

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 29.01.2019
Complaint No.	2281/2018 case titled as Mr. Ravinder Walia Babloo Singh Vs M/s Vatika India Next
Complainant	Mr. Ravinder Walia Babloo Singh
Represented through	Shri Babloo Singh complainant No.2 in person with Shri Sushil Yadav Advocate
Respondent	M/s Vatika India Next
Respondent Represented through	Ms. Ginisha Goel, Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 15 of the Floor Buyers Agreement dated 11.9.2015 for unit No.HSG-014B/Plot No.6/ST, admeasuring 1725 square feet, in project "Premium Floor", Sector-82, Gurugram, possession was to be handed over to the complainant within a period of 4 years from the date of execution of Floor Buyers agreement which comes out to be 11.9.2019. Complainant has so far made an amount of Rs.54,44,669/- to the respondent for the booked unit.

As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. Since there is a title dispute w.r.t. project site as admitted by counsel for the respondent, an FIR has been

lodged by complainant, a copy of an FIR is placed on record. The relevant portion of the admitted facts by the respondent is re-produced below:-

"It is also submitted that later on some of the plot areas a litigation arise after the revision of revised layout and then the company are constrained to re-allot some of the units to be constructed on that plot areas. It is pertinent to state herein that the Company immediately sent re-allotment letter dated 14.06.2016 to the Complainant informing that due to revision in the master layout of the said township due to certain fine turnings & amendments in the master layout necessitated due to architectural and other related considerations, the Company initiated a re-allotment process and invited the Complainant for the said re-allotment. (Copy of Re-allotment letter dated 14.06.2016 is attached herewith as Annexure-F).

Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

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

Samir Kumar
(Member)
29.1.2019

Subhash Chander Kush
(Member)

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

**Complaint no. : 2281 of
2018**
First date of hearing: 29.01.2019
Date of decision : 29.01.2019

1. Mrs. Ravinder Walia
2. Mr. Babloo Singh Walia
R/o H no 4104, DLF Phase IV,
Gurugram, Haryana.

Complainants

Versus

M/s Vatika India Limited,
Vatika India next, 1st floor, A block
Town Square,
Sector 82 A, NH 8, Gurugram.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Babloo Singh along with Advocate for the complainant
Shri Sushil Yadav
Ms. Ginisha Goel Advocate for the respondent



ORDER

1. A complaint dated 17.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs.

Ravinder Walia and Mr. Babloo Singh Walia against the respondent promoter M/s Vatika India Limited on account of violation of clause 15 of the floor buyers agreement executed on 11.09.2015 for unit situated on ground floor in the project "Premium floor".

2. Since, the floor buyer's agreement has been executed on 11.09.2015 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: -

- **Nature of project: Residential**
- **DTCP License No.: 113/2008, 71/2010, 62/2011 and 76/2011**

1.	Name and location of the project	Premium floor, Sector 82 Gurugram
2.	RERA registered/ Not registered	Not registered
3.	Apartment/unit no.	HSG-014B/Plot no. 6/ST.
4.	Apartment measuring	1725 sq. ft.
5.	Date of execution of floor buyers agreement	11.09.2015
6.	Payment plan	Time linked payment plan
7.	Total consideration per account statement dated 04.04.2018	Rs. 54,44,668/-



8.	Total amount paid by the complainant till date as per account statement dated 04.04.2018	Rs. 54,44,669/-
9.	Date of delivery of possession as per clause 15 of floor buyers agreement: within 4 years from the date of execution of the agreement	11.09.2019
10.	Penalty as per clause 20	Rs 7.50/- per sq. ft. of the super area
11.	Delay in handing over possession till date	Pre mature

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An apartment buyers agreement is available on record for the aforesaid apartment according to which the possession of the same is to be delivered by 11.09.2019. At the outset, this complaint is pre mature.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The reply filed on behalf of the respondent has been perused.

FACTS OF THE COMPLAINT

6. That the respondent gave advertisement in various leading newspapers about their forthcoming project named



“Premium floor sector 82 Gurugram” promising various advantages like world class amenities and timely completion/execution of the project. Relying on the promise and undertakings given by the respondent as well as the assurance by the broker Mr Gaurav Verma in the aforementioned project the complainants booked ground floor admeasuring 1725 sq. ft. in the aforesaid project of the respondent for basic sale price of Rs. 1,50,00,000/- and total sale consideration is Rs. 1,50,86,250/- which includes BSP, car parking, IFMS, club membership, PLC etc.

7. The complainants made payment of Rs 54,44,669/- to the respondent vide different cheques on different dates, the details of which are provided. That as per flat buyers agreement dated 11.09.2015 the respondent had allotted a unit bearing no 6, ground floor in block E in street 82 E-2 having super area of 1725 sq. ft. on the plot of 360 sq. yards to the complainants.
8. That as per para no 15 of the floor buyers agreement dated 11.09.2015 the respondent had agreed to deliver the possession of the flat within four years from the date of execution of floor buyers agreement.



9. Thereafter the complainants received a letter dated 14.06.2016 from the respondent for re allotment of premium floors stating revision in the master layout plan and requested to visit their office in the matter and a meeting took place on 29.06.2016 between petitioner and Ms. Jasleen representative of the respondent.
10. The respondent did not give satisfied reasonable remarks as raised by the complainants during the meeting therefore the complainant denied to accept the re allotment letter.
11. The proposed re allotted unit was not the part of the layout plan as shown at time of selling the unit by the respondent.
12. The complainants visited the site bas well as their offices and met the representative of the firm during the month of January-February 2018, but all in vain.
13. The complainants visited the site on 13.02.2018 where they were surprised and shocked to see that construction work was not even started.
14. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payment for the said floor without completing the work. The respondent has malafide, dishonest motives and intention.



