

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 25.7.2018
Complaint No.	248/2018 case titled as Ms. Urmila Devi versus M/s Vatika Limited
Complainant	Ms. Urmila Devi
Represented through	Complainant in person with Shri Amit Kumar, Advocate
Respondent	M/s Vatika Limited
Respondent Represented through	Ms. Aakansha Sinha Legal Executive on behalf of the respondent with Shri Dheeraj Kapoor, Advocate

Proceedings

The project is not registered.

It was brought to the notice of the authority that the Project is registerable but so far it has not been registered which is violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings shall not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act ibid, the penalty amount may extend upto 10% of the estimated costs of the Project.

The counsel for the complainant informed that he has already given possession vide letter **No.VL/CRM/14-15-12-01-0068749/9** dated 16.10.2015. Request of the complainant is to get the conveyance deed executed and in absence of the which he is not in a position to avail loan facility etc. Similarly without conveyance deed he can not start the construction over the plot as Town and Country Planning authority will not approve the building plan.

Learned counsel for the respondent informed that so far occupation certificate/ part completion certificate has not been obtained and the promoter is still have the time

till 31.7.2019 for getting the conveyance deed executed. The plot of the complainant is part of the plotted colony in which partial completion has been obtained for some portion and for the remaining portion in which the plot of the complainant is situated. Part completion certificate has not been obtained. The promoters are in the process of applying for partial completion certificate. It was also informed by the complainant that there are certain plots around his plot where construction is in full swing in the same colony. The authority suo motu took a notice of the fact and directed DTP Gurugram to have the inspection done in this colony and submit report whether unauthorized construction without approval of the building plans are going on. It is also informed by the complainant that the promoter has given possession of the plot without obtaining partial completion certificate. The DTP will also specifically enquire this matter and submit his report within 15 days. It was also informed by the counsel for the respondent that for this portion for which completion/partial completion certificate has not been obtained, they have applied for registration with RERA and are in the process of completing the formalities. The counsel for the respondent apprised and brought to the notice of the authority that indemnifier agree without demur that the clause as envisaged in Builder Buyer Agreement with reference to handing over of the floor/apartment/villa of the unit shall be rectified/amended hereto and indemnifier agree that the possession of the same shall be given within 4 years from the date of his/her affidavit and hereby rectify that the relevant clause of the BBA relating to handing over apartment/unit within 3 years from the date of signing of the agreement herein stands cancelled and shall be read as amended above for which indemnifier hereby give his/her consent. In para No.6 at page 73 of Buyer/Assignee affidavit, the allottee agree without demur that the clause as envisaged in Builder Buyer Agreement with reference to handing over the possession of the apartment/Unit shall be amended and the allottee agree that the possession of the same shall be given within 4 years from the date of signing of this affidavit. The allottee hereby rectify that the relevant clause of the Builder Buyer Agreement relating to handing over the possession of the part of the unit shall be read as amended above for which the allottee hereby give his consent. The said clause as mentioned above was not disputed by the complainant and as per these

documents the time period mentioned in this documents, it is evident that the possession of the plot shall be given within four years from the date of signing of the affidavit i.e. 13.7.2015. The authority is of the view that as per the existing town and country planning laws and Haryana Development and Regulation of Urban Areas Act, 1975 and rules made thereunder, the possession can only be handed over after obtaining completion/partial completion certificate and for this portion of the plotted colony partial completion certificate has not been obtained and the allottee has been given possession which is of no use for him as the promoter is not in a position to do the conveyance deed without obtaining the completion certificate. This not only amounts to irregularity but injustice with the buyers as to avoid consequences of not handing over possession in time. The possession has been given to the allottee is not possession in the eyes of law and allottee is suffering because of non-signing of the conveyance deed.

Keeping in view the provisions in the affidavit and the indemnity signed by the complainant, this complaint is premature but certainly it requires detailed investigation on various acts of omission and commission and avoiding condition of the license and also adversely affecting the rights of the allottee, who are similarly situated as the complainant.

It is understood that this kind of illegal possession given to the allottees so as to charge maintenance and security charges from the allottees which are otherwise payable only after the legal possession is given to the allottee.

Keeping in view the interest of the allottee the authority direct the respondent to submit statement as in how many cases they have given such kind of illegal possession in this portion of the plotted colony through an affidavit. This affidavit be filed by the respondent in the registration branch of HARERA, Gurugram. In view of the request made by the counsel for the respondent, the names of the directors be deleted right from the inception of the complaint. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
25.7.2018

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

Complaint no. : 248 of 2018
First date of hearing: 06.06.2018
Date of Decision : 25.07.2018

Mrs. Urmila Devi
R/o village Dhani, Patuadi
Gurugram, Haryana

...Complainant

Versus

M/s Vatika Limited
Vatika triangle, Shashank Lok-I, block A,
Mehrauli Gurugram, Road, Gurugram

...Respondent

CORAM:

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

Chairman
Member
Member

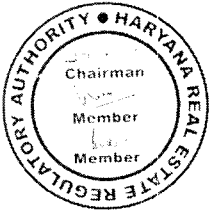
APPEARANCE:

Shri Amit Kumar
Mrs. Urmila Devi
Shri Aakash Sinha

Advocate for the complainant
Complainant in person
Legal executive on behalf of
respondent

Shri Dheeraj Kapoor

Advocate for the respondent



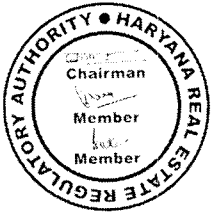
ORDER

1. A complaint dated 10.05.2018 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 Mrs. Urmila Devi, against the promoter M/s Vatika Limited.

