

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 14.02.2019
Complaint No.	731/2018 Case Titled As Gyanesh Gupta V/S M/S Vatika Limited
Complainant	Gyanesh Gupta
Represented through	Complainant in person
Respondent	M/S Vatika Limited
Respondent Represented through	Ms. Radhika Verma, Senior Executive Litigation in person on behalf of the respondent-company with Shri Kamal Dahiya Advocate
Last date of hearing	15.1.2019
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

No BBA has been executed inter-se the parties.

Complainant had booked a flat/unit No.HSG-023/602, Tower-A1, in project "Seven Elements" Sector-89A, Gurugram. The complainant has so far made an amount of Rs.32,60,246/-to the respondent for the booked unit against a total sale consideration of Rs.1,27,72,339/-. The respondent has failed to deliver the unit in time, as such, the complainant is entitled for refund of the amount deposited with the respondent.

As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. 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 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)
14.02.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 731 of 2018
First date of hearing: 14.02.2019
Date of decision : 14.02.2019

CA Gyanesh Gupta
R/o 398, 3rd floor, Saraswati Vihar,
Chakkarpur, Gurugram,
Haryana: 122002.

Complainant

Versus

M/s Vatika Limited
Vatika Triangle, 7th floor,
Sushant Lok phase 1, Block A,
Mehrauli Gurgaon road: 122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Complainant in person Advocate for the complainant
Ms. Radhika Verma, senior Advocate for the respondent
executive litigation in person
on behalf of the respondent
company with Shri Kamal
Dahiya



ORDER

1. A complaint dated 20.08.2018 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 CA Gyanesh Gupta against the respondent promoter M/s Vatika Limited.

- Since, the date of booking is 24.04.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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.
- The particulars of the complaint case are as under: -

Nature of project: Residential

1.	Name and location of the project	Seven Elements, Sector 89 A,
2.	RERA registered/ Unregistered	Registered 281 of 2017
3.	RERA registration valid up to	31.03.2021
4.	Apartment/unit no.	HSG-023/602, Tower A1
5.	Apartment measuring	1610 sq. ft.
6.	Date of execution of floor buyer's agreement	Not available on record



7.	Payment plan as alleged by the complainant	Construction linked
8.	Total consideration as per account statement dated 11.05.2015	Rs 1,27,72,339/-
9.	Total consideration paid by complainant till date as per account statement dated 11.05.2015	Rs 32,60,246/-
10.	Date of delivery of possession	Cannot be ascertained
11.	Delay	Cannot be ascertained
12.	Penalty	Cannot be ascertained

4.The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. There is no builder buyer agreement available on record.

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. The complainant booked an apartment in the project Seven Elements which was pre launched and had a super area of 1500 sq. ft.

7. The complainants were given a construction linked payment plan and booking amount of Rs 6,00,000 was paid by them.
8. After three months the complainant had to pay 15% of PLC.
9. Thereafter the complainant also paid Rs 26,60,246/- as demanded by the respondent several times.
10. One fine day the complainant got a call from the respondent informing him that they are not developing the said tower due to some technical issues and offered to transfer in some other tower or can cancel the booking.
11. When the complainant decided to cancel the booking and get a refund of the amount invested, the complainant was informed that the earlier tower is now being developed and hence cannot cancel the booking.
12. The complainant was shocked to see that only excavation on the site has been started and the respondent is not refunding the money either.



ISSUE RAISED BY THE COMPLAINANT:

13. The following issue have been raised by the complainant:

- i. Whether or not the respondent is bound to refund the amount invested by the complainant?

RELIEF SOUGHT BY THE COMPLAINANT:

14. The complainant is seeking the following relief:

- i. Pass appropriate directions to the respondent directing a refund of the amount of Rs. 32,60,246/- paid by the complainant to the respondent.

RESPONDENT'S REPLY:

15. The respondent submitted that the complaint filed before the authority besides being misconceived and erroneous is untenable in the eyes of law. The present complaint does not fall within the jurisdiction of the authority.

16. The complainant alone had filed the present complaint and that too is without any authorisation from the first allottee, thus the complaint is also liable to be dismissed.

17. The complainants are seeking refund with interest and compensation for harassment along with compensation for time and money spent which after reading the provisions of the Act and Rules, would be liable for adjudication.



18. That without prejudice to the aforesaid mentioned it is submitted that the complaint in any event cannot get his claims adjudicated under the provisions of the Act and Rules formed there under, keeping in view of the fact that the project in respect whereof the complaint has been made does not fall under the jurisdiction of this authority. Till such time the project is registered with this authority, no complaint or claim, can be adjudicated upon.
19. That further without prejudice to the aforesaid even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
20. That at this stage it would be just and proper to refer to certain provisions of the Rules which may be relevant for the adjudication of the present case.
21. The respondent submitted that the complaint is liable to be dismissed as it is pre mature in nature as the issues are still under consideration with the respondents. It is specifically submitted that the complainant has been allotted a flat in project Seven Elements situated at sector 89A wherein he has been allotted unit no HSG-023/602/tower A1.



22. It is also pertinent to mention that the complainant had satisfied himself in respect of the said project and was fully informed about the requirements of the said apartment and other obligations of the complainants at the time of making application for booking the said apartment.
23. That the relief sought by the complainants is based on assumptions and presumptions and is not maintainable and the complaint should be rejected at the very first instance.
24. That the complainant has filed the instant complaint without impleading the necessary party i.e. co- allottee. The said unit has been booked jointly by the complainant and his wife Mrs Shilpi Gupta. In fact Mrs. Shilpi Gupta is the first allottee, against whom all the communications and representations are valid as per the prevailing policy of the respondent.
25. That the complainant has stated that the respondent has showed their intention to shift from tower A to tower B in the said project, however such an allegation is false and baseless. The answering respondent never shifted the unit allotted to the complainant rather the respondent is ready and willing to deliver the promise as per the terms and conditions.



26. The respondents have never cancelled the unit allotted to the complainants rather demanded money from complainants as per the agreed terms and conditions.

27. That despite repeated demands letters the complainant failed miserably to pay on time thus defaulted repeatedly for reasons best known to them. That now the complainant is trying to take undue advantage of the beneficial provisions of the act.

DETERMINATION OF ISSUES:

28. 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:

- i. With respect to the **issue** raised by the complainant, no builder buyer agreement has been executed inter se the parties. The respondent has failed to deliver the unit in time, as such, the complainant is entitled for refund of the amount deposited with the respondent. As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. 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 amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum.

FINDINGS OF THE AUTHORITY:

29. 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.

30. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.



31. 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.
32. No builder buyer agreement has been executed inter se the parties. Complainant had booked a flat/unit no HSG-023/602, tower A1 in project Seven Elements in sector 89A, Gurugram. The complainant has so far paid an amount of Rs 32,60,246/- to the respondent for the booked unit against a total sale consideration of Rs 1,27,72,339/-. The respondent has failed to deliver the unit in time, as such, the complainant is entitled for refund of the amount deposited with the respondent.
33. As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. 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 amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum.



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 direction to the respondent in the interest of justice and fair play:

- a. The respondent is directed to refund the amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum from the date of each payment till the actual realisation of the amount.

35. The order is pronounced.

36. Case file be consigned to the registry.



(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Date: 14.02.2019

Judgement uploaded on 26.02.2019