

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 29.11.2018
Complaint No.	219/2018 case titled as Ms. Sonu Sunita Nagpal & anr. Vs. M/s Vatika Landbasepvt. Ltd & anr.
Complainant	Ms. Sonu Sunita Nagpal & anr.
Represented through	Shri Rishab Gupta, Advocate for the complainant.
Respondent	M/s Vatika Landbase Pvt. Ltd & anr.
Respondent Represented through	Shri Kamal Dahiya, Advocate for the respondent.
Last date of hearing	26.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

During arguments, counsel for the complainant brought before the authority that main grievance of the complainant is with regard to execution of sale deed of the unit allotted to them. Complainants were allotted a unit No. SF-25, 2nd Floor, measuring 213 square feet, in Vatika City Market situated at Mehrauli- Gurugram Road, Gurugram. Complainant submitted before the authority that respondent has unilaterally changed their allotted unit from 2nd floor to 6th floor. However, the counsel for the respondent submits that intimation regarding change of unit from 2nd to 6th floor in Vatika City Market, Gurugram was given to the complainant vide reference

No.VCP/6/604- 18.11.2013, although on this communication, there is no acceptance by the complainant. Respondent after this communication started paying rent to the complainant onwards and complainant has been receiving the rent as agreed during arguments for six years. There was no action on the part of the complainant against the respondents, for alleged illegal change of their unit. By their own conduct, the complainant is estopped to take this plea at this stage. The respondent is directed to get the sale deed executed of the unit now finally allotted to the complainant for which complainant is receiving rent.

Matter also went in Permanent Lok Adalat, Gurugram and the same was dismissed for non-prosecution by the complainant.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
29.11.2018

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

Complaint No. : 219 of 2018
First date of hearing: 31.05.2018
Date of Decision : 29.11.2018

Ms. Sonu Sunita Nagpal & Ors ,
R/o 32, Ganpati Enclave, Jharsa Road,
Gurugram

Complainants

Versus

M/s Vatika Landbase Pvt. Ltd
Office at : 308, Vishal Bhawan, 95 Nehru Place'
New Delhi
Corporate office: 7th floor, Vatika Triangle,
Sushant Lok-1, Gurgaon-122001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Rishab Gupta Advocate for the complainants
Shri Kamal Dahiya Advocate for the respondents

ORDER

1. A complaint dated 02.05.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Ms. Sonu Sunita Nagpal & Ors, against the promoter M/s. Vatika Landbase Pvt. Ltd. and Mr. Anil Bhalla (Director), on account



of violation of the clause 9 of the agreement executed on 18.03.2014 in respect of shop numbers-25, in the project 'Vatika City Market' for not handing over possession along with the execution of the sale deed which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Vatika City Market", Mehrauli, Gurgaon Road , Gurugram
2.	RERA registered/ un registered.	un registered
3.	Apartment/unit no.	SF-25
4.	DTCP License no.	303 to 314 of 2005
5.	Shop space measuring	213 sq.ft. of super area
6.	Date of execution of agreement	18.03.2004
7.	Occupation Certificate granted on	25.07.2011 Annexure R-2
8.	Payment plan	Assured Return (Rs. 12,780/- per month)
9.	Basic sale price as per the agreement	Rs. 8,16,800 /-
10.	Total amount paid by the complainant till date	Rs. 8,16,800/-
11.	Date of delivery of possession as per clause 9 of agreement	The date of physical possession would be formally intimated by the developer to the purchaser.



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 31.05.2018. The case came up for hearing on 31.05.2018, 10.07.2018, 09.08.2018, 16.08.2018, 12.09.2018, 18.09.2018, 28.09.2018, 26.10.2018 and 29.11.2018. The amended reply filed by the respondent on 08.08.2018.

Facts of the complaint

5. Briefly stated, the facts of the case of the complainant are that the director of the company entered into an agreement dated 18.03.2004 on behalf of the company with complainants. As per the terms of the agreement and assurance the complainants agreed to buy a commercial shop on the second floor bearing shop no. SF-25 in Vatika City Market (The Mall) situated on Mehrauli- Gurgaon Road, Gurugram.
6. The respondents started giving committed rent of Rs. 12,780/- per month of commercial shop. Till July 2012, the company paid rent to complainants of Rs. 12,780/- per month.
7. On august, 2012, the respondents, instantly and surprisingly issues a letter to complainants. The respondents made alteration in allotment of unit of second floor to sixth floor



made by respondents which is illegal and is in violation of terms of agreement.

8. The respondent company entered into a lease agreement with some unknown recognized lessee of commercial shop at sixth floor and started paying rent of Rs. 20,000/- per month to complainants. The respondents paid this committed rent upto Jan 2018, but they malafidely and intentionally failed to pay increased rent which was to be increased after every three years @15% escalation w.e.f 27.08.2015.
9. The market value of the unit of second floor commercial shop is approximately Rs. 35000/- sq.ft whereas the market value of the unit of sixth floor commercial shop is Rs. 18000/- sq.ft.
10. The complainants contacted the respondents about the aforesaid fraud, cheating done by company but they even did not give any response to the emails send by the complainants. The respondents have not obtained the completion certificate, occupation certificate from the concerned authorities.
11. The complainants have filed a complaint under permanent Lok Adalat and there also company has not taken any interest and are delaying the matter to grab the said commercial shop and hard earned money of the complainants.



