

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	669/2018 case titled as Girdhari Lal versus Vatika Ltd.
Complainant	Girdhari Lal
Represented through	Complainant in person with Shri Braham Dutt Sharma, Advocate
Respondent	Vatika Ltd.
Respondent Represented through	Shri Mukul Sanwariya, Advocate proxy counsel for Shri Kamal Dahiya, Advocate for the respondent.
Last date of hearing	4.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority and the revised date of possession as per RERA registration certificate is 8.10.2022.

Arguments heard.

As per clause 3 of Builder Buyer Agreement executed inter-se the parties on 14.11.2014 for plot No.12, street No.G-16, Block-G, in project "Vatika Express City" in Sector 88, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of agreement dated 14.11.2014 which comes out to be **14.11.2017**. Proxy counsel for the respondent could not provide any information w.r.t. execution

of any internal or external development work in the colony. The respondent has miserably failed to deliver the unit in time.

It is a **dismal state of affairs** w.r.t. work at the project site. In these circumstances, the authority find no option **but to order refund of the amount deposited** by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.

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

Samir Kumar
(Member)
10.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 669 of 2018
First date of hearing: 04.10.2018
Date of Decision : 10.01.2019

Mr. Girdhari Lal,
R/o. VPO, Sarhaul, Gurugram

Complainant

Versus

M/s Vatika Ltd.
Regd. Office: 7th floor, 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 Girdhari Lal Complainant in person
Shri Brahman Dutt Advocate for the complainant
Shri Kamal Dahiya and Shri Advocate for the respondent
Mukul Sanwariya, proxy
counsel for the respondent

ORDER

1. A complaint dated 02.08.2018 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 complainant Mr. Girdhari



Lal, against the promoter M/s Vatika Ltd. in respect of apartment/unit described below in the project 'Vatika Express City', Sector-88 and 88B, 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 builder buyer agreement has been executed on 14.11.2014 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.	Registered
3.	RERA registration no.	271 of 2017
4.	Revised date of completion	08.10.2022
5.	Project area	1000.785 acres
6.	DTCP License No.	94/2013 dated 31.10.2013
7.	Nature of the project	Residential plotted colony
8.	Plot/unit no.	12, street number G-16,



		block number G
9.	Plot measuring	302 sq. yards
10.	Date of builder buyer agreement	14.11.2014
11.	Payment plan	No payment plan annexed
12.	Total sales consideration	Rs. 1,12,79,700/-
13.	Total amount paid by the complainant till date	Rs. 1,12,79,700/- (100% paid)
14.	Date of delivery of possession Clause 3- 3 years from the date of execution of the agreement	14.11.2017
15.	Delay in handing over possession	1 year 1 month 27 days
16.	Penalty clause as per clause 5 of the builder buyer agreement	Rs. 150 sq. yards per month for the entire period of such delay

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. A builder buyer agreement dated 14.11.2014 is available on record for the aforesaid plot. 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 reply was filed by the respondent on 03.01.2019 which has been perused by the authority.



Facts of the complaint

6. Briefly stated, the facts of the case, the complainant on 12.11.2014, the complainant visited the office of the respondent and paid Rs. 1,12,79,700/- for total consideration for one unit of 302 sq. yards. It is further submitted that on 14.11.2014, the respondent issues an allotment letter in favour of the complainant in respect of the plot and also executed a builder buyer agreement.
7. The complainant visited the site of the said project and found no any residential plots, colony/project. Thereafter, the complainant visited the office of the respondents and inquired about the project but didn't get satisfactory answer from the respondent.
8. The complainant visited the respondent office and asked respondent either to return back his hard earned money with interest or give the possession of the promised plot at the earliest but all in vein. The respondent is prolonging the matter by giving false assurances. Since the very inception, the respondent never had any intention of developing the project and lured the complainant and public at large by



misrepresentation and succeeded in collecting several hundred crore rupees, without there being any intention to complete the project.

9. On 20.07.2018, when the complainant finally visited the office of the respondent and requested them to return the amount or give the possession of the plot but the officials of the respondent refused the same.

