

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 2065 of 2018

Date of decision : 28.09.2021

ABHISHEK GUPTA AND
PRAVEEN GUPTA
R/O : B-66, Suncity
Sector-58, Gurugram

Complainants

VATIKA LIMITED.
ADDRESS: 7th Floor,
Vatika Triangle,
Mehrauli- Gurugram Road,
Sushant Lok Phase- 1,
Gurugram-122002

Respondent

APPEARANCE:

For Complainants:

John Mathew (Adv)

For Respondents:

M.K. Sanwaria (Adv)

ORDER

1. This is complaint filed by Abhishek Gupta and Praveen Gupta (also called as buyers) under section 31 of The Real Estate



(Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.

2. As per complainants, in February 2014, they booked an apartment in respondent's project **Vatika Boulevard Heights**, situated at sector-83, Gurugram and made payment of Rs 15,34,182 as earnest money. The respondent allotted an apartment admeasuring 2110 sq. ft. for a total consideration of Rs 1,59,05,144.85 including BSP, EDC, IDC etc. A buyer's agreement dated 02.09.2014 executed between parties.
3. As per Clause 13 of buyer's agreement, possession of the said premises was proposed to be delivered within 48 months from the date of execution of buyer's agreement i.e. by 02.09.2018.
4. The apartment was booked under PLP plan in which 40 % payment was to be made in instalments within one year of booking and the rest 60 % of the payment was to be made at the time of possession. The complainants made payment of Rs 65,60,699 on various dates under possession linked payment plan.
5. They (complainants) had made 40 % of payment within time as per payment plan(annexure 1) to the agreement i.e. between January 2014 to January 2015. The respondent had represented that the subject project will be constructed as a

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luxury premium project with its own Olympic sized swimming pool, club house etc but in July 2016, complainants came to know that respondent had made misrepresentation and the project is not an independent project rather it is part of old existing ongoing project called Vatika Lifestyle Homes. They (complainants) raised objection against this misrepresentation and sought refund of their money.

6. Instead of refunding the money, respondent sent an intimation of possession dated 29.09.2016 of unit with new address as A1-203, Boulevard Residences & Heights, 33 A, Homes Avenue, Vatika India Next, Gurugaon-122004 and demanded payment of balance amount of Rs 1,01,61,904.50.
7. When complainants visited the site on 13.11.2016, they found that construction work was not complete. Upon their dissatisfaction with respect to the construction work of project, they sent an email dated 18.11.2016 to respondent stating that the offer of possession has been made without completion of project.
8. The respondent sent a termination notice dated 29.12.2016 to the complainants, on account of non-payment of Rs 1,01,61,904.50, which was demanded vide letters dated 03.11.2016 and 29.11.2016 . The complainants again vide their letter dated 28.10.2018 requested for refund of their money, but no response was received from respondent.



9. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence complainants are seeking refund of entire amount of Rs 65,60,699 along with interest @ 10.75 %.
10. The particulars of the project, the details of sale consideration, etc are reproduced here as under in tabular form:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Vatika Boulevard Heights", Sector-83, Gurugram,
2.	Project area	326.017 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 v, 71/2010 dated 15.09.2010 and 62/2011 dated 02.07.2011
UNIT DETAILS		
1.	Unit no.	203, 2 nd floor, building A1
2.	Unit measuring	2110 sq. ft. (Page No.34)
3.	Date of Booking	February 2014
4.	Date of Buyer's Agreement	02.09.2014
5.	Due Date of Delivery of Possession	02.09.2018



	As per Clause 13 of buyer's agreement, possession of the said premises was proposed to be delivered within 48 months from the date of execution of buyer's agreement	
6.	Offer of Possession	29.09.2016
7.	Notice of Termination	29.12.2016
PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,59,05,144.85
9.	Amount paid by the complainants	Rs 65,60,699 (Statement of accounts annexed with complaint)
10.	Payment Plan	Time/Possession linked payment plan

5. The respondent filed reply and raised preliminary objection that the adjudicating officer lacks jurisdiction as per recent amendment to Rule 28, whereby, Real Estate Regulatory Authority has been empowered to hear all complaints with respect to violations or contravention of provisions of the Act.
6. It is further averred that complainants had booked 2 units with the respondent, and present complaint has been filed with respect to unit no. 203. The complainants have paid only Rs 63,18,785.44 towards the said unit, against total consideration



of Rs 1,54,22,980, and Rs 91,04,195 is long overdue. The complainants never adhered to the payment schedule. More than 60 % total consideration is still due. The project is ready to be moved in. A letter of intimation of possession has already been sent to the complainants asking the latter to take possession and to clear outstanding dues. Complainants did not take possession and failed to make balance payment which constrained the respondent to terminate the unit vide 'Termination and Refund Letter' dated 05.06.2018. After making deductions as per builder buyer agreement it (respondent) refunded Rs 2,41,913.56 to complainants through cheque dated 01.06.2018. It (respondent) denied that it made any misrepresentation, it is clarified that the project Vatika Boulevard Heights is adjacent to another project Lifestyle Homes but not an integral part of it. Even conveyance deed is done under name of Vatika Boulevard Heights.

