

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

Complaint no. : 85 of 2020
First date of hearing: 06.02.2020
Date of decision : 03.11.2020

Shri Vikram Yadav
R/o:- VPO Mohammadpur Ahir, Teh. Tauru,
Distt. Mewat(Nuh), Haryana

Complainant

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 4th Floor,
Sushant Lok, Phase-I, MG Road,
Gurugram-122009

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sushil Yadav

Advocate for the complainant

None on behalf of respondent

Advocate for the respondent

EX-PARTE ORDER

1. The present complaint dated 08.01.2020 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.

- 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 India Next" in Sector 81, 82, 82A, 83, 84, 85, Gurugram
2.	Nature of the project	Residential township
3.	Project area	281.58 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid up to 31.05.2018 71 of 2010 dated 15.09.2010 valid up to 14.09.2018
5.	RERA registered/ not registered	Not registered
6.	Date of execution of plot buyer's agreement	08.08.2009
7.	Unit no.	Plot No. 297, Block-C
8.	Area	240 sq. yds.
9.	Payment plan	Construction Linked Plan (At page 24 of the complaint)
10.	Total consideration	Rs. 43,56,000/- (as per payment plan at page 24 of the complaint)

11.	Total amount paid by the complainant	Rs. 25,92,000/- (as admitted by the complainant in the facts)
12.	Due date of delivery of possession (as per clause 10 of the agreement: 3 years from the date of execution of agreement)	08.08.2012
13.	Offer of possession	Not offered
14.	Delay in delivery of possession till date of decision i.e. 03.11.2020	8 years 2 months and 26 days
15.	Specific reliefs sought	1. Direct the respondent to handover the possession of the subject unit and pay interest for delay in delivery.

3. As per clause 10 of the plot buyer's agreement the possession was to be handed over to the complainant within 3 years from the date of execution of the agreement, which comes out to be 08.08.2012. Clause 10 has been reproduced below:-

"10 HANDING OVER POSSESSION OF THE SAID PLOT TO THE ALLOTTEE

The Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit within a period of three years from the date of execution of this Agreement unless there shall be delay

or there shall be failure due to reasons mentioned in Clauses (11), (12 and Clause (30) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."

4. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves his right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainant. Hence, this complaint for the reliefs as stated above.
5. The complainant submitted that Mr. Amrish Kohli in the aforementioned project booked a plot admeasuring 240 sq. yds. for total sale consideration of Rs. 43,56,000/- which includes BSP, car parking, IFMS, club membership, PLC etc. Thereafter, Mr. Rajiv Chaudhary purchased this plot and on 18.08.2011 the complainant Vikram Yadav purchased this plot

and get his name endorsed in BBA with the consent and permission of the respondent.


6. The complainant submitted that he has made a payment of Rs. 25,92,000/- to the respondent vide different cheques on different dates.
7. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at info@vatikagroup.com, the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply or to appear before the authority on the date fixed for hearing to the complaint. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent on the basis of record submitted by the complainant.
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. On consideration of the circumstances, the evidence and other record and submissions made by the complainant 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. By virtue of clause 10 of the plot buyer's agreement executed between the parties on 08.08.2009, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 08.08.2012. Since, the respondent has not offered the possession of the subject unit to the complainant so far. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot buyer's agreement dated 08.08.2009 to hand over the possession within the stipulated period.

10. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such, the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. due date of possession i.e. 08.08.2012 till the date of actual offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
11. 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 i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 08.08.2012 till the date of actual offer of possession.
- ii. The respondent is directed to handover the physical possession of the unit to the complainant within one month.
- iii. 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 on or before 10th of each subsequent month.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent shall not charge anything from the complainant which is not part of the plot buyer's agreement.
- vi. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

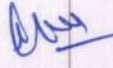
12. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondent. A copy of this order be endorsed to the registration branch.
13. Complaint stands disposed of.
14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.11.2020


(Subhash Chander Kush)

Member

Judgement Uploaded on 02.12.2020