



**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

| <b>PROCEEDINGS OF THE DAY</b> |   | <b>11</b> |
|-------------------------------|---|-----------|
| Day and Date                  | Friday and 17.02.2023   |           |
| Complaint No.                 | CR/789/2020 Case titled as MR PRADEEP KUMAR Vs VATIKA LIMITED |           |
| Complainant                   | MR PRADEEP KUMAR  |           |
| Represented through           | Shri Gaurav Rawat Advocate                                    |           |
| Respondent                    | VATIKA LIMITED  |           |
| Respondent Represented        | S/Shri Venket Rao and Pankaj Chandola Advocates               |           |
| Last date of hearing          | 20.12.2022  |           |
| Proceeding Recorded by        | Naresh Kumari and HR Mehta                                    |           |

### **Proceedings**

The present complaint has been filed on **19.02.2020** and the reply has not been received till now.

The AR of the respondent has already supplied a copy of reply to the complainant and has filed a copy of reply during proceedings and the same is taken on record.

Succinct facts of the case as per complaint and annexures are as under:

| <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                  |
| 6.           | RERA Registered/ not registered  | Not registered  |



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CA 184/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

|     |                                 |  |
|-----|---------------------------------|--|
| 7.  | Plot no.                        | 22, ground floor, 4 <sup>th</sup> street, block E (page no. 64 of complaint)   |
| 8.  | Unit area admeasuring           | 781.25 sq.ft. (page no. 64 of complaint)   |
| 11. | Date of builder buyer agreement | 08.07.2011 (page 61 of complaint)  |
| 13. | Due date of possession          | 08.09.2014   |
| 14. | Possession clause               | <b>10.1 Schedule for possession of the said independent dwelling unit</b><br>That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to <b>complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this agreement</b> 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. 24,78,759/-<br>(As per clause 1.2 of BBA, page 64 of complaint)  |
| 16. | Amount paid by the complainant  | Rs. 8,75,882/-<br>(As per receipts at annexure C7-C10 of complaint)  |
| 17. | Occupation certificate          | Not obtained   |

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण



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|     |                     |             |
|-----|---------------------|-------------|
| 18. | Offer of possession | Not offered |
|-----|---------------------|-------------|

The complainants have sought following relief:

**2. 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 **08.09.2014** and there is delay of **5 years 5 months 11 days** on the date of filing of the complaint.

The counsel for the respondent states that the respondent of its own vide letter dated 14.11.2018 intimated for the termination of BBA as the company has been facing Umpteen road blocks in construction and development works and has offered the refund of the amount alongwith interest at the rate of 6% per annum. But inspite of the same, no refund of the amount has been made and the allottee complainant is seeking refund of amount alongwith prescribed rate of interest. The counsel for the respondent confirms that the unit allotted to the complainant is not available and hence no offer can be made.

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.....”*



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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.

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 authority hereby directs the promoter to return the amount received by him i.e., Rs. 8,75,882/- 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 the date of each payment till the actual date of



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refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

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

V.1 - 3  
Vijay Kumar Goyal  
Member  
17.02.2023