


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

Complaint no. : 4277 of 2020
First date of hearing: 11.02.2021
Date of decision : 02.02.2022

Satya Priya Singh
R/o: Flat No. C-063,
DLF New Town Heights 91,
Sector 91, Gurugram-122505

Complainant


Versus

Vatika Limited
Office Address: Vatika Triangle,
4th Floor, Sushant Lok-I, Phase I, Block-A,
Mehrauli-Gurgaon Road, Gurugram, Haryana
122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Uday Seth Advocate for complainant
Sh. Pankaj Chandola Proxy Advocate for respondent
Counsel for Sh. Venkat Rao
Advocate

ORDER

1. The present complaint dated 15.12.2020 has been filed by the complainant/allottee 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)(f) and section 17(1) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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	Description
1.	Name of the project	Vatika India Next, Sector 81, 82, 82A, 83 & 85 Gurgaon
2.	Nature of the project	Residential Township
	DTCP License no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2010
3.	Project area	182.796 acres
4.	Rera Registration no.	Not registered
5.	Date of execution of buyer's agreement	07.04.2010 (Page 29 of complaint)
6.	Payment plan	Construction linked payment plan
7.	Final plot no. allotted vide addendum to the plot (Vatika India Next) BBA dated 12.05.2017	2, N-6, Vatika India Next, Gurgaon -122004 (annexure P6, page 66 of complaint) Note: Firstly, allotted plot no. 323, block F admeasuring 240 sq. yd. (Page 33 of complaint) Secondly, allotted plot vide Addendum to the plot (Vatika India Next) BBA dated



		<p>06.06.2013: 5/N-91/84/240 sq. yards (annexure P4, page 64 of complaint)</p> <p>Thirdly, allotted plot vide Addendum to the plot (Vatika India Next) BBA dated 12.07.2016: 9/N-6/84N/240 sq. yards (annexure P5, page 65 of complaint)</p>
8.	Total consideration	Rs. 51,36,480/- as per payment plan (annexure II, page 51 of complaint)
9.	Total amount payable by the Complainant	Rs. 56,34,078/- as per receipts (page 25, 53,55,56,57,58,59,71,72,73 of complaint) OR Rs. 53,28,089 as alleged by the complainant (page 19 of complaint)
10.	Memorandum of settlement	17.05.2017 *Note: Memorandum of settlement is executed between the complainant and respondent. In this settle both the parties have agreed that the respondent has allotted new plot no. 2/N6/240/84/Vatika India Next, Gurgaon Haryana admeasuring 240 sq.ft. against the previously allotted yards. On clearance of the balance dues, the complainant is being offered possession of plot no. 2/N6/240/84/Vatika India Next, Gurgaon Haryana admeasuring 240 sq.yards.



10.	<p>Due date of delivery of possession (10. Handing over possession of the said plot to the allottee) <i>That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this agreement unless there is a delay or there is a failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure II or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this agreement. The promoter, upon completion of development work in the said township and carving out, demarcation and measurement of plots shall offer in writing to the allottee to take over physical possession of the said plot in terms of this agreement within thirty days from the date of issue of such notice and the promoter shall hand over vacant possession of the said plot to the allottee subject to the allottee having complied with all the terms and conditions of this agreement and is not in default under any of the provisions of this agreement and has complied with all provisions, formalities documentation etc. as may be prescribed by the promoter in this regard)</i></p>	07.04.2013 (Due date is calculated from the date of execution of the agreement)
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11.	Possession handover letter	01.07.2017 (Page 52 of complaint)
12.	Offer of possession	Not offered
13.	Completion certificate	Not obtained

B. Facts of the complaint**The complainant has submitted as under: -**

3. That the complainant is a law-abiding citizen of the country. The respondent company is a real estate company by the name and style of Vatika Limited which is duly incorporated under the provisions of the companies act, 1956 having its registered office at Vatika Triangle, 4th Floor, Sushant Lok Phase I, Block A, Mehrauli-Gurgaon Road Gurgaon, Haryana-122002.
4. That the respondent company represented the complainant that it had introduced a real estate project by the name of 'Vatika India Next' as a mega future ready integrated residential township project in and around villages Sihi, Shokohpur and Sikanderpur Badha, Distt Gurgaon comprising of Sectors 81, 82, 82A, 83, 84 and 85, Gurgaon, Haryana. The complainant was shown rosy picture of the project of development and construction of a high-class residential township by the respondent company. Furthermore, the respondent company claimed that the project has been approved by the Director of Town and Country Planning, Haryana, Chandigarh. Consequently, the respondent company induced the complainant as well as several other people to purchase residential plot from it in the given project.