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

- i. Whether the respondent failed to complete the project within the agreed period of 3 years and in case of failure the complainant is entitled to recover the principal amount of Rs. 1,12,79,700/-paid by him to the respondent along with agreed interest @18% has delayed in providing possession to the complainant?
- ii. Whether the respondent intentionally, wilfully and committed fraud upon the complainant not executed the builder buyer agreement with the complainant till day?
- iii. Whether the respondent violated the provision of the RERA by not registering the said project with time?



11. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondent to refund the entire principal amount of Rs. 1,12,79,700/- along with interest 18% annually till the date of the present petition from the respondent.

OR

- ii. Direct the respondent to give alternate plot of same value in any other project in same locality in Gurugram.

Respondent's reply

12. The respondent submitted that the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law.
13. The respondent submitted that the claim for possession of the plot with interest and compensation or seeking any alternative relief along with interest and compensation, would be adjudged by the adjudicating officer as appointed under section 71 of 2016 Act and that too keeping in view the factors mentioned in section 72 of 2016 Act. Thus, the authority lacks jurisdiction to deal with the present complaint.



14. The respondent submitted that the complaint is liable to be dismissed as it is barred by the principle of estoppel. The complainant had booked/ allotted plot on 14.11.2014 with the respondent. The complaint now cannot be allowed to raise flimsy and frivolous objections at this juncture and also against the spirit of the agreement dated 14.11.2014.

15. The respondent submitted that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed by and between the complainant and the respondent company. The agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the builder buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint for interest and compensation, as provided under section-12, 14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and Haryana Rules 2017 and no other agreement.

16. The respondent submitted that the complainant has failed to bring on record anything contradictory or in violation of the provisions of RERA Act, 2016. Moreover, nowhere in the complaint any violation of the provisions of RERA Act, 2016



has been mentioned. Thus, the petition is liable to be dismissed solely on this ground.

17. It is respectfully submitted that the contents of the present complaint are incorrect and denied in its entirety. The complaint is not based on correct factual situation and the issue in right perspective.

18. The respondent submitted that the promoter has the necessary approvals to start the development of residential project and at no point of time has violated the provision of law. It is further submitted that the respondent got the environment clearance for the said plotted colony in year 2016. However, the respondent had applied for such environmental clearances vide application on 03.01.2014. The concerned department took more than 2 years to grant NOC for environmental purposes. It is pertinent to mention that without obtaining the environmental NOC, no construction activity could be carried out by the answering respondent. Thus, such time period falls under the definition of force majeure, as there was no fault or intentional delay on the part of respondent. The complainant satisfied himself and wishfully consented all the term & conditions as enumerated



and detailed in the 'BBA' executed between the complainant and respondent.

19. The respondent submitted that the entire consideration amount as alleged to be paid to the respondent is paid by complainant from own wish. The amount paid by the complainant is from the money which he received from the respondent in the land collaboration deal. The complainant is very well aware and consented to all the terms and conditions of the agreement which was duly signed by him with own free will and consent.
20. The respondent submitted that if the complainant had any issues or even otherwise, he ought to have approached for cancellation of the plot at any given time, however, the complainant never showed any disinterest or has approached the respondent for cancellation of the plot or for any other issues relating to the said plot. In spite, the complainant has made payment wilfully and that too subject to all the terms & condition of executed agreement.



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:

21. 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 and the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. It is a dismissal state of affairs with respect to the work at the project site and under these circumstances, the amount deposited by the complainant along with prescribed rate of interest i.e 10.75% per annum within a period of 90 days.
22. With respect to the **second issue** the respondent has not committed any fraud and has executed the builder buyer's agreement dated 14.11.2014
23. With respect to the **third issue**, the finding of the authority on the issue is that the project is already registered with authority having registration number **271 of 2017 dated 09.10.2017** so the issue raised becomes infructuous.



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.”

25. The complainant 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

26. The respondent admitted the fact that the project Vatika Express City is situated in sector-88A and 88B, 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.

27. **Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding 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.
28. Project is registered with the authority and the revised date of possession as per RERA registration certificate is 8.10.2022.
29. It is a dismal state of affairs with respect to work at the project site. In these circumstances, the authority find no option but to order refund of the amount deposited by the complainant/buyer along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.



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 amount paid by the complainant along with prescribed rate of interest @ 10.75% p.a. from the date of each payment within a period of 90 days from the issuance of this order.

35. The order is pronounced.

36. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date: 10.01.2019

Judgement uploaded on 25.02.2019