

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

Complaint no. : 6007 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 amend and execute the BBA as per the approved format of HARERA.

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@vaticagroup.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. 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”.

12. 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.
13. 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.
14. 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
15. Complaint stands disposed of.
16. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.11.2020


(Subhash Chander Kush)

Member

Judgement uploaded on 27.11.2020