

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

Complaint No. : 668 of 2018
First date of hearing : 04.10.2018
Date of Decision : ~~10.12.2018~~
10.01.2019

Mr. Girdhari Lal,
R/o. VPO Sarhaul,
Gurugram.

Complainant

Versus

M/s Vatika Pvt. Ltd.
(Through its Director)
7th floor, Vatika Tringle, Sushant Lok Phase
I Gurugram, Haryana - 122018.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Braham Dutt Sharma Advocate for the complainants
with complainant in
person

Shri Mukul Sanwariya and Advocate for the respondents
proxy counsel for Shri
Kamal Dahiya

ORDER

1. A complaint dated 02.08.2018 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

*Corrected vide order
dated 12/04/19*



Development) Rules, 2017 by the complainant Mr. Girdhari Lal, against the promoter M/s Vatika Pvt. Ltd., on account of violation of the clause 3 of builder buyer's agreement executed dated 14.11.2014 in respect of plot no. 110, E-12, admeasuring 150 sq. yds. of the project 'Vatika Express City' located at sector 88 A, Gurugram for not handing over possession of the subject plot on the due date i.e. by 14.11.2017 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act ibid.

2. Since the builder buyer agreement dated 14.11.2014 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act ibid.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	Vatika Express City, Sector 88 A, Gurugram, Haryana.
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2.	Plot no.	110, E12,
3.	Nature of real estate project	Residential plotted colony
4.	DTCP license no.	94 of 2013
5.	Project area	100.785 acres
6.	Admeasuring super area of the allotted unit	150 sq. ft. 150 sq. yards
7.	RERA registered/unregistered	Registered (271 of 2017)
8.	Revised date of completion as per registration certificate	08.10.2022
9.	Date of execution of builder buyer agreement	14.11.2014
10.	Payment Plan	Full and final payment made in one time
11.	Total consideration amount	Rs. 56,02,500/- (as per builder buyer agreement)
12.	Total amount paid by the complainant	Rs. 56,02,500/-
13.	Due date of delivery of possession as per clause 3 within 3 year from the date of execution of this agreement	14.11.2017
14.	Delay in handing over possession till date	1 years and 1 months approx.
15.	Penalty clause as per agreement (clause 9)	Rs. 150/- per sq. yds of the super area per month

4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement

Corrected vide order dated 12/04/19.



dated 14.11.2014 is available on record for the aforesaid plot no. 110, E-12 according to which the possession of the same was to be delivered by 14.11.2017. The respondent has failed to deliver the possession till date. Therefore, the promoter has not fulfilled his obligation 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 respondent for filing reply and for appearance. The respondent appeared on 10.01.2019. The case up on the 10.01.2019. The reply has been filed by respondent has been pursued.

Facts of the complaint

6. Briefly stated, facts relevant for the disposal of present complaint as that in 2010, the complainant booked a plot in the respondent's project namely 'Vatika Express City' located at sector 88 A Gurugram. Pursuant to the said booking of the complainant, respondent vide allotment letter dated 14.11.2014 allotted plot no. 110-E12, admeasuring 150 sq. ft. in favour of the complainant. On the same date builder buyer agreement for the allotted plot was executed between the



parties. As per builder buyer agreement respondent has to give possession within 3 years from the execution of BBA

7. The complainant visited the site of the said project and did not find any residential plots, colony/project. Thereafter the complainant visited the office of the respondent and inquiry about the project but didn't get satisfactory answer from the respondent.
8. The complainant visited the respondent office and asked to return back his hard-earned money with interest or give the possession of promised plot or offer to give alternative plot of equal value in any other project but respondent is not ready for the same. The respondent is prolonging the matter by giving false assurances.
9. The respondent not only cheated and committed fraud upon the complainant but under false pretexts and assurance, the respondent succeeded in siphoning the money from the complainant to cause wrongful losses to him. The respondent had intention to cheat and commit fraud not only upon the complainant but public at large.



10. The complainant had waited more than 3 year 9 months and also visited their office at many occasions and asked the respondent to give the possession of the plot or to return the amount of Rs. 56,02,500/- along with agreed interest 18 % per annum till realisation but the respondent refuses to accede any of demand of the complainant.
11. The complainant submitted that he finally visited the office of the respondent and requested them on return the amount or give possession of the plot but the official of the respondent refused the same. So, the complainant is left with no other option then to file the present complaint before the authority.

