

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 13.12.2018
Complaint No.	329/2018 Case titled as Mr. Rupinder Kalia V/S M/S Vatika Ltd.
Complainant	Mr. Rupinder Kalia
Represented through	Shri Umesh Chauhan Advocate for the complainant.
Respondent	M/S Vatika Ltd.
Respondent Represented through	Shri Kamal Dahiya, Advocate for the respondent.
Last date of hearing	29.11.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings****Arguments heard.**

Project is registered with the authority vide No.271 of 2017.

An allotment letter dated 24.11.2014 for plot No.21, street No.G-16 in 'Vatika Express City', Sector-88 Grogam has been issued after making payment of Rs.11,09,845/- on 20.8.2013. Later on, complainant has made subsequent payments to the tune of approximately Rs.70,73,580/- whereas respondent's counsel states that builder has received only Rs.65,73,580/- and Rs.4,26,496/- as interest of delayed payment against a total cost consideration of Rs.1,92,00,060/-. No Builder Buyer Agreement has been signed inter-se the parties. It was a possession linked payment plan. Revised date of delivery of possession is 8.10.2022. Complainant intends to wriggle out of the project. Counsel for the respondent apprised that the respondent-

company has issued them a large number of demand letters which are on record and reminder letters for signing of BBA. The matter stands stymied on account of buyer. There is no option with the RERA authority but to direct the respondent to refund the deposited amount after forfeiting 10% of the total sale consideration amount alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

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

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

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

**Complaint No. : 329 of 2018**  
**First date of hearing: 24.07.2018**  
**Date of Decision : 13.12.2018**

Mr. Rupinder Kalia,  
R/o. 47-A, Kalia Colony, G.T Road, Jalandhar,  
Punjab-144008

**Complainant**

**Versus**

M/s Vatika Ltd.  
(Through its director)  
Regd. Office: Vatika Triangle, Sushant Lok-1,  
Block-A, Mehrauli Gurgaon Road, Gurugram,  
Haryana-122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Umesh Chauhan Advocate for the complainant  
Shri Kamal Dahiya Advocate for the respondent

**ORDER**

1. A complaint dated 25.05.2018 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 complainant Mr. Rupinder Kalia, against the promoter M/s. M/s Vatika Ltd. in respect of apartment/unit described below in the project 'Vatika



Express City', Sector-88, Gurugram on account of violation of the section 11(4)(a) of the Act ibid for not developing the project within stipulated period.

2. Since, the allotment letter has been executed on 24.11.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Vatika Express City", Sector- 88, Gurugram
2.	RERA registered/ not registered.	<b>registered</b>
3.	RERA registration no.	<b>271 of 2017</b>
4.	Plot/unit no.	Plot no. 21, street no. G-16
5.	Plot measuring	300 sq. yard.
6.	Booking date	20.08.2013
7.	Date of allotment letter <b>Note: Builder Buyer Agreement not executed</b>	24.11.2014
8.	Payment plan	Possession linked payment plan
9.	Total sales consideration as per statement of account	Rs.2,12,43,534.43/-
10.	Total amount paid by the complainant till date	Rs. 70,73,580/-



11.	Date of delivery of possession	<b>Cannot be ascertained since the BBA is not executed between the parties</b>
12.	Delay in handing over possession	<b>Cannot be ascertained since the BBA is not executed between the parties</b>
13.	Penalty clause	<b>Cannot be ascertained since the BBA is not executed between the parties</b>

4. 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. An allotment letter dated 24.11.2014 is available on record for the aforesaid plot as per which the time was the essence with respect to payment of sums due and any default shall entail penal interest. But the complainant has failed to make timely payments of instalment on account of delay in development of project by the promoter. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 24.07.2018. The case came up for hearing on 24.07.2018, 11.09.2018,



18.09.2018, 28.09.2018, 26.10.2018, 29.11.2018 and 13.12.2018. The reply was filed by the respondent on 16.08.2018 which has been perused by the authority.

### Facts of the complaint

6. Briefly stated, the facts of the case of the complainant that the complainant is an NRI and is living in USA for the last 15 years. The complainant wanted to purchase a property in Gurugram because his mother was suffering from blood cancer and for the purpose of regular treatment medanta hospital.
7. The complainant convinced and expressed his interest for booking of plot and asked the respondent to provide detail of payment and plan for the payment of booking amount. The respondent offered possession linked payment plan to the complainant as 40:60 ratio 40% within 12 months of booking and 60% at the time of possession and the possession of the said plot was to be handed over in 2015
8. The respondent verbally committed to the complainant that delivery of the unit to be completed in last 2015 or early 2016. The respondent's sales team claim to be next lutyens' style project in the NCR region.



9. The respondent raised the demand of Rs. 8,20,006/- for the payment within 30 days from the date of booking, Rs, 19,20,006/- for the payment of within 60 days from the date of booking and Rs. 19,20,006/- for the payment of within 90 days from the date of booking and the complainant paid Rs. 8,43,735/-.
10. The complainant requested many times to the respondent about execution the builder buyer agreement but every time respondent made excuse about the agreement and has not executed the agreement till date.
11. The complainant paid all the demands time to time whenever demanded by the respondent but the respondent charged interest on the delayed payment from the complainant and regarding this complaint the complainant sent various mail and requested to clarified to interest charged by him because the complainant already made request for extension of the payment because his mother was suffering from blood cancer and admitted PGI Chandigarh.
12. According to the brochure the complainant need to pay 40% amount within one year, whereas the respondent cannot charge any interest till completion of one year.





