

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

Complaint no. : 2066 of 2018
Date of first hearing : 27.03.2019
Date of decision : 27.03.2019

1. Shri Abhishek Gupta, and
2. Shri Praveen Gupta.

R/o. B-66, Suncity, Sector- 54, Gurugram, **Complainants**
Haryana.

Versus

M/s Vatika Limited, through its authorized
representative.

Office at: Vatika Triangle, 7th Floor,
Sushant Lok, Phase-I, Block-A,
MG Road, Gurugram,
Haryana-122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri John Mathew Advocate for the complainants
Ms. Radhika Verma Senior Executive (Litigation) on behalf
of the respondent.
Shri Venkat Rao Advocate for the respondent

ORDER

1. A complaint dated 05.12.2018 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 Shri Abhishek

Gupta and Shri Praveen Gupta, against the promoter M/s Vatika Limited, (through its authorized representative) in respect of apartment no. 902, 9th floor in building A of the project 'Vatika Boulevard Heights' located at Sector 83, Gurugram on account of violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the builder buyer's agreement dated 21.07.2014 and termination letter dated 13.01.2017 were executed 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 this 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 are as under: -

1.	Name and location of the project	"Vatika Boulevard Heights" in Sector 83, Gurugram.
2.	Nature of real estate project	Residential group housing colony
3.	Allotted apartment no.	902, 9 th floor, building A1
4.	Admeasuring area of the allotted apartment no.	2140 sq. ft.
5.	Project area	12.83 acres

6.	RERA Registered/ not registered	Not registered
7.	DTCP license no.	113/2008 dated 01.06.2008, 71/2010 dated 15.09.2010 and 62/2011 dated 02.07.2011
8.	Date of builder buyer agreement	21.07.2014 (Annx C-2)
9.	Total consideration	Rs. 1,54,15,880/- (as per statement of account, Annx C-4)
10.	Total amount paid by the complainant till date	Rs. 63,08,412/- (as per statement of account, Annx C-4)
11.	Payment plan	Possession linked payment plan.
12.	Due date of delivery of possession	21.07.2018 Clause 13 – 48 months from date of execution of agreement
13.	Date of intimation of possession	04.10.2016 (Annx C-3)
14.	Date of notice of termination of allotment	13.01.2017 (Annx C-7)
15.	Delay of number of months/ years	No delay
16.	Penalty clause as per builder buyer agreement dated 21.07.2014	Clause 18- Rs. 7.50/- per sq. ft. per month of the super area

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A builder buyer agreement dated 21.07.2014, intimation of possession letter dated 04.10.2016 and notice of termination dated 13.01.2017 is available on record for unit no. 902, 9th floor, building no. A1,

admeasuring super area of 2140 sq. ft. The allotment of the complainant was cancelled on account of non-payment of outstanding dues which was demanded with the intimation of possession letter. However, as per the allegation of the complainant, the possession offered by the respondent is not inhabitable condition which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondent through his counsel appeared on 27.03.2019. The case came up for hearing on 27.03.2019. The reply filed by the respondent on 22.01.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of the present complaint are that on 23-01-2014, the complainants showed their expression of interest in the premium residential project, namely, "Vatika Boulevard Heights" in Sector-83, Gurugram on a land measuring 12.83 acres. Based on the advertisement and representations of the respondent that the "Vatika Boulevard Heights" project was to be a luxury premium project and that the project would be completed within 48 months, the

complainants booked one apartment in February 2014 in the high rise boulevard heights and was allotted one apartment namely A1-9-902 on the ninth floor. The apartment was booked under a possession linked plan ("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.