Issues to be decided:

- i. Whether the respondent failed to complete the project within the agreed period 3 years and in case of failure, the complainant is entitled to refund the principle amount Rs. 56,02,500/- along with agreed interest @18 % per annum?





- ii. Whether the respondent intentionally, wilfully and committed fraud upon the complainant not executed the builder buyer agreement with the complainant?
- iii. Whether the respondent breach the terms and condition of the builder buyer agreement dated 14.11.2014 executed between the complainant and respondent?
- iv. Whether the respondent violated the provision of RERA by not registering the said project within time?

Reliefs sought-

The complainant is seeking the following reliefs:

- i. Refund the entire paid amount along with interest @18%p.a. from the date of receipt of payments.
- ii. The respondent violated the provision of RERA by not registering the said project within time.

Respondent's reply

12. The respondent submitted that the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law.





13. The respondent submitted that 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. Apparently, under section 71 the adjudicating officer will 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 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.



14. The respondent submitted that the claim for possession of the plot with interest and compensation or seeking any alternative relief along with interest and compensation, would be 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. Thus, the authority lacks jurisdiction to deal with the present complaint.

15. The respondent submitted that the complaint is liable to be dismissed as it is barred by the principle of estoppel. The complainant had booked/ allotted plot on 14.11.2014 with the respondent.
16. The respondent submitted that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed by & between the complainant and the respondent company. The agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the builder buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint for interest and compensation, as provided under section-12, 14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and Haryana Rules 2017 and no other agreement.



17. The respondent submitted that the complainant has failed to bring on record anything contradictory or in violation of the provisions of RERA Act, 2016. Moreover, nowhere in the complaint any violation of the provisions of RERA Act, 2016 has been mentioned. Thus, the petition is liable to be dismissed solely on this ground.
18. It is respectfully submitted that the contents of the present complaint are incorrect and denied in its entirety. The complaint is not based on correct factual situation and the issue in right perspective.
19. The respondent submitted that the respondent has the necessary approvals to start the development of residential project and at no point of time has violated the provision of law. It is further submitted that the respondent got the environment clearance for the said plotted colony in year 2016. However, the respondent had applied for such environmental clearances vide application on 03.01.2014. The concerned department took more than 2 years to grant NOC for environmental purposes. It is pertinent to mention that without obtaining the environmental NOC, no





construction activity could be carried out by the answering respondent. Thus, such time period falls under the definition of force majeure, as there was no fault or intentional delay on the part of respondent. The complainant satisfied himself and wishfully consented all the term & conditions as enumerated and detailed in the 'BBA' executed between the complainant and respondent.

20. The respondent submitted that the entire consideration amount as alleged to be paid to the respondent is paid by complainant from own wish. The amount paid by the complainant is from the money which he received from the respondent in the land collaboration deal. The complainant is very well aware and consented to all the terms and conditions of the BBA which was duly signed by him with own free will and consent.

21. The respondent submitted that if the complainant had any issues or even otherwise, they ought to have approached for cancellation of the plot at any given time, however, the complainant never showed any disinterest or has approached the respondent for cancellation of the plot or for



any other issues relating to the said plot. In spite, the complainant have made payment wilfully and that too subject to all the terms & condition of executed BBA

Determination of issues: -

22. After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:
23. With respect to the **issue no. 1** raised by the complainant, as per clause 3 of the builder buyer agreement dated 14.11.2014 the respondent is under obligation to handover the possession within 3 years from the date of execution of agreement, the possession of the plot was to be handed by 14.11.2017. However, the possession has been delayed by 1 years and 1 months(approx.) till the date of decision. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Moreover, the project is registered and the date of completion as per registration certificate is 08.10.2022. So, the refund cannot be granted at this belated stage as it will otherwise hamper



the completion of the project and adversely affect the interest of other allottees who wish to continue with the project. However, project has already been delayed thus as such, the builder is liable for payment of interest at the prescribed rate of interest @10.75% as per the provision of section 18(1) of the Act.