13. The respondent till October 2014 rather than executing builder buyer agreement issued only allotment later dated 24.11.2014. After receiving payment of more than 25% only issued allotment later whereas a respondent have to execute builder buyer agreement after receiving 10% amount of basic sale price.
14. The complainant according to the payment plan had already paid Rs. 7,73,580/- till October 2014 which is more than 40% of the basic sale price. According to the statement of account the respondent changed the payment plan and converted into construction linked plan without taking any consent from the complainant.
15. The respondent has not provided any detail and status of the development of the project and has only demanded for the payment of installment. The complainant sent an email dated 09.09.2015 to the respondent but no replay has been received.
16. The complainant was not aware about the status of the project and did not know about the time of possession of the unit because the builder buyer agreement was not executed by the respondent. Hence, the complainant was constrained to file the present complaint.





**17. Issues raised by the complainants are as follow:**

- i. Whether the respondent has delayed in providing possession to the complainant?**
- ii. Whether the respondent is liable to refund the entire amount paid by the complainant along with interest at 18% per annum ?**
- iii. Whether the respondent is liable to pay compensation for mental torture, harassment, travel expenses, litigation post and financial loss caused to the complainant?**

**18. Relief sought:**

The complainant is seeking the following relief:

- i. Direct the respondent to refund the entire paid amount to the complainant and consequently pay to the complainant an amount of Rs. 70,73,580/- with interest 18% per annum calculated from the date of respective deposit till the date of actual realization.**
- ii. Award a compensation of Rs. 5 lacs in favour of the complainant and against the respondents for causing severe intense mental torture, sever pain, endless agony, harassment and huge financial loss illegally**



**retaining the entire deposited amount of the complainant.**

- iii. Award a cost of travel expenses from USA of Rs. 5 lacs (for 5 trip) in favour of the complainant and against the respondent.**
- iv. Award a cost of litigation of Rs. 1,60,000/- in favour of the complainant and against the respondent.**

#### **Respondent's reply**

19. The respondent company has contended in its reply that the complainant has misdirected himself in filing the complaint and the relief being claimed cannot be said to even fall within the jurisdiction of the authority. The relief being claimed regarding compensation and the same has to be adjudged by the adjudicating officer under section 71 of the Act and hence the authority does not have jurisdiction to hear the matter. That the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully.

20. However, the respondent submitted that for the purpose of adjudicating compensation under section 12,14,18 and 19 of



the 2016 act and for holding an enquiry in the prescribed manner.

21. The respondent further admitted that the complainant is liable to be dismissed as it is barred by the principle of delay and laches. The respondent asserted that the complainant after passage of more than 5 years from the date of booking form cannot be allowed to raise the flimsy and frivolous objections at such juncture where the project is near to completion when the complainant has not bothered to execute the plot buyer agreement.
22. The respondent submitted that the plot buyer agreement dated 20.10.2014 along with the forwarding letter was sent to the complainant on 20.10.2014, but the complainant failed to adhere the terms of booking application form and allotment letter and did not signed and returned the PBA. Thus, the complaint is liable to b dismissed.

**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:

23. With respect to the **first issue** raised by the complainant, the authority came across that the respondent has delayed in



providing the possession and completion of project. The respondent has provided with an allotment letter and the status of delivery of no builder buyer agreement has been executed between the complainant and the respondent till date.

24. The complainant 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.*

The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation 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.*

25. With respect to the **second issue** raised by the complainant, it can be seen from the perusal of records the respondent has issued various demand letters and reminder letters to the



complaint for execution of BBA. But the complainant did not turn up on the plea that the respondent has failed to provide the details of the status of the project. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate i.e 10.75%, for every month of delay till the handing over of possession under section 18(1).

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

26. With respect to the **third issue** raised by complainant, the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.

### **Findings of the authority**

27. The respondent admitted the fact that the project Vatika Express City is situated in sector-88, 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

28. 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.

29. The authority is of the view that the complainant intends to wriggle out of the project. The counsel for the respondent apprised that the respondent company had issued them a large number of demand letters which are on record and reminder letters for signing of BBA. There is no option with the RERA authority but to direct the respondent to refund the





deposited amount after forfeiting 10% of the total sales consideration along with prescribed rate of interest.

### **Decision and directions of the authority**

30. 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 refund the entire deposited amount of the complainant after forfeiting 10% of the total sales consideration from the said amount which comes to Rs. 4949227/-.
- (ii) The respondent in addition is directed to pay the interest at the prescribed rate of 10.75% p.a. on the remaining amount to be refundable amounting to Rs. 2150032.25/-, from the date of last payment till 13.12.2018 (date of order) within 90 days of this order. Details of amount refundable by respondent to the complainant is given below in tabular form.





Total Consideration	Amount paid by the complainant	10% of sales consideration	Balance amount payable on deduction of 10% of total consideration from paid amount	Interest payable @10.75% p.a on balance amount from last date of payment till date
Rs. 2,12,43,534.43/-	Rs.70,73,580/-	Rs. 21,24,534.44/-	Rs. 49,49,226.55/-	Rs. 16,63,177.41/-

31. The order is pronounced.

32. 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: 13.12.2018

Judgement Uploaded on 09.01.2019

