

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

Complaint no. : 617 of 2020
Date of filing complaint: 06.02.2020
First date of hearing : 01.04.2020
Date of decision : 02.02.2022

1. Harshvardhan krishanaatray
2. Tanuja Krishnatray

Both RR/o: - C-9/13A, DLF City Phase 1,
Gurgaon, Haryana- 122002

Complainants

Versus

1. M/s Vatika Limited
2. M/s Vatika Limited

Both RR/o: Vatika Triangle, 4th floor, Sushant
Lok-I, Block A, MG Road, Gurugram, Haryana-
122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Mr. Vivek Singh Bishnoi

Advocate for the complainants

Ms. Pankaj Chandola proxy
counsel for Shri Venket Rao

Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the

Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name and location of the project	One on One, Sector 16, Gurgaon, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	12.13125 acres
4.	DTCP License	05 of 2015 dated 06.08.2015
	valid upto	05.08.2020
5.	RERA registered/ not registered	237 of 2017 dated 20.09.2017
	HRERA registration valid up to	19.09.2022
6.	Payment plan	Construction linked plan
7.	Power of attorney	31.12.2019 *Note: Complainant no.1 (harsh Vardhan Krishnatray) by way of power of attorney, appointed his wife (complainant no.2 Tanuja Krishnatray) as his power of attorney in respect of property being unit no. 441, 4 th floor, block 3

8.	Date of execution of builder buyer's agreement	31.05.2016 as alleged by the complainants (page 17 of BBA)
9.	Plot no.	441, 4 th floor, block 3 admeasuring 500 sq.ft. (annexure 9, page 103 of complaint)
10.	Possession clause	BBA for above-mentioned unit is not annexed in file
11.	Basic sale consideration (including EDC & IDC as on date of license of the project)	Rs. 43,93,500/- as per allotment letter (annexure 9, page 103 of complaint)
12.	Total amount paid by the complainants	Rs. 45,84,618/- as per total of cheque (page 93 & 94 of complaint)
13.	Due date of delivery of possession	Cannot be ascertain
14.	Date of offer of possession to the complainants	Not offered
15.	Occupation certificate	Not obtained

B. Facts of the complaint

- The complainants submitted that the respondent no.2 is a co-signee of the builder buyer agreement executed by them and the respondents and the respondent stood as guarantor for the respondent no.1 for the investment made by them herein. They submitted that the complainant no.1 by way of power of attorney dated 31.12.2019, appointed his wife, complainant no.2, as his power of attorney in respect of property being unit no. 441, 4th floor, block 3, "One on One, commercial complex", Sector 16, Gurugram, Haryana for various purposes including filing of the present complaint and all necessary and incidental actions.
- The complainants submitted that the respondent approached the complainants for investment in 'Vatika One on One' admeasuring

500 sq. ft. super area and assured them monthly return at the rate of Rs. 151.65/- per sq. ft. per month on super area to be paid by the respondents on the investment made in the project upon receipt of full down payment. The said assured return was to be paid till the completion of the construction of the said building and thereafter lease rental of Rs. 130/- per sq. ft. per month was to be paid on super area for up to three years from the date of completion of construction of the said building or till the said unit is put of lease, whichever was earlier. They invested in the project by way of making full payment by way of down payment of Rs. 45,84,618/-.

5. The complainants submitted that along with the allotment letter dated 01.06.2016, of unit no. 441, 4th Floor, Block 3, the respondents also issued them a cheque no. 694154 dated 15.06.2016 towards assured/commitment return for the month till June 2016 w.e.f 20.05.2016, which was duly encashed by them.
6. The complainants submitted that allotment letter was followed by letter dated 07.06.2016 enclosing 2 copies of BBA for signing and executing the same. It is pertinent to note that similar letters along with similar BBA were sent to complainant no. 2 and their daughter Radhika Krishnatray in respect to other properties in the same project being unit no. 436 and unit no. 437, 4th floor, block no. 3. Just as in the case of the present unit, complainant no. 2 and Radhika Krishnatray signed/executed and sent back the agreements for Unit 436 and 437. Although, the BBAs counter signed by the respondents with respect to unit 436 and 437 were received back