5. That further it is to be submitted that on believing the representations and assurances given by respondent company about the timely delivery and quality of the project, the complainant booked a residential unit in the project for a total consideration of Rs. 51,36,480/-, and in pursuance of same, a cheque bearing no.252404 amounting to Rs. 5,10,053/- drawn on deutsche bank dated 04.01.2010 was given to the respondent company and the respondent company by admitting issued receipt vide receipt no. 36751 in favour of the complainant.
6. That it is pertinent to mention here that at the time of entering into agreement dated 07.04.2010, the respondent company had allotted plot bearing no F/240/323 admeasuring 240 sq. yds. area in "Vatika India Next" Sector 85 Gurgaon to the complainant in terms of clause 1.1 for a total consideration of Rs.51,36,480/- .
7. That Further, it is pertinent to mention that in terms of clause 10 of the agreement, it was stipulated that the development of the township project will be completed within a span of three years from the date of execution of agreement and consequently, the plot will be handed over to the complainant.
8. That it is pertinent to mention here that the complainant had made the payment to respondent company of instalments as per the schedule of payment annexed along with the agreement dated 07.04.2010.
9. That the respondent company was not able to deliver the possession to the complainant as per the promised schedule, hence, at the instance of the respondent company, the plot reference was

changed to plot no. 5/N-9.1/84N/240 sq. yds. Sector 84 Gurgaon by way of an addendum dated 06.06.2013, while retaining all the other terms and conditions as mentioned in the original agreement dated 07.04.2010.

10. That it is pertinent to mention here that the complainant had never defaulted in any of the payment instalments as per the schedule of payment annexed along with the agreement dated 07.04.2010 and the addendum was signed solely at the behest and request of the respondent company.
11. That it is further to be submitted that subsequently, again the respondent company failed to deliver the possession of the above-mentioned plot for which reason another addendum was entered between the respondent company and the complainant as per which the reference of plot was again changed to plot bearing no. 9/N-6/84N/240/Sector 84 by addendum dated 12.07.2016. It is pertinent to mention here that despite obtaining the signatures of the complainant on the addendum, the respondent company drastically failed to affix the signature on the said addendum.
12. This is to be further submitted that since the respondent company failed to honour the promises for the third time and the complainant was constrained to approach the economic offences wing of Gurgaon police in order to report the matter. Consequently, upon the complaint made by the complainant, the respondent company settled the matter and signed another addendum on 12.05.2017 which was followed by a settlement agreement dated

- 17.05.2017. However, again the plot reference was changed to plot bearing no. 2, N-6, Vatika India Next, Gurgaon, 122004.
13. That pursuant to the settlement agreement, the complainant further issued a cheque bearing no. 205410 amounting to Rs.25,99,790 drawn on deutsche bank, Gurgaon dated 09.06.2017 to the respondent company as full and final payment and for which the respondent company issued receipt vide receipt no P/C#17-06-751733 in favour of the complainant. The complainant again further made payment of Rs.26,260/- on 19.06.2017 and for which he received receipt vide receipt no P/C#17-06-752692.
 14. That thereafter finally on 01.07.2017, the respondent company gave offer of possession of plot bearing no. 2, N-6, Vatika India Next, Gurgaon, 122004 to the complainant, consequent to which the complainant took physical possession of the plot. It is pertinent to mention here that the complainant has been paying a monthly maintenance charges towards the plot to the respondent company.
 15. That the grievance of the complainant is despite giving the possession of plot more than 32 months ago, the respondent company has drastically failed to get the same registered in the name of the complainant. The complainant repeatedly visited at the office of the respondent company and contacted through numerous telephonic calls/emails, but the respondent company kept on delaying the registration of plot on one pretext or another and made the complainant run from pillar to post.
 16. That as a matter of last resort the complainant approached the counsel and got issued a legal notice dated 26.09.2019, however,

despite effective service of legal notice on the respondent, the respondent company failed to abide to the request of the complainant and did not even care to file a reply to the legal notice.

17. That it is to be pertinent to mention here that the conduct of the respondent company is in total breach and contradiction of clause 16 of agreement dated 17.04.2010 which casts a duty upon the respondent company to prepare and execute the conveyance of title in favour of allottee after receiving the total consideration of the plot.
18. That due to the lax attitude, there has been an apprehension in the mind of the complainant that the respondent company has turned dishonest at this stage and will never proceed with the registration of the plot in the name of the complainant. Moreover, since the respondent company had continued to mislead the complainant with the false and devious assurances, even at earlier instances. The complainant has completely lost faith in the respondent company.
19. That till date, an amount of Rs. 53,28,089/- has been paid by the complainant to the respondent company which includes Rs. 51,91,364/- against the plot purchased by him Rs. 54,000/- towards maintenance charges and Rs. 82,725/- towards 50% advance for club membership and there is delay of more than 6 years; yet the plot is not registered in the name of the complainant despite there had been 100% payment in favour of the respondent company/promoter. Furthermore, the respondent company has

also deceived the complainant and the construction of the club has not completed till date.

20. That the facts and circumstances of the present case clearly makes out a case where the respondent has blatantly failed to perform its obligation to give possession in terms of the agreement for sale and hence in the present scenario section 17(1) read with section 37 and 38 of the Haryana Real Estate Regulation and Development Act 2016 is attracted.

