handing over the possession and the complainant has received it till September 2018. However, the complainant signed a

builder buyer agreement on 24.09.2019, clause 12 of which reads as under:-

"12. ASSURED RETURN AND LEASING ARRANGEMENT. N.A

Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreement to pay Rs. NA (Rupees -----) month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/said Commercial Unit is ready and fit for occupation. The Buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the Confirming Party".

18. The authority finds that with regard to assured return and leasing arrangement, everything was made crystal clear to the complainant and she signed the agreement in her all senses, which is applicable for all other intents and purposes.
19. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:
 - i. The respondent shall pay the interest at the prescribed rate of interest i.e. 9.30% per annum for every month of

delay on the amount paid by the complainant from September 2018 till the actual offer of possession.


- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
- iii. The respondent shall not charge anything from the complainant which is not part of the plot buyer's agreement.

20. The authority has decided to take *suo motu* cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondent. A copy of this order be endorsed to the registration branch

21. Complaint stands disposed of.

22. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.11.2020

Judgement uploaded on 27.11.2020