7. The complainants submitted that before the booking of the apartment in February 2014, the respondent on 15-01-2014 showed the complainants a vacant piece of land in Sector-83 and explained to them that it was the site for the upcoming project in which they offered the apartment.
8. The complainants submitted that on 21-07-2014, a builder buyer agreement was executed between the respondent/developer and the complainants herein. The agreement in paragraph-1, recorded the receipt of the earnest money of Rs. 15,09,438/- and the respondent agreed to sell to the allottee, the complainants herein, the apartment together with the indivisible pro-rata share in the land forming the footprint of the said building. It was agreed that the apartment

no. 902, comprising of a three BHK on the ninth floor, having a super area of 2140 sq. ft. was allotted to the complainants at the rate of Rs. 6562 per sq. ft, as the basic sale price and at the total sale price of Rs. 1,54,22,980/-.

9. As per clause-13, of the agreement dated 21-07-2014, the developer undertook to complete construction of the apartment within a period of 48 months from the date of execution of the agreement. The complainants submitted that, as allottees, they had paid the price of the apartment that was timely due, and which was demanded by the respondent in accordance with the schedule of payments. Clause-14 of the agreement dealt with the procedure for taking possession, wherein it was stated that the developer, upon completion of construction of the apartment will offer in writing to the allottee to take over, occupy and use the said apartment in terms of the agreement within thirty days from the date of issue of such notice.
10. The complainants submitted that clause-18, of the agreement provided that if the respondent/developer fails to handover

possession of the apartment within the stipulated period as stated in clause-14, then the developer will pay to the allottee, compensation up to a maximum of Rs. 7.50/- per sq. feet of the super area of the apartment per month for the period of such delay after expiry of the initial period of 60 days from the stipulated date for delivery of possession. The same clause also provided that in the event the developer abandoned the project at a time before or after the start of construction, the respondent/ developer's liability shall be limited to the refund of the amounts paid by the allottee with simple interest at the rate of 12% per annum for the periods such amounts were lying with the developer.

11. The complainants, on their behalf, fulfilled the terms and conditions of the agreement in making the 40% of the payments i.e. Rs. 63,08412/- within the time as stipulated in the schedule of payments as given in annexure-1 to the agreement on various dates between February, 2014 to February, 2015.

12. The complainants alleged that in July 2016, the complainants gained knowledge that “vatika boulevard heights” was not an independent premium luxury project, but rather it was part of an old existing ongoing project called “vatika lifestyle homes”. After gaining knowledge about this misrepresentation by the developer/respondent herein, the complainants raised objections to the misleading representations made by the respondent and sought refund of their money from the respondent. In fact, the complainants had booked the apartment after taking a home loan, through which we have financed these properties. The cost of this variable interest rate loan has been between 12.15 and 12.65 % basis points on daily basis, which if compounded comes to 17-18% annually.
13. The complainants further alleged that instead of offering refund, the respondent/developer vide letter dated 04-10-2016, well before the term for handing over possession, apparently sought to give the complainants an intimation of possession, along with an account statement, vide letter dated 04-10-2016 for the unit no. HSG-011a- A1, boulevard heights-9-902 at boulevard residences and heights. It was also

intimated that the new address with respect to the property was A1-902, boulevard residences & heights, 33A, homes avenue, Vatika India Next, Gurugram-122004. The letter also annexed a statement of accounts, whereby the complainants were called upon to remit the balance of the money, amounting to Rs. 97,97,070.60/- towards the final payments due for the unit in order to enable them to start the process of handing over the possession of the unit. It was also indicated that once the payments are cleared and requisite documents are executed, the complainants were to fix up an appointment with the Developer for taking possession of the unit.

14. In order to ascertain about the actual completion of the apartment, the complainants visited the project site on 13.11.2016 and found that only the bare structure of the so-called "vatika boulevard" stood there and that no work was going on for completing the apartments as required by the agreement. The complainants took a number of photos of the incomplete structure on his visit on 13-11-2016. It is important to state here that as per clause-14 of the agreement, as detailed earlier, the procedure for taking possession

involved the developer writing to the allottee, upon completion of construction of the apartment, to take over possession. Therefore, any letter offering possession could have been issued only after completion of the apartment/unit that would be fit for human habitation. On receiving the intimation of possession letter from the respondent within an unusual time of 30 months and when we went on to check on the project, we found that they have rebranded a part of "vatika lifestyle homes" as "vatika boulevard" and thus committing a fraud on us by misrepresentation and false statement. This was neither on the site shown to the complainants, nor was it an independent gated project and nor was it the promised project. In fact, it was not the project, which was initially booked/sold to the complainants.