24. With respect to **issue no. 2** raised by the complainant, as the builder buyer agreement dated 14.11.2014 and the agreement is duly executed inter say the parties and has been annexed with the complaint. Thus, the respondent cannot held liable for any fraud by the complainant.
25. With respect to **issue no. 3** raised by the complainant as per the as per clause 3 of the builder buyer agreement dated 14.11.2014 the respondent is under obligation to handover the possession within 3 year from the date of execution of agreement, the possession of the plot was to be handed by 14.11.2017. However, the possession has been delayed by 1 years and 1 months(approx.) till the date of decision. As the respondent failed to deliver the possession on the above mentioned. So, he has breached the terms of agreement and





thus he is further liable to compensate the complainant as per clause 9 the delay compensation payable by the respondent @ Rs. 150/- per sq. yds. per month of the super area of the said flat is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

26. With respect to **fourth issues** raised by the complainant as the project is registered bearing no 271 of 2017. Thus, the respondent is not liable .

Findings and directions of the authority

27. **Jurisdiction of the authority-** The project "Vatika Express City" is located in Sector 88A and 88B, Gurugram, thus the





authority has complete territorial jurisdiction to entertain the present complaint. 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 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.

28. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



29. 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.
30. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
31. As per clause 3 of builder buyer agreement executed inter- se the parties on 14.11.2014 for plot no. 110/E12, in the project "Vatika Express City" in sector 88A, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the dte of execution of agreement dated 14.11.2014 which comes out to be 14.11.2017. proxy counsel for the respondent could not provide any information w.r.t. execution of any internal or external development work in the colony. Complainant has made entire payment of Rs. 56,02,500/- to the respondent has miserably failed to deliver the unit in time.

Decision and direction of authority

32. 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:

- (i) The respondent is directed to refund the amount deposited by the complainant along with the prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

The Interest will be calculated from the date of respective payments.

(Signature)
(Samir Kumar)
Member

(Signature)
(Subhash Chander Kush)
Member

Dated: 10.01.2019

Corrected vide order dated 12/04/19.

Corrected judgement uploaded on 17.04.2019



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	668/2018 case titled as Girdhari Lal versus Vatika Ltd.
Complainant	Girdhari Lal
Represented through	Complainant in person with Shri Braham Dutt Sharma, Advocate
Respondent	Vatika Limited
Respondent Represented through	Shri Mukul Sanwariya, Advocate proxy counsel for Shri Kamal Dahiya, Advocate for the respondent.
Last date of hearing	4.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority and the revised date of possession as per RERA registration certificate is 8.10.2022.

Arguments heard.

As per clause 3 of Builder Buyer Agreement executed inter-se the parties on 14.11.2014 for plot No.110/E12, in project "Vatika Express City" in Sector 88A, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of agreement dated 14.11.2014 which comes out to be **14.11.2017**. Proxy counsel for the respondent could not provide any information w.r.t. execution of any internal or external development work in the colony. Complainant has

made entire payment of Rs.56,02,500/- to the respondent but the respondent has miserably failed to deliver the unit in time.

It is a **dismal state of affairs** w.r.t. work at the project site. In these circumstances, the authority find no option **but to order refund of the amount deposited** by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
10.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 668 of 2018
First date of hearing : 04.10.2018
Date of Decision : 10.12.2018

Mr. Girdhari Lal,
R/o. VPO Sarhaul ,
Gurugram.

Complainant

Versus

M/s Vatika Pvt. Ltd.
(Through its Director)
7th floor, Vatika Tringle, Sushant Lok Phase
I Gurugram, Haryana – 122018.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Braham Dutt Sharma Advocate for the complainants
with complainant in
person

Shri Mukul Sanwariya and Advocate for the respondents
proxy counsel for Shri
Kamal Dahiya



ORDER

1. A complaint dated 02.08.2018 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 Mr. Girdhari Lal, against the promoter M/s Vatika Pvt. Ltd., on account of violation of the clause 3 of builder buyer's agreement executed dated 14.11.2014 in respect of plot no. 110, E-12, admeasuring 150 sq. yds. of the project 'Vatika Express City' located at sector 88 A, Gurugram for not handing over possession of the subject plot on the due date i.e. by 14.11.2017 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act ibid.