15. The complainants wrote a letter to the respondent to withdraw from the project on 16.02.2018 and to refund the money amounting to Rs. 54,44,669/- with interest as applicable to the respondent as they have failed to execute the agreement of the concerned project and made false statements.

ISSUES RAISED BY THE COMPLAINANTS:

16. The following issues have been raised by the complainants:

- i. Whether or not the respondent has violated the terms and conditions of the floor buyers agreement thereby delaying possession? OR
- ii. Whether or not the complainants are entitled to refund of the amount invested by them?

RELIEF SOUGHT BY THE COMPLAINANTS:

17. The complainants are seeking the following reliefs:

- i. The respondent be directed to refund the amount deposited by the complainants i.e. Rs. 54,44,669/- along with prescribed interest.
- ii. Any other relief which this hon'ble authority deems fit and proper to meet the ends of justice.



RESPONDENT'S REPLY:

18. The respondent submitted that the present complaint, filed by the complainants, is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
19. That the present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainants have not approached this authority with clean hands and is trying to suppress material facts relevant to the matter. The complainants are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. It is submitted that the complaint is devoid of merits and should be dismissed with costs.
20. It is submitted that in the present complaint, the complainants have not mentioned the name of the hon'ble authority before the present complaint is filed, making it ambiguous and unclear. However, there shall be a proper and clear name of the hon'ble authority at the top of the complaint before whom complaint has been filed and not mentioning the name of the authority is abuse of the process of the hon'ble authority. Therefore, the present complaint is liable to be dismissed.



21. It is submitted that the present complaint is premature. There is no cause of action arise in favour of the complainants. It is imperative to note that complainants have mislead this hon'ble authority in respect of provisional allotment, various clauses of erstwhile buyer agreement dated 11.09.2015 and their own failure to abide by said agreement and is making illegitimate and illegal demands. In terms 'Recital F' of the said erstwhile floor buyer agreement dated 11.09.2015, it was clear that the 'allotment was subject to changes/directions as may be imposed by the appropriate authority i.e. Director Town & Country Planning, Haryana and such changes shall be binding on both the parties.'
22. In view of the changes in layout, respondent had to carry out the process of re-allotment and invited the complainants through a letter dated 14.06.2016 to visit and conclude the process thereof as mentioned in the letter of invitation of re-allotment but it were the complainants who did not take any interest and it is stated that as per the terms of the agreement, in case of circumstances beyond the control of the respondent. Instead of abiding by the said agreement complainants are making false and frivolous allegations to cover their own failure. Further, it is also submitted that even if the said erstwhile floor buyers agreement dated



11.09.2015, is considered there is no default or delay on the part of the respondent. The due date for handing over the possession of the unit would have been on or after 11.09.2019 and not before. Therefore, question of delay in handing over the possession of the unit to the complainant does not arise in the present case. Therefore, the present complaint is liable to be dismissed on this ground alone.

23. That the complaint filed by the complainants before this authority besides being misconceived and erroneous, is untenable in the eyes of law and liable to be rejected. The complainants have misdirected them self in filing the above captioned complaint before this authority as the reliefs being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this authority.

24. Apparently, in the present case, the complainants are seeking a claim for refund of sum paid towards said plot instead physical possession and along with interest as also the compensation, which, from reading of the provisions of the 2016 Act and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication after due deliberation, if at all, by the adjudicating officer and not by this authority. That on this ground alone, the complaint is liable to be rejected.



DETERMINATION OF ISSUES:

25. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

- i. With respect to the **first issue** raised by the complainants, the authority came across that as per clause 15 of floor buyer's agreement dated 11.09.2015, the possession of the flat is to be handed over by 11.09.2019. The clause regarding the possession of the said unit is reproduced below:

“Clause 15: schedule for possession of the said residential floor

The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said house/said residential floor within a period of 4 years from the date of execution of this agreement....”

Accordingly, the due date of possession was 11.09.2019. Thus, the present complaint is premature. If there is a delay beyond the due date, then the complainants shall be entitled to delayed possession charges.



- ii. With respect to the **second issue**, the authority is of the view that there is no hope and scope for completion of project. No choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% p.a. within a period of 90 days from the date of this order.

FINDINGS OF THE AUTHORITY:

26. 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 complainants at a later stage.
27. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
28. The complainants 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.



29. As per clause 15 of the floor buyers agreement dated 11.09.2015 for unit no HSG-014B/Plot no. 6/ST, admeasuring 1725 sq. ft. in project "Premium Floor", sector 82, Gurugram, possession was to be handed over to the complainants within a period of 4 years from the date of execution of floor buyers agreement which comes out to be 11.09.2019. The complainants has so far made an amount of Rs 54,44,669/- to the respondent for the booked unit.

30. As per averments made by the counsel for the complainants there is no progress w.r.t. construction of work. Since there is a title dispute w.r.t. project site as admitted by counsel for the respondent an FIR has been lodged by the complainant. A copy of the same is placed on record. The relevant portion of the admitted facts by the respondent is reproduced below:

"It is also submitted that later on some of the plot areas a litigation arose after the revision of revised layout and then the company are constrained to re allot some of the units to be constructed on that plot areas. It is pertinent to state herein that the company immediately sent re-allotment letter dated 14.06.2016 to the complainants informing that due to revision in the master layout of the said township due to certain fine turnings and amendments in the master layout necessitated due to architectural and other related considerations, the company initiated a re allotment process and invited the complainants for the said re allotment.



DECISION AND DIRECTIONS OF THE AUTHORITY:

31. 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 amount deposited by the complainants with prescribed rate of interest i.e. 10.75% p.a. within a period of 90 days from the date of this order.

32. The order is pronounced.

33. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 29.01.2019

Judgement Uploaded on 08.02.2019