15. The complainants vide email letter dated 18-11-2016 sent a detailed letter complaining about the incomplete construction of the apartment while possession was being offered by the respondent/complainant. In the letter, the complainants indicated over nine various items of work that was far from complete and also stated that none of the 19 points mentioned

on pages 40-42 of the builder buyer agreement was complete in any respect. It was also stated that according to the architect's assessment, more than 60% of the work was yet to be completed. Therefore, the complainants stated in the letter that since the structure was far from complete, the offer of possession from the respondent/developer was totally invalid. The complainants also enclosed the photos taken by the complainants on their visit on 13-11-2016 along with the letter dated 18-11-2016. The complainants received no response to their letter dated 18-11-2016 from the respondent/developer.

16. Instead of addressing the complaint/objections raised by the complainants in their letter, the respondent/Developer vide email letter dated 13-01-2017 sent a notice of termination for the apartment A1-902, stating that the notice of termination was served as the complainants failed to remit the (alleged) outstanding balance. Since the respondent/developer refused to address the grievance/complaints of the complainants raised in their email letter dated 18-11-2016, the complainants refused to pay the alleged outstanding dues

raised pursuant to an illegal offer of letter of possession. The complainants had verbally informed the respondent/developer on many occasions that they were only interested in getting a refund of their money with interest as the respondent had wrongfully misrepresented the details of the project by giving incorrect, false statement to the complainants at the time of the booking of the apartments.

17. The complainants, vide letter dated 28.10.2018, again requested the respondent/developer to refund the money with interest, as the complainants were waiting for more than two years for the refund. The letter also made reference to the earlier letter dated 18.11.2016 sent by the complainants, which complained about the incomplete construction when the (alleged) letter of offer of possession was sent by the respondent/developer. The complainants had also conveyed to the respondent that the complainants were misled by the false and incorrect statement made by the respondent at the time of booking and deposit of the 40% of the money. It was also stated by the complainants that despite verbal assurances

for over the past two years, the respondent chose to only threaten cancellation without offering to refund the money.

18. The complainants have no option but to withdraw from the project seeking refund with interest and have made a demand to withdraw from the project per section 18(1) of the Act seeking refund with interest. The promoter has failed to return the amount received by him along with the prescribed interest which is an obligation on the respondent/Developer/promoter as per section 18(1) of the Act.

Issues raised by the complainant: -

- I. Whether the project of the respondent namely 'boulevard heights', sector -83, Gurugram was built in accordance with the representations, statement made by the respondent at the time of booking?
- II. Whether the construction of the apartment was complete and fit for human habitation when the respondent has sent the letter of offer of possession alongwith the demand for the balance payment?

- III. Whether the complainants are entitled for the refund of entire money invested alongwith prescribed rate of interest?

Reliefs sought:-

Direct the respondent to refund the amount of Rs. 63,08,412/- alongwith interest at the prescribed rate of interest to the complainants.

Respondent's reply: -

19. 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. This complaint is an abuse of the process of this authority and is not maintainable. The complainants are 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.
20. It is submitted that the apartments of the complainants are already ready to occupy and instead of paying the huge outstanding dues towards the sale consideration of apartment of Rs.1,33,38,562.01/- file the present complaint just to

wriggle out his contractual obligation and to harass and to extort illegitimate money from the respondent. It is crystal clear from the intention as reflecting through the present complaint that the complainant either have no money to pay the balance dues and hence, filed the present complaint to get the refund of the money or the complainants are the investors and as admitted in the para no.1 of the complaint that the complainants has booked two apartments with the respondent and now due to slump in the prices in the real estate sector, the complainants couldn't reap the desired benefit out of the investment and hence want to walk out of the booking and filed the present complaint. In view of the above submissions, the present complaint deserves dismissal as the complainants are using the Hon'ble Forum as a tool to extract illegitimate money with interest.

