



HARERA
GURUGRAM

**HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

PROCEEDINGS OF THE DAY		12
Day and Date	Friday and 17.02.2023	
Complaint No.	CR/2416/2020 Case titled as UPENDRA MAHESHWARI Vs VATIKA LIMITED	
Complainant	UPENDRA MAHESHWARI	
Represented through	Complainant in person with Shri Sanchit Kumar Advocate	
Respondent	VATIKA LIMITED	
Respondent Represented through	S/Shri Venket Rao and Pankaj Chandola Advocate	
Last date of hearing	20.12.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
The present complaint has been filed on 18.08.2020 and an amended CRA for refund has been filed on 22.06.2022.		
Succinct facts of the case as per complaint and annexures are as under:		
S. N.	Particulars	Details
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
6.	RERA Registered/ not registered	Not registered
7.	Villa no.	64/240/Simplex/BR (page 22 of complaint)



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8.	Unit area admeasuring	1527 sq.ft. (page no. 22 of complaint)
11.	Date of builder buyer agreement	27.11.2009 (page 19 of complaint)
13.	Due date of possession	27.11.2012
14.	Possession clause	11.1 Schedule for possession of the said unit That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses (11.1),(11.2),(11.3) and clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payment given in annexure III or as per the demands raised by the company from time to rime or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this Agreement b.(Emphasis supplied)
15.	Total sale price	Rs. 83,03,175/- (As per clause 1.1 of BBA, page 22 of complaint)
16.	Amount paid by the complainant	Rs. 33,45,150/- as alleged in the complaint but during proceedings, the amount confirmed is Rs.33,19,222/- as this amount is not disputed by the respondent.
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered



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The complainants have sought following relief:

1. Direct the respondent to refund the entire amount paid by 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 unit 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 **27.11.2012** and there is delay of 7 years 8 months 22 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



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24/6/2020

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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.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The reply has been filed on 04.04.2019 in reference to earlier complaint No.887/2018 and the above complaint is filed after generating new proforma on the directions of the authority and thus relief being sought is similar in both the above complaint.

The counsel for the respondent requests that the above reply already filed be treated for the above complaint as no new facts are to be stated as the unit is still not available and the respondent can offer an alternative ready to move in the project 7 Elements if the complainant is interested for the same.

However, the counsel for the complainant alongwith complainant present in person are very categorical that they are not interested in an alternative unit and is seeking refund of full amount alongwith interest as inspite of having booked the unit in 2009 the unit is still not complete as the project is abandoned.

The counsel for respondent states that although the unit of the complainant is not available as on date but project may not be categorized as abandoned.

Keeping in view the above discussions, the authority hereby directs the promoter to return the amount received by him i.e., **Rs.33,19,222/-** with interest at the rate of 10.60% (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



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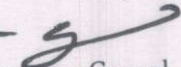
CR/24/2023

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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.

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

V.I-
Vijay Kumar Goyal
Member
17.02.2023