2. Since the builder buyer agreement dated 14.11.2014 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act ibid.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	Vatika Express City, Sector 88 A, Gurugram, Haryana.
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2.	Plot no.	110, E12,
3.	Nature of real estate project	Residential plotted colony
4.	DTCP license no.	94 of 2013
5.	Project area	100.785 acres
6.	Admeasuring super area of the allotted unit	150 sq. ft.
7.	RERA registered/unregistered	Registered (271 of 2017)
8.	Revised date of completion as per registration certificate	08.10.2022
9.	Date of execution of builder buyer agreement	14.11.2014
10.	Payment Plan	Full and final payment made in one time
11.	Total consideration amount	Rs. 56,02,500/- (as per builder buyer agreement)
12.	Total amount paid by the complainant	Rs. 56,02,500/-
13.	Due date of delivery of possession as per clause 3 within 3 year from the date of execution of this agreement	14.11.2017
14.	Delay in handing over possession till date	1 years and 1 months approx.
15.	Penalty clause as per agreement (clause 9)	Rs. 150/- per sq. yds of the super area per month

4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement



dated 14.11.2014 is available on record for the aforesaid plot no. 110, E-12 according to which the possession of the same was to be delivered by 14.11.2017. The respondent has failed to deliver the possession till date. Therefore, the promoter has not fulfilled his obligation 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 respondent for filing reply and for appearance. The respondent appeared on 10.01.2019. The case up on the 10.01.2019. The reply has been filed by respondent has been pursued.

Facts of the complaint

6. Briefly stated, facts relevant for the disposal of present complaint as that in 2010, the complainant booked a plot in the respondent's project namely 'Vatika Express City' located at sector 88 A Gurugram. Pursuant to the said booking of the complainant, respondent vide allotment letter dated 14.11.2014 allotted plot no. 110-E12, admeasuring 150 sq. ft. in favour of the complainant. On the same date builder buyer agreement for the allotted plot was executed between the



parties. As per builder buyer agreement respondent has to give possession within 3 years from the execution of BBA

7. The complainant visited the site of the said project and did not find any residential plots, colony/project. Thereafter the complainant visited the office of the respondent and inquiry about the project but didn't get satisfactory answer from the respondent.

8. The complainant visited the respondent office and asked to return back his hard-earned money with interest or give the possession of promised plot or offer to give alternative plot of equal value in any other project but respondent is not ready for the same. The respondent is prolonging the matter by giving false assurances.

9. The respondent not only cheated and committed fraud upon the complainant but under false pretexts and assurance, the respondent succeeded in siphoning the money from the complainant to cause wrongful losses to him. The respondent had intention to cheat and commit fraud not only upon the complainant but public at large.



10. The complainant had waited more than 3 year 9 months and also visited their office at many occasions and asked the respondent to give the possession of the plot or to return the amount of Rs. 56,02,500/- along with agreed interest 18 % per annum till realisation but the respondent refuses to accede any of demand of the complainant.

11. The complainant submitted that he finally visited the office of the respondent and requested them on return the amount or give possession of the plot but the official of the respondent refused the same. So, the complainant is left with no other option then to file the present complaint before the authority.

Issues to be decided:

i. Whether the respondent failed to complete the project within the agreed period 3 years and in case of failure, the complainant is entitled to refund the principle amount Rs. 56,02,500/- along with agreed interest @18 % per annum?



- ii. Whether the respondent intentionally, wilfully and committed fraud upon the complainant not executed the builder buyer agreement with the complainant?
- iii. Whether the respondent breach the terms and condition of the builder buyer agreement dated 14.11.2014 executed between the complainant and respondent?
- iv. Whether the respondent violated the provision of RERA by not registering the said project within time?

Reliefs sought-

The complainant is seeking the following reliefs:

- i. Refund the entire paid amount along with interest @18%p.a. from the date of receipt of payments.
- ii. The respondent violated the provision of RERA by not registering the said project within time.

Respondent's reply

12. The respondent submitted that the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law.



13. The respondent submitted that 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. Apparently, under section 71 the adjudicating officer will 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 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.



14. The respondent submitted that the claim for possession of the plot with interest and compensation or seeking any alternative relief along with interest and compensation, would be 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. Thus, the authority lacks jurisdiction to deal with the present complaint.

15. The respondent submitted that the complaint is liable to be dismissed as it is barred by the principle of estoppel. The complainant had booked/ allotted plot on 14.11.2014 with the respondent.

16. The respondent submitted that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed by & between the complainant and the respondent company. The agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the builder buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint for interest and compensation, as provided under section-12, 14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and Haryana Rules 2017 and no other agreement.



