

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

Complaint No. : 2339 of 2018
Date of first hearing : 26.03.2019
Date of Decision : 26.03.2019

Mrs. Lalita Ramkrishnan
R/o . I-858, Palam Vihar, Gurugram-
122017

Complainant

Versus

M/s Vatika Limited
Office at: Vatika Triangle, 7th Floor, Sushant
Lok-1, Phase 1, Mehrauli-Gurugram Road,
Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Lalita Ramkrishnan Complainant in person
Ms. Radhika Verma Senior Advocate for the respondent
Executive litigation in person
with Shri Venkat Rao



ORDER

1. A complaint dated 08.01.2018 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 Mrs. Lalita

Ramkrishnan, against the promoter M/s Vatika Limited, in the project 'Vatika India Next' in respect of unit described on account of violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the floors buyer agreement has been executed on 11.05.2011, 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.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Vatika India Next" in Sector 81, 82, 82A, 83, 84, 85, Gurugram
2.	Nature of real estate project	Residential colony
3.	Plot no.	Plot no. 1, Primrose. SF, ST. 82F-15, block F
4.	Plot area	1056.33 sq.ft. Note: The area as per agreement was 881.41. however, vide revised payment plan dated 11.01.2012 the unit area



		was changed from 881.41 sq.ft. to 1056.33 sq.ft.
5.	Registered/ not registered	Not registered
6.	Date of allotment letter	26.04.2011 (Annexure-2 of reply)
7.	DTCP license	113 of 2008 dated 01.06.08,
8.	Date of floor buyers agreement	11.05.2011
9.	Total consideration	Rs. 26,40,708.50 + other charges As per clause 1.2 of the agreement dated 11.05.2011
10.	Total amount paid by the complainant	Rs. 11,34,160/- (as alleged by the complainant) Rs. 11,17,441/- as per receipts and payment schedule annexed with file)
11.	Payment plan	Construction linked payment plan
12.	Due Date of delivery of possession	11.05.2014 Clause 10.1 – 3 years from date of execution of agreement
13.	Termination of builder buyer agreement in respect of allotment of independent floor no. Plot No. 1/ST. 82F-15/240/SF/82F	14.11.2018 Annexure 19 of the complaint
14.	Penalty clause as per plot buyers agreement dated 23.07.2012	Clause 11.5- Rs. 5/- per sq. ft. per month for the period of delay



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 complainant and the respondent. A floors buyer's agreement dated 11.05.2011 is available on record for the aforesaid unit in the project 'Vatika India Next' according to which the due date of possession comes out to be 11.05.2014. However, vide letter dated 14.11.2018 the respondent terminated the said agreement. Therefore, the promoter has not fulfilled his liability.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 26.01.2019. The reply has been filed on behalf by the respondent and the same has been perused.

Facts of the complaint

6. Briefly stating the facts of the complaint, are that the complainants booked a second floor flat on 16.12.2009 and also paid Rs.2,59,672 towards booking amount dated 16.12.2009 at a total price of Rs.25,96,729/- (after adjusting 1.5% discount on the offer price of Rs.26,36,181).
7. The complainants submitted that on 16.2.2010, the respondent confirmed the booking under the concept of low



rise row-housing with ground + 2 structure on 240 sq. yards with second floor owners getting larger terraces.

8. On 11.05.2011 a floor buyer agreement was executed between the parties, which provided the following allotment details:-

Plot No:	01
Floor	Second floor
Street	ST. 82 F-15
Block	F
Built up area	881.41 sq.ft

9. On 11.01.2012 Vatika Limited vide letter informed a “**Change in numbering system and area change of floors in Vatika India Next**”, where the following changes were conveyed:-

- (i) Change in numbering system as plot no:1, Primrose, SF, 82F-15, Sec-82F, VIN in place of its existing number plot no:1, Primrose, SF, ST.82F-15, Sec-82F, VIN
- (ii) Increase in the area from 881.41 sq.ft (81.88 sq. mtr) to 1056.33 sq.ft (98.17 sq. mtr).
- (iii) Increase in total sale consideration from Rs.25,96,634/- to Rs.32,51,436/-.



(iv) Vatika also requested the complainant for making payment towards this increase by 25.01.2012. Accordingly, an amount of Rs.2,08,612 was paid to Vatika Limited towards increased area, which was acknowledged by Vatika Limited dated 20.01.2012 for Rs 2,08,612/-.