C. Relief sought by the complainant:

The complainant has sought following relief(s):

- (i) Direct the respondent to execute the conveyance deed of the plot bearing no. 7/N-6/84N/240 Sector-84 Gurugram to be registered in the name of the complainant along with delay compensation in favour of the complainant and against the builder.
16. On the date of hearing, the authority explained to the respondent/promote about the contravention as alleged to have been committed in relation to section 11(4) (f) and section 17(1) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

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 complainant is trying to suppress material facts relevant to the matter. The Complainant

is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

- ii. That it is submitted that the complainant voluntarily with free will and consent has taken the possession of the plot bearing no. 2, N-6, Vatika India Next, Gurgaon-122004 on 01.07.2017. That the complainant upon satisfying the terms and conditions of the possession letter has taken the peaceful possession of the plot. It is submitted that the complainant voluntarily with free will and consent has taken the possession of the plot on 01.07.2017 after satisfying with all the terms and conditions of the handing over of possession letter dated 01.07.2017. The respondent submitted that the possession letter was executed dated 01.07.2017 (the same is already on record) whereby the complainant took over peaceful and vacant physical possession of the plot in question after fully satisfying himself with regard to its measurements, location, dimension, approvals and development etc. It was further explicitly stated by the complainant in the aforesaid letter that upon acceptance of possession, he would not be entitled to raise any claim of any nature whatsoever regarding any variation in the size, dimension, area, location or legal status, delay in possession of the plot in question. The respondent relying upon the aforesaid representation had changed its position to its detriment and proceeded to deliver possession of the plot in question. Therefore, the instant complaint is barred by estoppel.

- iii. That the present complaint has been filed with the oblique motive of harassing the respondent company and to extort illegitimate money while making absolutely false and baseless allegations against it.
 - iv. That it is brought to the knowledge of the hon'ble authority that the complainant is guilty of placing untrue facts and is attempting to hide his true colours or the intention.
 - v. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. Hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs.
 - vi. That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant is sustainable before this hon'ble authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the hon'ble authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
18. 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 based on these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

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

F. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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 complete territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per section 11(4)(f) and section 17(1) of the Act of 2016 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief(s):

- i. Direct the respondent to execute the conveyance deed of the plot bearing no. 7/N-6/84N/240 Sector-84 Gurugram to be

registered in the name of the complainant along with delay compensation in favour of the complainant and against the builder.

19. In the present complaint, the complainant is seeking relief of execution of conveyance deed as well as seeking relief of physical possession of the unit. Clause 16 of unit buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"16. Conveyance of title of the said plot

That the promoter, its associates' companies, its subsidiary companies, its collaborators or attorneys duly appointed in this regard, as the case may be, shall prepare and execute along with the allottee a deed in the manner as may be prescribed by the Govt. of Haryana to convey title/rights in the said plot in favour of allottee but only after receiving full payment of the total price of the said plot and all securities including maintenance security deposits, interest, penal interest etc. on delayed installments stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this agreement or as demanded by the promoter from time to time prior to the execution of the said deed. If the allottee is in default of any of the payments as set forth in this agreement, then the allottee authorizes the promoter to withhold registration of the title deed in its favour until full and final settlement of all dues to the promoter is made by the allottee. The Allottee undertakes to cooperate fully for execution of the title deed within the time stipulated by the promoter in its written notice failing which the allottee authorizes the promoter to cancel the allotment and terminate this agreement and to forfeit out of the amounts paid by the allottee the earnest money, delayed payment of interest any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount without any interest in the manner prescribed hereinabove. The allottee shall be solely responsible and liable for

compliance of the provisions of Indian Stamp Act, 1899 including any actions take or deficiencies/penalties imposed by the competent authority(ies). The allottee also undertakes to pay without demur any increase in stamp duty/registration charges as may be effected by the Govt. authorities even if such an increase takes place after the allottee has paid to the promoter all the dues/charges/fees etc. under this agreement.

Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:


Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

20. On consideration of the above-mentioned facts, the authority observes that the memorandum of settlement was executed between the parties on 17.05.2017 and in which they agreed that the respondent has allotted a new plot.no 2/N6/240/84/Vatika India Next, Gurugram, Haryana admeasuring 240 sq. yards against the previously allotted plot. Also, on clearance of the balance dues, the unit was offered to the complainant. As per record the respondent neither obtained part CC or CC from the competent

authority nor offered the possession to the complainant, but the complainant has taken over the possession of the aforesaid unit.

21. It is pertinent to mention here that, the authority directed the respondent to submit the circumstances under which the possession was offered without part completion certificate/completion certificate. The respondent submitted that development works in the area have been completed and whereas a certificate to this effect has been given by the builder and the allottee may take possession and get his building plan approved from the competent authority as per policy of Town and Country Planning Department. However, there is no document on the record with regard to receipt of part CC of plot of the complainant. No doubt, the possession of the allotted unit has been offered and taken but without part CC. So, the respondent is directed to take part CC of the plot within a period of 3 months from the competent authority and get the conveyance deed registered in favour of the allottee, failing which legal consequences would be follow.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2022