21. It is submitted that the complaint is devoid of merits and should be dismissed with costs. 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. It would be pertinent to make reference to some of the provisions of the Real Estate

(Regulation and Development) Act 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017, made by the government of Haryana in exercise of powers conferred by sub-section-1 read with sub-section-2 of section-84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this authority or the adjudicating officer, sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 rules provides for filing of complaint with this authority, in reference to section 31 of 2016 Act. Sub-clause (1) inter alia, provides that any aggrieved person may file a complaint with the authority for any violation of the provision of 2016 Act or the rule and regulations made there under, save as those proved to be adjudicated by the adjudication officer, in form 'CRA'. Significantly, reference to the authority, which is this Ld. Authority in the present case and before the "adjudicating

officer”, is separate and distinct “adjudicating officer” has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of the section 71, whereas the “authority” has been defined under Section 2(i) to mean the Real Estate Regulatory Authority, established under sub-section (1) of section 20. Apparently, under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate government for the purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be deliberated and taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. It would be pertinent to make reference to section 18 of 2016 Act, which inter-alia, provides for return of amount and compensation.

22. From the conjoint reading of the aforementioned provisions, it is crystal clear and evident that the claim for refund of sum paid towards said plot with interest and compensation would be only 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. No complaint can be entertained much less before this authority in respect of the matters to be adjudicated by the adjudicating officer. Hence, the authority lacks jurisdiction to deal with the present complaint.

23. 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.

Note – Written submissions of the arguments have been filed by the complainants on 25.03.2019 wherein they stated to withdraw from the project. It was further stated by the complainants that the project is only 40% completed.

Determination of issues: -

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under: -

24. In respect of **issue no. i and ii** raised by the complainants, although they have filed the photographs of the site, but it is difficult to ascertain from the said photographs that the construction was not commenced as per the representations made by the respondent at the time of booking. It is pertinent to note that the possession was offered to the complainants on 04.10.2016 which is prior to the due date of delivery of possession in terms of clause 13 of the agreement dated 21.07.2014 i.e. before 21.07.2018. Hence, as regards determination of this issue, the authority is of the view the complainants could not been able to produce any documentary evidence in support to prove their alleged misrepresentation and that the construction of the apartment is not fit for habitation.

25. In respect of **issue no. iii** raised by the complainants it is pertinent to note that intimation of offer of possession was given in writing by the respondent on 04.10.2016 with the demand to the complainants to clear outstanding dues of Rs. 97,97,070.60/-. However, the complainants did not turn up to

make payment of outstanding charges due to which the respondent has sent notice for termination of allotment on 13.01.2017 (**annx C-7**) as per the terms of agreement dated 21.07.2014. The authority is of the view that the complainants is at fault as they have refused to pay the outstanding dues on the plea that the apartment was not in habitable condition. So, the respondent has rightly terminated the allotment of unit on account of non-payment of outstanding dues of Rs. 98,03,271.60/-. But the respondent is not entitled to retain the entire paid amount of the complainants. The aim of the Real Estate (Regulation and Development) Act, 2016 is to balance the rights of allottees as well as of the promoters and not to prejudice the rights of anyone of them.

Decision and directions of the authority:-

26. Keeping in view the facts and circumstances of the case, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following direction to the respondent: -

- The respondent is directed to refund the paid amount of the complainants after deducting 10% of the total sales consideration from the same, without interest within 90 days from the date of this order.

- Since the project is not registered, the authority has decided to take suo moto cognizance to initiate penal proceedings against the respondent under section 59 of the Act ibid for not getting the project registered.

27. The order is pronounced.

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

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.03.2019.

Judgement Uploaded on 12.04.2019

(Subhash Chander Kush)

Member

HARERA
GURUGRAM