

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

Complaint no. : 2806 of 2019
First date of hearing: 06.12.2019
Date of decision : 03.11.2020

1. Sh. Vikas Birla
2. Smt. Shashi Birla
Both R/o:- 85, Gobind Nagar, Ambala Cantt.
Ambala, Haryana-13300

Complainants

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 4th floor, Sushant
Lok-I, Block A, MG Road, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Rahul Rathore

Advocate for the complainants

None

Advocate for the respondent

EX-PARTE ORDER

1. The present complaint dated 02.08.2019 has been filed by the complainants/allottees 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 complainants, 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	"Primrose Floors", Vatika India Next, Sector 82, Gurugram
2.	Nature of the project	Residential Colony
3.	Project Area	182.796 acres
4.	DTCP Licence	113 of 2008
5.	RERA registered/ not registered	Not Registered
6.	Payment plan	Construction linked payment plan
7.	Date of execution of dwelling unit buyer's agreement	14.04.2011
8.	Unit no.	Plot no. 18, 1 st Floor, St. 17, Block-E
9.	Plot admeasuring	1094.21 sq. ft.
10.	Re-Allotment letter	28.01.2013
11.	New Unit	Plot-32, 1 st Floor, St. 83 E-3 (Vide re-allotment letter dated 28.01.2013 annexed at pg. 71 of the complaint)

12.	Plot admeasuring	1263.16 sq. ft.
13.	Addendum to the agreement (Annexure P/12)	Not executed
14.	Termination letter	14.11.2018 (annexed at page 77 of the complaint)
15.	Total consideration	Rs. 32,09,057/- (As per clause 1.2 of the agreement)
16.	Total amount paid by the complainants	Rs. 13,02,852/- (As per receipts attached with the complaint on pg. 18, 20, 69 & 70)
17.	Due date of delivery of possession (as per clause 10.1 of the agreement: 3 years from the date of execution of agreement)	14.04.2014
18.	Specific reliefs sought	1. Direct the respondent to quash the termination letter. 2. 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 complainants within 3 years from the date of execution of the agreement, which

comes out to be 14.04.2014. Clause 10.1 has been reproduced below:-

"10.1 Schedule for Possession of the said Residential Unit

The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Residential Unit within a period of 3 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 (36) or due to failure of Allottee(s) to pay In time the price of the said Apartment 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."

4. The possession of the subject apartment has not been offered by the respondent to the complainants till now. The complainants seek delay interest as per section 18 of the Act. The complainants reserve their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs as stated above.


5. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at secretarial@vaticagroup.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 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.
6. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
7. On consideration of the circumstances, the evidence and other record and submissions made by the complainants 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 14.04.2011, 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 14.04.2014. Since, the respondent has not offered the

possession of the subject unit to the complainants till now, accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the dwelling unit buyer's agreement dated 14.04.2011 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 complainants are entitled for delayed possession charges @9.30% p.a. w.e.f. due date of possession i.e. 14.04.2014 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.

8. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:
 - i. The respondent is directed to withdraw the termination letter dated and to give the possession of the new unit allotted to the complainant. The complainants are also directed to pay the outstanding dues, if any.
 - ii. 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 complainants from due date of possession i.e. 14.04.2014 till the date of actual offer of possession.

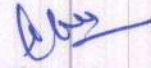
- iii. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
 - iv. The respondent shall not charge anything from the complainants which is not part of the dwelling unit buyer's agreement.
 - v. Interest on the due payments from the complainants 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 complainants in case of delayed possession charges.
9. 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.
10. Complaint stands disposed of.

11. 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