10. The complainant submitted so far he has paid an amount of Rs 11,34,160/- as per the demand notice in this regard received from Vatika Limited between December 2009 and January, 2012, representing 35% of the total sales consideration, i.e. within about 2 years of booking the dwelling unit. No demand notice or any intimation regarding progress/road blocks has been received from the respondent thereafter and hence no further payment has been made and nothing is outstanding from the complainant's side.

11. In the absence of any intimation from Vatika since January, 2012, another follow up meeting was held with the client services department on 11.06.2018 and on complainant's insistence an e-mail dated 12.06.2018 was received from Vatika conveying that there has been a revision in the master layout of the Vatika Next Township due to certain fine tuning



and Vatika Limited are in the process of initiating re-allotments and one of the option offered was re-allotment of housing unit in same category.

12. The complainants submitted that the respondent also noted that their preferred option for allotment of independent floor under low rise row housing concept on a plot of 240 sq. yards and they were to revert to on the subject. However, the respondent did not “revert back” on their preferred option as conveyed vide the e-mail indicated above, so another visit to project location was made and the complainant met Mr Dhiraj Kumar on 11.09.2018, when he orally conveyed the position during the discussions and provided with the revised outlay, floor plan and the cost of the proposed dwelling unit in K-12 in Sector 83 in Vatika Next.

13. The complainants submitted that in place of the original booking for an independent dwelling unit in a low rise row-housing, it was orally suggested that Vatika could consider offering a third floor housing unit (15 or 17) in a multi-storied (stilt parking + 4 floors), which was under construction on plot having lower area 180 sq. yard (as against 240 sq. yd plot originally envisaged) and offered lower built up area of 65.505



sq. mtrs. in place of 98.13 sq. mtrs), representing a one-third reduction in the total built up area.

14. Since all the original features offered at the time of booking of the Primrose independent floors were changed totally to their detriment. The respondent was informed vide e-mail dated 26.09.2018 that the complainant is not in a position to accept a third floor flat in a multi-storied building in K-12 block in Sector 83 Vatika India Next and reiterated the request for handing over possession of an apartment having all the features as originally booked in 2009.

15. The complainants submitted that in response to the e-mail dated 26.9.2018, instead of addressing the genuine grievances, Vatika vide their letter dated 14.11.2018 informed that due to certain road blocks being faced by them they are unable to allot independent floor in a low rise row housing as originally envisaged and also conveyed unilateral termination of our buyer seller agreement (that too without any notice) and advised to collect the payment made by the complainant with 6% interest after 30 days from the date of their letter with prior appointment.

16. Vide letter dated 8.12.2018 the complainant informed the respondent that their unilateral termination of the buyer seller



agreement is not acceptable. This may be seen in context of the position stated in the e-mail dated 11.06.2018 from Vatika that they were considering the option of re-allotment of housing unit in the same category clearly brings out the fact that the so called road blocks indicated in their letter dated 14.11.2018 are not borne out of facts.

17. Issues to be decided:

The relevant issues as raised in the complaint are:

- I. Whether there is an inordinate delay on the part of the promoter in delivery of the possession of the apartment as well as whether the respondent is liable to pay delayed interest?
- II. Whether the respondent can make revision in the master layout of the said township without the consent of the allottees?
- III. Whether offering a completely different unit with completely different specifications is in violation of the agreement dated 11.05.2011?



18. Relief sought

- I. Direct the respondent to hand over possession of a 2nd floor independent dwelling unit under the concept of low-rise

row-housing with ground + 2 structure on a 240 sq. yard plot with larger terrace and reserved parking having a built up area of 1056.33 sq ft at a total sale consideration of Rs.32,51,436/- (plus other charges) as originally contracted between the complainant and Vatika Limited in terms of the floors buyer agreement executed on 11.05.2011.

- II. Direct the respondent to pay delayed interest for exorbitant delay.

Respondent's reply

19. The respondent submitted that the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
20. The respondent submitted that 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 and making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.
21. It is submitted that the hon'ble authority does not have the jurisdiction to try the present complaint as some of the reliefs prayed for by the complainant are in nature of compensation.



The present complaint is liable to be dismissed on this ground alone.

22. It is submitted that the hon'ble authority does not have the jurisdiction to try and adjudicate upon the present complaint. It is to be noted that clause 47 of the agreement provides for resolution of the dispute through arbitration. Clause 47 of the agreement is reproduced herein below;

“ That all or any of the disputes arising out of or touching upon or in relation to the terms of this agreement including interpretation and validity of terms thereof and respective rights and obligations of the parties shall be settled by mutual discussion failing which the same shall be settled through Arbitration. The Arbitration proceeding shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The Arbitration proceeding shall be held at the office of the Company alone at Gurgaon stated hereinabove by a Sole Arbitrator who shall be nominated by the Company. The Allottee hereby confirms that he shall have no objection to this appointment.”