- but the BBA for Unit No. 441 was not received from the respondents despite repeated follow up by them.
7. The complainants submitted that in terms of the agreement, the respondents have duly made payments of assured return to them till September 2018, thereby acting upon the builder buyer agreements previously signed. However, abruptly, since October 2018 the respondents have stopped making payments towards the assured returns in contravention with the agreed terms and conditions.
 8. The complainants received email dated 31.10.2018 from the respondents informing about suspension of all return-based sales. Soon thereafter, in 2019, the respondents started pressurising them to sign a fresh builder buyer agreement, which illegally and wrongfully sought to omit the assured return promised under the builder buyer agreement, without explaining the terms and conditions of the same and implications of the same.
 9. The complainants submitted that vide e-mail dated 22.04.2019, the respondents sent an addendum to the builder buyer agreement executed by the complainant No.2 and Radhika Krishnatray, their daughter, in respect to properties being unit no. 436 and 437, 4th Floor, block no.3 which illegally and wrongfully sought to omit the assured return promised under the builder buyer agreements. The said addendums were rejected by complainant no.2 and Radhika Krishnatray, their daughter vide separate e-mails dated 08.12.2019

- and the original agreements therefore continue to remain in force and the respondents are fully bound by the same.
10. The complainants submitted that by way of letter dated 11.12.2019 issued by respondents, received by them on 26.12.2019, they once again pressurised, intimidated and coerced them to enter into a fresh builder buyer agreement, whereby the respondents have unilaterally sought to change the terms and conditions of the builder buyer agreement executed in respect of unit no. 441, 4th floor, block 3 in 2016, sent by the respondents by way of letter No. 16-05-0266948-762016 dated 07.06.2016, and the agreed terms as contained in allotment letter dated 01.06.2016 and application for allotment dated 16.05.2016, thereby prejudicing their rights and interests.
 11. The complainants submitted that the property price of the unit has increased dramatically and presently is in the range of Rs. 85,00,000/- to Rs. 92,46,000/-. That the respondents have devised this new builder buyer agreement since they wish to change the builder buyer agreement already executed by them and return to the respondents, who wish to cancel the allotment and sell the same in the market at the current market rate which is much higher than the rate at which they invested in the property/ project.
 12. The complainants submitted that the question of termination of booking does not arise in as much as they have already signed/ executed the buyers agreement sent to them vide letter dated 07.06.2016 and have ownership of the said unit having paid full

consideration. The respondents were accordingly called upon to stop and desist from initiating any action against them by way of termination of the booking/unit.

C. Relief sought by the complainants:

13. The complainants have sought following relief(s):

- i. Restrain the respondents from cancelling allotment of property being unit no. 441, 4th floor, block 3, One on One commercial complex, Sector 16, Gurgaon, Haryana.
- ii. Restrain the respondents from unilaterally changing the terms and conditions of the BBA executed in respect of unit no. 441, 4th floor, block 3 in 2016.
- iii. Direct the respondents to produce the BBA in 2016, by and between the complainants and respondents before this hon'ble authority.

14. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

15. The respondent has contested the complaint on the following grounds.

- i. The present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainants



- have not approached this Id. authority with clean hands and trying to suppress material facts relevant to the matter. They are making false, misleading, frivolous, baseless, unsubstantial sole purpose of extracting unlawful gains from the respondent.
- ii. The complainants have come before this hon'ble authority with ulterior motive. That the present complaint has been filed by the complainants just to harass the Respondent and to gain the unjust enrichment and further submitted that the complainants relied upon various e-mails as annexed with the complaint were not supported by affidavit/ certificate under section 65 (B) of Evidence Act hence, the e-mails placed on record by the complainants have no authenticity, be invalid and is not an admissible document.
- iii. The respondent humbly submits that the complainants being regular investors had approached a real estate broker for the investment in the respondents' project and after discussing the details and the terms and conditions of the project with the broker and after being fully satisfied with its representation/demonstration, the complainants voluntarily invested in the project. the present complaint has been preferred for unit no. 441 only and rest of the averments of this are denied by the respondents. It is submitted that the complainants never returned the signed agreement w.r.t. unit no. 441 to the respondents and has concealed this material fact in the present complaint to mislead the Id. authority.

- iv. It is submitted that the terms of the agreement are not being disputed by the respondent; however, due to the lack of jurisdiction of the Id. authority for deciding the matters pertaining to assured return, the respondent is not liable to reply to the averments pertaining to assured return. The builder buyer agreement for unit no. 436 and 437 shall not be considered or taken on the record herein in this complaint as the present complaint has been filed in regard of unit no. 441.
- v. It is submitted the respondent has sent an email to the complainants on 31.10.2019 in accordance with the prevailing law and apprised them about the suspension of all return-based sales. It is vehemently denied that the respondent pressurized them to sign a fresh buyer agreement. The respondents had already informed them about the suspension of return based sales and further vide email dated 03.12.2018, the respondents also sent an intimation to the complainants that due to the inexplicable circumstances, an amended agreement will be sent to them for countersigned. The complainants vide email dated 17.07.2019 agreed to execute the addendum to the agreement on 1st week of the July.
- vi. It is submitted that respondents are entitled to terminate the complainant's unit in case of violation of the agreed terms and conditions from the side of the complainants or any other reasons beyond the control of the respondents. The respondent sent the fresh agreement in the wake of