7. As possession has been offered much before the scheduled date of delivery of possession, there is no liability of respondent to refund the amount paid by complainants. The complainants are defaulter and not paid a single penny after January 2015. Contending all this, respondent prayed for dismissal of complaint.

8. Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of

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complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd.** Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019 Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation.

9. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.
10. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status qua ante i.e. when the complaints seeking refund, compensation



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and interest were entertained by the Adjudicating Officer. Considering all this, I don't find much substance in plea of respondent that this forum has no jurisdiction to try and entertain complaint in hands.

11. I have heard learned counsel of both the parties ^{and have} gone through the record on file.
12. The facts that complainants booked an apartment in the project of '**Vatika Boulevard Heights**' being developed by respondent and allotted a unit for total sale consideration of Rs.1,59,05,144.85p. including BSP,EDC,IDC etc. Buyer's agreement was executed between them on 02.09.2014. The said apartment was booked under PLP Plan in which 40% of payment was to be made in instalments within one year of booking and rest of amount i.e. 60% of total sale consideration was to be paid at the time of possession. The complainants paid 40% of the amount as per payment plan between Jan. 2014 to Jan. 2015 are not disputed during deliberations. It is contended on behalf of complainants that on 13.11.2016, same visited the project site and found that only bare structure of project stood there. No construction work was going on. They took photographs of incomplete structure. On 18.11.2016, they sent detailed email stating apartment is incomplete while possession was being offered by respondent. According to them, the construction was far from being complete despite offer of possession.
13. However, the respondent denied the fact that complainants made visit to the site on 13.11.2016, the same did not deny the



fact that email letter dated 18.11.2016 was sent by the complainants, complaining about incomplete construction work.

14. Similarly, according to respondent, same offered possession of unit in question to the complainants on 29.09.2016. Reminder about the same was issued on 03.11.2016. The complainants were informed about completion of project and were asked to clear the remaining dues and take over possession. The receipt of these letters are not denied on behalf of complainants.
15. The complainants have put on file some photographs stated to have taken from spot at the time of their visit and sent to respondent alongwith aforementioned emails. If said photographs are taken as true, the apartment is apparently incomplete in construction and not worth taking possession. In circumstances mentioned above, onus was upon the respondent to establish that project in question was complete and unit/apartment allotted to the complainants was worth taking possession. It is not the claim of respondent that even same had received occupation certificate or completion certificate in regard to said unit/project. In this way, even if respondent offered possession, it is not proved on file that apartment allotted to the complainants was worth taking possession at that time.
16. As per BBA entered between the parties, the respondent was obliged to hand over possession within a period of 48 months from the date of execution of buyer's agreement unless they establish delay or failure due to reasons mentioned in clause

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14 to 17 and 37 or due to failure of allottees to make payment in time.

17. As stated above, according to payment plan, the complainants were liable to pay 40% of sale consideration in installments upto one year. Rest of 60% was to be paid at the time of offer of possession. The claim of complainants, they paid 40% sale consideration as per agreement is not specifically denied by the respondent. In this way, the complainants cannot be blamed for not making payment as the remaining amount was to be paid at the time of offer of possession. According to complainants, the project as well as apartment in question are still incomplete. In this way, respondent failed to complete the project/apartment in agreed time and consequently to hand over possession of same to the complainants. Despite all this, complainants filed an application dated nil having next date i.e. 12.11.2020, prayed for similar order as passed in another case i.e. RERA-GGN-2066/2018, appeal of which was disposed of by the Hon'ble Haryana Real Estate Appellate Tribunal on 11.05.2019 where the Appellate Tribunal disposed of appeal with modification of the impugned order dated 27.03.2019 passed by the Authority to the extent that the appellant shall be entitled to interest @ 10.20% p.a. on the amount of refund from the date of filing the complaint, filed by the appellant till realization. The forfeiture of 10% on total sale consideration as ordered by the learned Authority remained intact.
18. The complaint in hands is thus allowed. The respondent is directed to refund the amount received from the complainants after deducting 10% of total sale consideration. The same is to

pay interest @ 10.20%p.a. on the amount of refund from the date of filing of complaint till realization. Cost of ^{litigation} Rs.1,00,000/- is also awarded in favour of complainants to be paid by the respondent.

File be consigned to the Registry.

28.09.2021


(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 08.10.2021.