Therefore, it is humbly submitted that the hon'ble authority may dismiss the present complaint and direct the complainant to settle the dispute through arbitration

23. It is submitted that the clause 10.1 provides that the time limit for handing over of the possession was subject to other terms and conditions of the agreement such as timely payment of instalments by the complainants and reasons such as delay or



failure which are beyond control of the respondent under clauses (11.1), (11.2), (11.3) and clause (36) or due to failure of allottees to pay the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments.

24. The respondent submitted that respondent always at his own initiative has attended and replied to queries raised by the complainants and apprised them about the status of the project and reasons for the delay. The respondent apprised the complainant about the hitches which were being faced by the respondent.

25. The respondent contended that being a customer centric company, the respondent company sent an e-mail to the complainant regarding a revision in the master layout of the said township due to certain fine tuning & amendments in the master layout necessitated due to architectural and other related consideration and also informed the complainant in good faith about following options available for re-allotments such as:

- Re-allotments of unit in same category.
- Re-allotments of unit in different category



- Refund.

26. The respondent further submitted that the main reasons behind the delay in project was due to the non-acquisition of sector roads by HUDA, Initiation of GAIL corridor passing through the “Vatika India Next” Project, Non-shifting of High Tension lines passing through the project by DHBVN. It is submitted that the “Vatika India Next” is large township and respondent has already given possession more than approx. 5000 units in the past few years which includes plots, villas, independent floors, group housing flats and commercial. Due to extraneous reasons which is beyond control of the respondent, the respondent was unable to execute and carry out all necessary work for completion in some part of the project. There was change in the master layout plan of the project by the concern government agencies because of which the entire plot cluster map changed, and due to this there was also delay in the handing over the possession.

27. It is submitted that the respondent was compelled to stop the construction work of the said project due to the reasons beyond the control of the respondent and therefore, for preventing the complainant from any loss, the respondent advised the complainant to re-allotment or refund with



interest. However, the respondent company with good gesture provided the option of re-allocation or refund to the complainant for preventing the complainant from any financial loss.

28. The respondent submitted that he conveyed to the complainant about the reason beyond the control of the respondent due to which he is unable to allot independent floor in a low rise low housing as originally envisaged and advised the complainant in good faith to collect the payment so far made by them with 6% interest. However, the complainant failed to collect the amount with interest.

Determination of issues

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

29. In respect of **first issue** raised by the complainant, floors buyers agreement was executed on 11.05.2011 wherein as per clause 10.1, the possession should have been handed over within a period of 3 years from the date of execution of this agreement, i.e. by 11.05.2014. However, the possession has not been handed over till date. The promoter has violated the



agreement by not giving the possession on the due date i.e 11.05.2014 as per the agreement. The promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

Keeping in view of the submissions of both the parties and other intervening circumstances the authority is of the considered opinion that the complainant is entitled to refund of amount of Rs. 11,34,160/- paid along with prescribed rate of interest @10.75% p.a from date of deposit of amount till actual realization.

30. The **second issue** raised by the complainant, the respondent as per section 14 of the RERA Act cannot make any additions or alterations in the sanctioned plans without the previous consent of the allottees.
31. In respect of third issue the agreement is silent upon the change in unit or offer of completely different unit with different specifications.
32. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



33. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
34. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.

Findings of the authority

35. **Jurisdiction of the authority-** The project “Vatika India Next” is located in Sector 82, 82A, 83, 84, 85, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.

36. Keeping in view the unilateral action on the part of the respondent, the conduct of the respondent was one sided and not responsive with a view to redress the grievance of the complainant. Under the circumstances nothing has been materialized, the complainant, since had paid Rs. 11,34,160/- he has the right to seek refund on account of non-performance of agreement.

Directions of the authority

37. 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 directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to refund the amount deposited by the complainant i.e Rs. 11,34,160/- along with prescribed rate of interest i.e 10.75% per annum from the date of deposit of amount till actual refund within 90 days.



38. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
39. The complaint is disposed off accordingly.
40. The order is pronounced.
41. Case file be consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 26.03.2019

Judgement uploaded on 17.04.2019

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