

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

Complaint no. : 2029 of 2019
First date of hearing: 12.09.2019
Date of decision : 03.11.2020

Smt. Poonam Yadav
R/o: RZ-35, Prem Nagar, Phase-I, Thana Road,
Najafgarh, New Delhi

Complainant

Versus

M/s Vatika Limited
Regd. Office: Flat No. 621-A, 6th floor,
Devika Tower, Nehru Place,
New Delhi-110019.
Also at: Vatika Triangle, 7th 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 Harshwardhan Advocate for the complainant
Shri Venket Rao Advocate for the respondent

ORDER

1. The present complaint dated 21.05.2019 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	"Emilia Floors in Vatika India Next", Gurugram
2.	Nature of the project	Residential township
3.	DTCP License	113 of 2008 dated 01.06.2008
4.	RERA registered/ not registered	Not registered
5.	Payment plan	Construction linked plan
6.	Date of execution of dwelling unit buyer's agreement	24.03.2011
7.	Unit no.	Plot no. 6, 1 st Floor, 15 th Street, Block-E
8.	Plot measuring	781.25 sq. ft.
9.	Addendum to the agreement	30.11.2012
10.	New unit	12/FF/St. 82 F-14/VIN
11.	Revised area	925.26 sq. ft.
12.	Total consideration	Rs. 30,91,607.41/-

		(As per SOA dated 24.05.2019 annexed as Annexure R-3 on pg. 30 of the reply)
13.	Total amount paid by the complainant	Rs. 14,60,548/- (As per the SOA dated 24.05.2019 annexed as Annexure R-3 on pg. 30 of the reply)
14.	Due date of delivery of possession (as per clause 10.1 of the dwelling unit buyer's agreement-within 3 years from the date of execution of the agreement)	24.03.2014
15.	Specific reliefs sought	Direct the respondent to handover the possession along with interest for delay in delivery.

3. As per clause 10.1 of the dwelling unit 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 24.03.2014. Clause 10.1 has been reproduced below:-

10.1 Schedule for Possession of the said independent dwelling unit

That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete

construction of the said Building/ said independent dwelling 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 (11.1), (11.2), (11.3) and Clause (38) 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 in Annexure III 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. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the Company shall be entitled to reasonable extension of time for completing the same".

4. The possession of the subject apartment has not been offered by the respondent to the complainant till now. The complainant seeks delay interest as per section 18 of the Act. The complainant reserve her 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 the sale price of the above said unit is Rs. 30,91,607.41/- and he has paid an amount of



Rs. 12,64,098/- through cheques/DD/RTGS to the respondent and in this regard the respondent has issued the acknowledgment/ receipts.

6. The complainant submitted that the respondent has caused monetary losses to her and has denied the right to enjoy the property for which she has already paid major amount. Even more damaging they have caused immense mental agony, confusion, insecurity and pain to her.
7. 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.
8. The respondent contended on the following grounds :-
 - i. 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 take possession and pay the overdues payment as per the affidavit and agreement.
 - ii. The respondent submitted that the complainant have come before this Hon'ble authority with ulterior motive. That the present complaint has been filed by the complainant just to harass the respondent and to gain the unjust enrichment. It is pertinent to mention here that for



the fair adjudication of grievance as alleged by the complainant, a detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication, if at all the contents of the complaint are taken to be correct and true.

iii. The respondent submitted that the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead this Hon'ble authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Hon'ble authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

9. 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.

10. 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.

11. 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 10.1 of the dwelling unit buyer's agreement executed between the parties on 24.03.2011, 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 24.03.2014. 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 his obligations, responsibilities as per the dwelling unit buyer's agreement dated 24.03.2011 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. 24.03.2014 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.

12. 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. 24.03.2014 till the date of 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 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 dwelling unit 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.

13. 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.

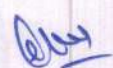
14. Complaint stands disposed of.

15. 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