



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1208 OF 2019

Gautam Bathla & Virender Thakral

....COMPLAINANT(S)

VERSUS

M/s Vatika Limited & Anr.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Date of Hearing:** 17.02.2021

**Hearing:** 11th

**Present:** Mr. Himanshu Raj, counsel for complainants through video conference  
Mr. Kamal Dahiya, counsel for respondent through video conference

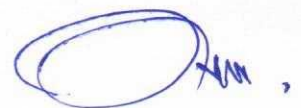
### **ORDER (ANIL KUMAR PANWAR - MEMBER)**

1. The complainants herein are seeking directions against the respondent for delivering them possession of a plot which was jointly purchased by Mr. Ashok bathla (since deceased) and Mr. Virender Thakral (complainant no. 2). Ashok Bathla and Virender Thakral had booked the plot on 13.12.2010 and buyer's agreement was executed in their favour by respondent on 03.06.2011 in respect of Plot no. 4/Block A/St. A-3. The respondent in terms of

the said agreement was obliged to deliver possession within 3 years which period had lapsed on 03.06.2014.

2. Mr. Gautam Bhatla (complaint no. 1) is claiming that deceased Ashok Bathla was his father and whatever rights his father had in the plot in question have devolved upon him by virtue of the deceased's registered will dated 02.05.2011. The complainants' grievance is that respondent has not offered possession till date and necessary directions be, therefore, issued for delivery of possession along with interest for delayed period.

3. The respondent has not disputed the complainants' averments on the point that a sum of Rs. 13,77,653/- has already been paid to him by the allottees against total sale consideration of Rs. 18,20,100/-. However, the respondent has sought to defeat the present complaint on a technical ground that complainant Mr. Gautam Bhatla has no locus standi to file this complaint because neither his name is reflected in the record books as allottee nor he had ever approached the promoter's company for his substitution as allottee of the plot in place of deceased allottee Ashok Bhatla. The respondent has further pleaded that Mr. Gautam Bhatla without obtaining probate from a competent court of law cannot claim substitution as allottee of the plot in place of deceased Mr. Ashok Bhatla. The respondent further sought to defeat the complaint averring that allotment of plot was cancelled on 28.12.2017 and after deducting earnest money, the balance amount was sent to the allottees through cheque dated 28.12.2017. So, the complainants are not entitled to possession.



4. The Authority by its order dated 16.09.2020 had rejected respondent's objection regarding maintainability of present complaint as also the objection that complainant Mr. Gautam Bhatla without obtaining probate cannot claim substitution as co-allottee of the plot in place of his deceased father Ashok Bhatla. The Authority on the question concerning cancellation of allotment of the plot and the complainant's entitlement for the relief of possession has made following observations in order dated 16.09.2020 :

"5. *The only other point argued on behalf of respondent is that the complainants are not entitled to the prayed relief of possession because allotment made in their favour has already been cancelled on 28.12.2017. As earlier observed, the respondent has not disputed that the allottees have already paid approximately 90% of the total sale consideration. So, the respondent at the time of effecting cancellation and sending its information to the allottees was required to simultaneously refund to the allottees the already paid amount after deducting the earnest money, which reasonably and legally shall not exceed 10% of the total sale consideration. So, the validity of alleged cancellation now needs judicial scrutiny in this perspective.*

6. *The cancellation letter was attached with the complaint as Annexure C-13 and is available as at page 96 of the paper book. It was mentioned in the cancellation letter that Cheque no. 001159 dated 18.12.2017 for Rs. 4,87,704.26 was sent to the allottees after deducting the earnest money. The complainants have categorically averred in paragraph 12 of the complaint that they have not received the cheque in the envelope containing cancellation letter. Interestingly, the respondent in the corresponding paragraph of his reply has neither disputed the complainants' averments on the point that they have not received the cheque*

*nor has averred that the amount of cheque was got encashed by the complainants from drawer's account. So, the Authority is prima-facie of the view that the cancellation of allotment made after obtaining 90% of the total sale consideration and without remitting the amount payable to the allottees after deducting earnest money, is unsustainable in eyes of law. The Authority before affirming its view on this point however deems it proper to afford an opportunity to the respondent to prove on the next date of hearing that the amount of cheque was caused encashed by the allottees."*

3. In view of the observations already made in order dated 16.09.2020, the respondent is now required to prove that the amount of Cheque no. 001159 dated 18.12.2017 which was alleged to have been sent to the allottees along with alleged cancellation letter had been encashed. Today, the respondent could not prove that the amount of cheque was got encashed. Such proof otherwise could have been easily produced by showing the passbook of respondent's account from which cheque was drawn or by way of a certificate obtained from the concerned bank. Since respondent has not produced any such proof, it can be safely concluded that complainants had not received the cheque and their plea laid in paragraph 12 of the complaint is correct on the point that they have not received the cheque in the envelope containing cancellation letter.

4. In view of above mentioned circumstances, the cancellation relied upon by respondent can not impair in any manner the right of complainants to have the possession of booked Plot no. 4/Block A/St. A-3 on payment of balance dues.



5. The complainant had earlier filed a complaint for the reliefs now being prayed and the same was dismissed by the Authority on 22.01.2019. Said dismissal, argued the respondent's learned counsel, debars the present complaint by principle of res judicata. The Authority does not agree with the contention because the earlier complaint was not adjudicated on merits and was dismissed with a liberty to complainants to file a fresh complaint on the same cause of action after furnishing better particulars to substantiate their claim.

6. Learned counsel for the respondent has lastly argued that this Authority while dismissing the earlier complaint had given liberty to complainants to file fresh complaint with better particulars but the complainants, instead of producing new material, have attached for supporting their case those documents which respondent had annexed with its written statement in the earlier complaint and, therefore, the present complaint deserves dismissal. The documents upon which respondent had relied in the earlier complaint, as a matter of fact, constitute such material which without discharge of further proof can be used against the respondent and therefore, mere fact that the complainants have used those documents, could not warrant any right to the respondent to seek dismissal of the present complaint on the ground as urged by its learned counsel.

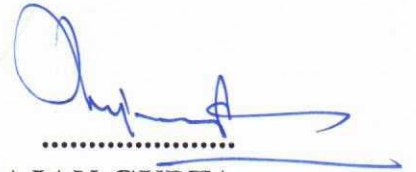
7. In view of above discussion, the Authority has no hesitation to conclude that complainants are entitled to the relief of possession and their complaint can not be dismissed on any of the objections put forth by the



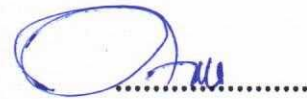
respondent. So, the complaint is allowed and respondent is directed to deliver possession of the booked plot along with the interest as per Rule 15 of Haryana Real Estate (Regulations and Development) Rules, 2017. Such amount of interest is awarded on account of delay in delivery of possession and shall be calculated from the deemed date of possession, which was 30.06.2014 to the actual delivery of possession. The respondent to the extent as necessary will be entitled to adjust the interest so payable to the complainants against the balance dues recoverable from them in terms of the agreement entered between the parties.

8. Respondent is also directed to pay the cost of ₹5000/- to the Authority and ₹2000/- to the complainant imposed vide order dated 17.10.2019.

9. The complaint is **disposed of** in aforesaid terms. Order be uploaded and files be assigned to the record room.



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]