12. Issues raised by the complainants are as follow:

- i. Whether M/s Vatika Landbase Pvt. Ltd., obtained completion certificate, occupancy certificate from the concerned authority?**
- ii. Whether the respondent company violated the terms of the agreement by not executing the conveyance deed in favour of the complainants?**
- iii. Whether the respondent company has violated the terms of the agreement by allotting shop at sixth floor instead of second floor?**
- iv. Whether the company has failed to pay committed rent regularly as per terms of the agreement as well as later on increased rent after every three years @ of 15% escalation w.e.f 27.08.2015 till now?**

13. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondents to pay arrears of rent of Rs. 60,000/- (for three months Feb 2018, March 2018, April 2018) to the complainants along with escalation @ 15% w.e.f 27.08.2015 till now.**



Respondent's reply

14. The respondents submitted that the complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint.
15. The respondents submitted that the project is neither covered under the HARERA rules, 2017 nor is the project registered with the authority. As per the definition of "ongoing projects" under rule 2(o) of the said rules, any project for which an occupation certificate, or part thereof completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this authority.
16. The respondents submitted that the respondent had applied the occupation certificate for the said project on 19.07.2010 and completion certificate on 29.08.2012 which is much prior to the date of publication of the said rules i.e 28.07.2017 and hence the said project is not an ongoing project as per rule 2(o)(i) and the present case is squarely covered under rule 2(o) and therefore the authority has no jurisdiction to entertain the present complaint.



17. The respondents submitted that the occupation certificate was granted on 25.07.2011 which is much prior to the publication of the said rules on 28.07.2017 and the present case is also squarely covered under the second exception provided under rule 2(o) and therefore as per rule 2(o)(ii).
18. The respondents submitted that the complaints pertaining to compensation and interest for a grievance under section 12,14,18 and 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before the authority.
19. The respondents submitted that section 71 which clearly states that even in a case where a complaint is withdrawn from a Consumer Forum/Commission/NCDRC for the purpose of filing an application under the said Act and said rules, the application, if any, can only be filed before the adjudicating officer and not before the authority.
20. The respondents further submitted that the permission to withdraw the complaint under proviso to section 71 is applicable only for the complaints pending before any Consumer Forum/Commission/NCDRC established under



section 9 of the Consumer Protection Act, 1986 and not before any other forum and at the same time, such permission to withdraw has to be for the purpose of filing it before the adjudicating officer under the said Act.

21. The respondents submitted that the complainant has already filed a complaint before the Permanent Lok Adalat (Public Utility Services), Gurugram in the year 2014 and, vide order dated 24.04.2018 the same has been dismissed in default on account of non-prosecution by the complainant and it has not been withdrawn from any Consumer Forum/Commission/NCDRC established under section 9 of the Consumer Protection Act, 1986 and at the same time no such permission to withdraw the said complaint for the purpose of filing it before the adjudicating officer.
22. The respondents submitted that during the pendency of his first complaint before the Industrial -cum-Labour court, Gurugram that the complainant had filed the second complainant had filed the second complaint before the Permanent Lok Adalat(Public Utility Services), Gurugram on 12.09.2014 and categorically made a false statement in para 9 of the complaint.



23. The respondents submitted that RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. The complainant is an investor and not a consumer and nowhere in the complaint has the complainant pleaded as to how the complainant is a consumer as defined in the Consumer Protection Act, 1986 qua the respondent.
24. The respondents submitted that the respondent has continued with the development of the project and has already obtained the occupation certificate dated 25.07.2011 for the said project and around 70% conveyance deeds have already been executed, till date.
25. The respondents submitted has made huge investments in obtaining approvals and carrying on the development of the said project and despite several adversities respondents has continued with the development.
26. The respondents submitted that no such act has been done by the complainants which cause huge financial loss to the respondents rather the respondents have caused a great financial loss.



Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

27. With respect to the **first issue** raised by the complainants the authority came to know from the perusal of documents filed by the complainants that the respondent has already obtained occupation certificate from DTCP Haryana on 25.07.2011. Hence this issue becomes infructuous
28. With respect to the **second issue** raised by the complainants, the authority is of the considered opinion that the respondent company have violated the terms of the agreement by not executing the conveyance deed which was their primary obligation. The respondent is directed to get the sale deed executed of the finally allotted unit in favour of the complainants.
29. With respect to **third issue** raised by the complainants, there's no iota of evidence produced in support of allegation by the complainants that the respondent has earlier allotted unit at the 2nd floor which was later changed to the unit at the 6th floor.



30. The **fourth issue** raised by the complainants, the respondents paid committed rent upto January, 2018 but they malafidely and intentionally failed to pay increased rent which was to be increased after every three years @15% escalation w.e.f 27.08.2015 till now as mentioned in the letter vide dated 27.08.2012. The respondents are not regular in paying the monthly rent and the rent w.e.f 01.02.2018 to 30.04.2018 is due against the respondents.

31. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

“34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

32. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider



necessary and such directions shall be binding on all concerned.”

Findings of the authority

33. The respondent admitted the fact that the project Vatika City Market (The Mall) is situated in Mehrauli, Gurgaon road, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

34. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



35. The respondent has unilaterally changed their allotted unit from 2nd second floor to 6th floor. However, the counsel for the respondent submitted that that the respondent intimated regarding the change of unit from 2nd to 6th floor in Vatika city Market, Gurugram was given to the complainant, although there was no acceptance by the complainant. The respondent after this communication started paying rent as agreed during arguments for six years.

36. The name of the respondent no.2 is deleted from the array of the heading of the complaint vide order dated 10.07.2018.

Decision and directions of the authority

37. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to get the sale deed executed of the unit now finally allotted to the complainant for which the complainant is receiving rent.



38. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
39. The order is pronounced.
40. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.11.2018

Judgement Uploaded on 09.01.2019

HARERA
GURUGRAM