suspension of the return-based sales as already intimated to the complainants vide email dated 31.08.2019 and 03.12.2019. The complainants are making false and baseless allegations to shift his onus of failure upon the respondent. The complainants did not return the original agreement sent in the year 2016 and making the false claim and allegations against the respondent.

vii. It is submitted that the complainants with the wrongful intention are trying to wriggle out from their liabilities. It is further submitted that the complainants are liable to execute the agreement as per the prevailing law. The return-based sales have now been banned and therefore, the agreement between the complainants and the respondents was required to be amended. It is submitted that the return-based sales have now been suspended therefore, the complainants are not entitled for the same. It is further submitted that the complainants are entitled to execute the amended agreement and the respondents are willing to correct the payment plan and total amount paid in the agreement. It is submitted that the respondents have never intended to cancel the unit of the complainants.

16. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

17. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

18. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has completed territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

19. While filing the complaint the complainants mentioned about the provision of assured returns and the same having been paid by the respondent/builder upto September 2018 and stopping the reflate the same. Though entitlement to the same was denied by the respondent/builder while filing a reply but it is not disputed that the complainants have already filed a complaint bearing no. **5135 of 2021** on **29.12.2021**, seeking assured returns against the allotted unit. So, in view of pendency of complaint w.r.t. assured returns between the parties the relief in this regard is not being sought by the complainants. Hence, no findings in this regard are being returned.

F. I Findings on the relief sought

F. I Restrain respondent no.1 and 2 from cancelling allotment of property being unit no. 441, 4th floor, block 3, One on One Commercial complex, Sector 16, Gurgaon, Haryana.

The complainants have not submitted any document vide which either the unit has been cancelled or cancelled notice has been issued by the promoter. The complainants may approach the authority when the cause of action in this regard arises. The complainants have already paid the full consideration amount much earlier and there seems to be no plausible reason for cancellation of the unit.

F.II Restrain the respondent no. 1 and 2 from unilaterally changing the terms and conditions of the BBA executed in respect of unit no. 441, 4th floor, block 3 in 2016.

The complainants have failed to place on record the alleged buyer's agreement, the terms have been unilaterally changed or altered. In absence of that document to be produced by any of the parties, the allotment letter is governing document about terms and conditions of allotment and accordingly, the builder at this stage cannot unilaterally change any condition which is in contradiction of allotment letter and alleged BBA which was signed by the complainants and handed over to the respondents for returning one side copy to the complainants which was not returned to the respondents. Although for the same project, there are large number of allottees which have signed BBA similar to one alleged by the complainants and the conditions contained therein shall also not be changed to the detriment interest of the allottee.

F.III The respondent no.1 and 2 to produce the BBA in 2016, by and between the complainants and respondents no.1 and 2 before this hon'ble authority.

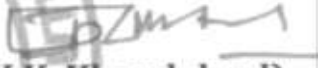
The complainants submitted that the respondent vide letter dated 07.06.2016 sent two copies of BBA for execution and after signing the same, they delivered the said BBA by hand to the respondent. But the respondent submitted that the complainants did not return the copy of agreement sent in the year 2016 for counter signatures. But without going into the rival contentions raised, the authority exercising powers under section 35 of the Act, 2016 hereby directs the company secretary of the respondent for handing over copy of BBA alleged to have been signed by the complainants submitted to the respondent in June 2016, and duly signed by the promoter. If such BBA is not available in the records of the company, then an affidavit to this effect would be submitted by the company secretary in the registry of the authority within 15 days. The promoter is further directed to handover a signed copy of the BBA to the complainants as per the terms & conditions of the allotment letter dated 01.06.2016 as the same is available with the promoter and has been submitted by them.

G. Directions of the authority

32. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act:

- i. The respondents/promoters are directed to pay the arrears of assured return to the complainants/allottees from October 2018 at the agreed rate i.e., 151.65/- per sq.ft. till the completion of building and after completion of the building @130/- per sq.ft. on super area upto three years or the said unit put on lease whichever is earlier.
 - ii. The respondents shall not charge anything from the complainants which is not the part of the agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.

V.I. →
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2022

HARERA
GURUGRAM