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

1.	Name and location of the project	Vatika India Next, Sector 85B, Gurugram, Haryana
2.	Plot no.	29, 2 nd court street, Block B
3.	Plot area admeasuring	240 sq. yards
4.	Nature of project	Residential
5.	Registered/ Unregistered	Unregistered
6.	DTCP license	113 of 2008(01.06.2008)
7.	Date of booking	09.04.2010
8.	Date of plot buyer agreement	20.07.2010
9.	Total consideration	Rs. 62,73,790/-
10.	Total amount paid by the complainant	Rs. 65,48,953/-
11.	Percentage of amount paid	Above 100%
12.	Payment plan	Development link plan
13.	Letter of offer of possession	16.10.2015



3. The details provided above have been checked as per the record available in the case file which have been provided by the complainant and the respondent. A plot buyer agreement dated 20.07.2010 is available on record for plot no. 29, 2nd court street, block B for which possession has been offered on 16.10.2015.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 06.06.2018. The case came up for hearing on 06.06.2018, 12.07.2018 and 25.07.2018. The reply has been filed by the respondent on 29.06.2018.

Facts of the case

5. The complainant submitted that the original allottee have been complainant purchased a residential plot no. 003/2/K-16/83K/180/Sector -83 from its original allottee Mrs. Shubre Prakash vide agreement to sell dated 02.07.2015.
6. The complainant submitted that the originally allotted the plot no. 2, 16th court street, sector 83, block E, Vatika India next Gurugram measuring area 241 sq. yards through allotment letter dated 31.01.2011 from the respondent vide builder buyer agreement dated 20.07.2010. The location of the said plot has been changed twice by the respondent vide addendum to the plot builder buyer agreement in year 2013 and further changed to addendum to the plot builder buyer agreement on 9.10.2014 which is now the plot in question.



7. It is submitted that pursuant to the agreement to sell dated 02.07.2015, the said plot was transferred in the name of complainant on 15th July 2015 in records of the company.
8. That as per the clause 10 of the plot buyer agreement dated 20.07.2010, the respondent was under obligation to hand over the possession within 3 years i.e. in July 2013 from the date of buyer agreement. It is submitted that instead of handing over the possession to the allottee, the respondent altered the location of the plot twice contrary to the promises and assurance given to the allottee. .
9. That in July 2015, the said plot was purchased by the complainant herein from the original allottee. The physical possession of the said plot was handed over to the complainant only in year 2015 vide possession letter dated 16 .10.2015 contrary to assurances given under the buyer agreement.
10. That at the time of handing over the possession to the complainant herein, the complainant was assured that the registration of the plot in the name of complainant will be done within next 6 months from the date of handing over possession i.e. 16.10.2015



11. The complainant submitted that the said plot was not registered in the name of the complainant in the revenue records. It is submitted that without having the name registered in the revenue records, the concerned authority shall not give permission to build any structure upon the said plot.
12. The complainant submitted that full and final payment in respect of the said plot was made by the complainant to the respondent in December 2014 and despite making the entire full and final payment to the respondent, the complainant has been running after the complainant has been running after the respondent in order to persuade them to have the plot registered in her name.
13. That the complainant along with her family has been staying on rent since 2015 and paid a sum of Rs.4,42,600/-. It is submitted that due to non- registration of the plot in the name of the complainant herein the revenue record has resulted in great mental agony as well as financial loss because of the conduct, acts and omission on the part of the respondent herein. It is submitted that the complainant is also entitled to be reimbursed for the amount of interest @18% on the entire



payment made by the complainant to the respondent in respect of the said plot.

14. That the complainant is not able to apply for the housing loan or take any necessary approval for construction of the plot for the want of registration of the plot in the name of complainant.
15. The complainant submitted that the modus operandi of the respondent has caused tremendous financial pressure upon the complainant herein for which the complainant is entitled to be reimbursed forthwith as well as for the mental agony caused to the complainant by the act on the part of the respondent.

Issue to be decided.

Whether the complainant is entitled to transfer the said plot in her name by the respondent?

Relief sought

- I. Direct the respondent to transfer the said plot in name of the complainant in revenue records with immediate effect.
- II. Direct the respondent to pay sum of Rs. 4,42,600/- as indemnification for the loss caused to the complainant on the account of rent of premises paid by the complainant.



- III. The respondent to pay interest at the rate of 18% per annum on the entire payment made by the complainant to the respondent from the date of handing over possession till the plot is transferred in the name of the complainant.

Respondent Reply

16. The respondent submitted preliminary objections upon the maintainability of the complaint. The respondent stated that the present complaint is not maintainable in law or facts and the hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under sections 12,14,18 and section 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 this hon'ble regulatory authority under rule 2.