17. The respondent submitted that the complainant has failed to bring on record anything contradictory or in violation of the provisions of RERA Act, 2016. Moreover, nowhere in the complaint any violation of the provisions of RERA Act, 2016 has been mentioned. Thus, the petition is liable to be dismissed solely on this ground.
18. It is respectfully submitted that the contents of the present complaint are incorrect and denied in its entirety. The complaint is not based on correct factual situation and the issue in right perspective.
19. The respondent submitted that the respondent has the necessary approvals to start the development of residential project and at no point of time has violated the provision of law. It is further submitted that the respondent got the environment clearance for the said plotted colony in year 2016. However, the respondent had applied for such environmental clearances vide application on 03.01.2014. The concerned department took more than 2 years to grant NOC for environmental purposes. It is pertinent to mention that without obtaining the environmental NOC, no



construction activity could be carried out by the answering respondent. Thus, such time period falls under the definition of force majeure, as there was no fault or intentional delay on the part of respondent. The complainant satisfied himself and wishfully consented all the term & conditions as enumerated and detailed in the 'BBA' executed between the complainant and respondent.

20. The respondent submitted that the entire consideration amount as alleged to be paid to the respondent is paid by complainant from own wish. The amount paid by the complainant is from the money which he received from the respondent in the land collaboration deal. The complainant is very well aware and consented to all the terms and conditions of the BBA which was duly signed by him with own free will and consent.

21. The respondent submitted that if the complainant had any issues or even otherwise, they ought to have approached for cancellation of the plot at any given time, however, the complainant never showed any disinterest or has approached the respondent for cancellation of the plot or for



any other issues relating to the said plot. In spite, the complainant have made payment wilfully and that too subject to all the terms & condition of executed BBA

Determination of issues: -

22. After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:

23. With respect to the **issue no. 1** raised by the complainant, as per clause 3 of the builder buyer agreement dated 14.11.2014 the respondent is under obligation to handover the possession within 3 years from the date of execution of agreement, the possession of the plot was to be handed by 14.11.2017. However, the possession has been delayed by 1 years and 1 months(approx.) till the date of decision. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Moreover, the project is registered and the date of completion as per registration certificate is 08.10.2022. So, the refund cannot be granted at this belated stage as it will otherwise hamper



the completion of the project and adversely affect the interest of other allottees who wish to continue with the project. However, project has already been delayed thus as such, the builder is liable for payment of interest at the prescribed rate of interest @10.75% as per the provision of section 18(1) of the Act.

24. With respect to **issue no. 2** raised by the complainant, as the builder buyer agreement dated 14.11.2014 and the agreement is duly executed inter say the parties and has been annexed with the complaint. Thus, the respondent cannot held liable for any fraud by the complainant.

25. With respect to **issue no. 3** raised by the complainant as per the as per clause 3 of the builder buyer agreement dated 14.11.2014 the respondent is under obligation to handover the possession within 3 year from the date of execution of agreement, the possession of the plot was to be handed by 14.11.2017. However, the possession has been delayed by 1 years and 1 months(approx.) till the date of decision. As the respondent failed to deliver the possession on the above mentioned. So, he has breached the terms of agreement and



thus he is further liable to compensate the complainant as per clause 9 the delay compensation payable by the respondent @ Rs. 150/- per sq. yds. per month of the super area of the said flat is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

26. With respect to **fourth issues** raised by the complainant as the project is registered bearing no 271 of 2017. Thus, the respondent is not liable .



Findings and directions of the authority

27. **Jurisdiction of the authority-** The project “Vatika Express City” is located in Sector 88A and 88B, Gurugram, thus the

authority has complete territorial jurisdiction to entertain the present complaint. 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 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.

28. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



29. 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.
30. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
31. As per clause 3 of builder buyer agreement executed inter- se the parties on 14.11.2014 for plot no. 110/E12, in the project "Vatika Express City" in sector 88A, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the dte of execution of agreement dated 14.11.2014 which comes out to be 14.11.2017. proxy counsel for the respondent could not provide any information w.r.t. execution of any internal or external development work in the colony. Complainant has made entire payment of Rs. 56,02,500/- to the respondent has miserably failed to deliver the unit in time.



Decision and direction of authority

32. 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:

- (i) The respondent is directed to refund the amount deposited by the complainant along with the prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 10.01.2019

Judgement Uploaded on 25.01.2019

HARERA
GURUGRAM

