

<b>PROCEEDINGS OF THE DAY</b>		<b>32</b>
Day and Date	Tuesday and 21.03.2023	
Complaint No.	CR/1002/2021 Case titled as MANOHAR KHERA Vs VATIKA LIMITED	
Complainant	MANOHAR KHERA	
Represented through	Shri Amberish Kharbanda Advocate	
Respondent	VATIKA LIMITED	
Respondent Represented	Shri Dhruv Dutt Sharma Advocate	
Last date of hearing	27.01.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
<b>Proceedings</b>		
<p>The present complaint has been filed on <b>18.02.2021</b> and the reply has been filed by the respondent on 07.12.2021. Thereafter an amended CRA for refund has been filed on 22.03.2022.</p> <p>Succinct facts of the case as per complaint and annexures are as under:</p>		
<b>S. N.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name and location of the project	"Vatika India Next" at sector 81,82A,83,84 and 85, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	Project area	393.358 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

5.	RERA Registered/ registered	not	Not registered
6.	Plot no.		Plot no. 5, block E2 (page 16 of complaint)
7.	Plot area admeasuring		1725 sq. yds.
8.	Date of allotment		N/A
9.	Date of builder buyer agreement		30.04.2014 (page 13 of complaint)
10.	Possession clause		<b>15. Schedule for possession of the said residential plot</b>  <i>The Developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential Plot within a period of 4 (four) years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein....Emphasis supplied</i>
11.	Due date of possession		30.04.2018  [Due date of possession calculated from the date of execution of agreement]
12.	Total sale consideration		Rs. 1,46,11,246/- (as per SOA dated 24.05.2019, annexure B, page 46 of complaint)
13.	Amount paid by the complainant		Rs. 53,55,650/- (as per SOA dated 24.05.2019, annexure B, page 46 of complaint)
14.	Occupation certificate		Not obtained as confirmed by the counsel of the respondent during proceedings.
15.	Offer of possession		Not offered

The complainant has sought following relief:

- 1. Direct the respondent to refund the entire amount paid by the complainant.**

Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the

promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

The due date of possession as per agreement for sale as mentioned in the table above is **30.04.2018** and there is delay of 2 years 9 months and 19 days on the date of filing of the complaint.

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.*** it was observed

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a).


The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

The authority hereby directs the promoter to return the amount received by them along with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member  
21.03.2023