17. The respondent submitted that the complainant has filed the present complaint under rule-28 of the said rules and is seeking the relief of interest and compensation u/s 18 of the said Act. The respondent has already obtained the part

completion certificate dated 31.05.2017 for a part of the project and the balance part of the project of the respondent is covered under the definition of “ongoing projects” u/r 2(1)(o) of HARERA rules, 2017 and the respondent is already in the process of applying for registration under the said Act, the complaint, if any, is still required to be filed before the adjudicating officer under rule-29 of the said rules and not before the hon’ble regulatory authority has no jurisdiction whatsoever to entertain such complaint and is liable to be rejected.

18. The respondent submitted that the statement of objects and reasons of the said Act clearly states that the RERA is enacted for effective consumer protection. The RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of “consumer” u/s 2(d) as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer. The complainant, who is already the owner and resident of her house in village Dhani, Chitrasen, V.P.O, Bhora Kalan, Tehsil Pataudi, District Gurugram, Haryana is an investor, and never had any intention to buy the apartment for her own personal use and kept on avoiding the performance of her contractual



obligations of making timely payments and has now filed the present complaint on false and frivolous grounds.

19. The respondent submitted that the complainant is not the original allottee and has purchased the plot in question from Ms. Shubre Prakash and Mr. Anupam Prakash in July 2015. The application form dated 09.04.2010, welcome letter dated 06.05.2010, re-allotment letter dated 11.06.2013 and 19.06.2013, addendum dated 30.07.2013, letter dated 15.12.2014 for intimation of possession along with the statement of account and indemnity bond dated 29.12.2014 is in the name of the original allottees.
20. The respondent contended that vide letter dated 13.10.2015, possession of the said plot was offered to the complainant and after inspection of unit and final approval of finishes and fully satisfying herself, the complainant, vide possession letter dated 16.10.2015, took the possession of the said plot.
21. The respondent submitted that the complainant has filed a false affidavit on oath wherein the complainant has concealed the fact that the complainant has already filed a complaint with DTCP, Haryana for which the respondent has already filed its reply and the complaint is still pending.



22. The respondent further submitted that despite several adversities, the respondent has continued with the development of the project and has already obtained the part completion certificate dated 31.05.2017 for a part of the project and has handed over the possession of more than 750 plots out of 945 plots till date. The respondent is also in the process of completing the development of the balance project and should be able to apply the completion/part completion certificate for the balance project at the earliest but not later than 31.12.2021. The complainant was only a speculative investor and not interested in taking over the possession of the said plot and because of slump in the real estate market, the complainant failed to make the payments in time.

23. The respondent submitted that they made huge investments in obtaining approvals and carrying on the development of 'Vatika India Next' project. The respondent continued with the development of the said project and also had to incur interest liability towards its bankers. The complainant prevented the respondent from allotting the said plot in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainant.



Determination of issues

24. With respect to the sole issue raised by the complainant, the respondent is under an obligation u/s 11(f) and 17 to execute a conveyance deed in favour of the complainant and transfer the title in the same name.
25. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”



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

26. As the offer of possession has been made to the complainant on 13.10.2015, thus the promoter has fulfilled his obligation, but has failed to execute the conveyance deed in favour of the complainant as per section 11(f) and 17 of the Act.

27. As the conveyance deed has not been executed in favour of the complainant, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”



28. 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.

29. 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.

Inferences drawn by the authority



30. 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.

31. Keeping in view the facts and circumstances of the case, The authority is of the view that as per the existing town and country planning laws and Haryana Development and Regulation of Urban Areas Act, 1975 and rules made thereunder, the possession can only be handed over after obtaining completion/partial completion certificate and for this portion of the plotted colony partial completion certificate has not been obtained and the allottee has been given possession which is of no use for him as the promoter is not in a position to execute the conveyance deed without obtaining the completion certificate. This not only amounts to irregularity but injustice with the buyers as to avoid consequences of not handing over possession in time. The possession has been given to the allottee is not possession in the eyes of law and allottee is suffering because of non-signing of the conveyance deed.



32. Keeping in view the provisions in the affidavit and the indemnity signed by the complainant, this complaint is premature but certainly it requires detailed investigation on various acts of omission and commission and avoiding

condition of the license and also adversely affecting the rights of the allottee, who are similarly situated as the complainant.

33. It is understood that this kind of illegal possession given to the allottees so as to charge maintenance and security charges from the allottees which are otherwise payable only after the legal possession is given to the allottee.

Decision and directions of the authority

34. 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. Keeping in view the interest of the allottee, the authority directs the respondent to submit statement as in how many cases they have given such kind of illegal possession in this portion of the plotted colony through an affidavit. This affidavit be filed by the respondent in the registration branch of HARERA, Gurugram. In view of the request made by the counsel for the respondent, the names of the directors be deleted right from the inception of the complaint.



35. The order is pronounced.
36. Complaint is disposed of accordingly. Case file be consigned to the registry.
37. Copy of this order be consigned to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated :25.07.2018

Judgement Uploaded on 16.01.2019

