

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

**Complaint no. : 1158 of 2019**  
**First date of hearing: 17.09.2019**  
**Date of decision : 03.11.2020**

Shri Sachin Minocha  
**R/o:-** The Palms, 901 tower4,  
South City 1, Sector 30, Gurugram.

**Complainant**

Versus

M/s Vatika Limited,  
**Office:-** Vatika Triangle, 4<sup>th</sup> floor, Sushant  
Lok, Phase I, Block A, M.G. Road, Gurugram,  
Haryana-122002.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav  
Shri Venket Rao

Advocate for the complainant

Advocate for the respondent

**ORDER**

1. The present complaint dated 18.03.2019 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	"Bellevue Residences at Vatika India Next", Sector 82, 82A, 83, 84 and 85, Gurugram <b>New Project</b> - Signature Villa 2 (As per offer of possession)
2.	Nature of the project	Residential township
3.	RERA registered/ not registered	<b>Not registered</b>
4.	Buyer's agreement	<b>31.08.2010</b>
5.	Payment plan	Construction linked plan
6.	Unit no.	HSG-008, Plot no. 22, St. 82D1-7
7.	Plot measuring	3240 sq. ft. (360 sq. yds.)
8.	Total consideration	Rs. 1,48,68,833.12/- (as per SOA dated 14.03.2019 annexed at page 20 of the reply)
9.	Total amount paid by the complainant	Rs. 1,17,03,295.12/- (as per SOA dated 14.03.2019 annexed at page 20 of the reply)

10.	Due date of delivery of possession as per clause 11.1 of the buyer's agreement: within a period of three years from the date of execution of the agreement	31.08.2013
11.	Delay in handing over possession till date of offer of possession	5 years 1 months 9 days
12.	Offer of possession	09.10.2018 (annexed at page 19 of the reply)
13.	Area offered in offer of possession letter	2385 sq. ft.
14.	Reminder for intimation of possession	23.01.2019 (annexed at pg. 24 of the reply)
15.	Specific reliefs sought	Direct the respondent to handover the possession along with interest for delay in delivery.

3. As per clause 11.1 of the buyer's agreement, the possession was to be handed over within a period of 36 months from the date of signing of the subject agreement which comes out to be 31.08.2013. Clause 11.1 of the buyer's agreement is reproduced below:

***"11.1 Schedule for Possession of the said Unit***

*The Company 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. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and Clause (38) or due to failure of Applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-III or as per the demands raise by the Company from time to time or any failure on the part of the Applicant(s) to abide by any of the terms or conditions of this Agreement”*

4. The possession of the subject apartment has been offered by the respondent to the complainant on 09.10.2018 after a delay of 5 years, 1 month and 10 days from the due date of handing over the possession. The complainant seeks delay interest as per section 18 of the Act. The complainant reserve 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 despite receiving all payments, the respondent has failed to deliver the possession of the allotted villa to the him within stipulated period.
6. The complainant submitted that as per clause 12.5 of the buyer agreement dated 31.08.2010 it was agreed by the respondent

that in case of any delay the respondent shall pay to him a compensation of Rs. 5 per sq. ft. per month of the built up area of the villa.

7. The complainant submitted that the respondent sent intimation of offer of possession on date 09.10.2018. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned money and wrongful loss to the him.
8. 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.
9. The respondent contended on the following grounds:-
  - a. The respondent submitted that the present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainant has not approached this Ld. Authority with clean hands and is trying to suppress material facts relevant to the matter.
  - b. The respondent submitted that the complainant is trying to shift its onus of failure on the respondent as it is the complainant who failed to comply his part of obligation and miserably failed to pay the instalments on time despite

repeated payment reminders being sent by the promoter company from time to time and it is the complainant himself who wants to cancel the unit booked with the promoter as the complainant was relocating from Gurgaon.


- c. The respondent submitted that the complaint is liable to be dismissed on the preliminary submissions/objections mentioned herein above.
10. 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.
11. 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.
12. 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. By virtue of clause 11.1 of the buyer's



agreement executed between the parties on 31.08.2010, 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 31.08.2013. Since, the respondent has offered the possession of the subject unit to the complainant on 09.10.2018 i.e. after a delay of approx. 5 years. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 31.08.2010 to hand over the possession within the stipulated period. 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. 31.08.2013 till the date of offer of possession i.e. 09.10.2018, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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 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. 31.08.2013 till the date of offer of possession i.e. 09.10.2018.

- ii. The arrears of interest accrued till offer of possession shall be paid to the complainant within a period of 90 days from the date of this order.
  - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The respondent shall not charge anything from the complainant which is not part of the space buyer's agreement.
  - v. 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.
14. The authority has decided to take suo-moto cognizance against the promoters 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

  
(Subhash Chander Kush)  
Member

Dated: 03.11.2020

Judgement Uploaded on 02.12.2020