

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

Complaint no. : 1545 of 2019
First date of hearing: 17.09.2019
Date of decision : 25.08.2021

Shri Rajendera Kumar
R/o:- F-439, Mahipalpur, New Delhi-110037 Complainant

Versus

M/s Vatika Limited,
Office:- Vatika Triangle, 5th Floor, Sushant Lok,
Phase I, Block A, Mehrauli-Gurgaon Road,
Gurgaon 122002, Haryana **Respondent**
सत्यमेव जयते

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Shri. Rajendera Kumar Complainant in person
Shri Venket Rao Advocate for the respondent

ORDER

1. The present complaint dated 01.05.2019 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Emilia Floors in Vatika India Next", Gurugram
2.	Nature of the project	Residential township
3.	RERA registered/ not registered	Not registered
4.	Payment plan	Construction linked plan
5.	Date of execution of buyer's agreement	28.07.2011 (No copy of BBA has been annexed in the complaint, hence, the date of signing of BBA is taken from the termination letter)
6.	Allotment letter dated	18.07.2011 (page 20 annexure p/3 of complaint)
7.	Intimation of area change and numbering system	10.07.2013 (page 35 annexure R-4 of reply)
8.	Unit no.	11/ST.82E-3/180/GF/82E/Vatika India Next (page 26 annexure P/8 of complaint)
9.	Plot measuring	929.02 sq. ft. (page 26 annexure P/8)
10.	Addendum to the agreement	Neither signed nor dated (page 27 of complaint)
11.	New unit	83K, Plot no.50, ST. K-8.1, level-1
12.	Revised area	940 sq. ft. (Page 26 annexure P/8)



13.	Termination letter	14.11.2018 (page 29 annexure P/9)
14.	Total consideration	Rs. 33,52,285.13/- (as per SOA dated 01.05.2019 annexed at page 30 of the reply)
15.	Total amount paid by the complainant	Rs. 16,84,169.42/- (as per SOA dated 01.05.2019 annexed at page 30 of the reply)
16.	Due date of delivery of possession (as per clause 10.1 of the dwelling unit buyer's agreement-within 3 years from the date of execution of the agreement)	28.07.2014 Note:- possession clause is taken from another complaint of the similar project.

B. Facts of the complaint

The complainant has made following submissions in the complaint:

3. The complainant along with his wife booked the unit in question detailed above with the respondent/builder for sum of Rs 27,16,000/- (28,00,000/- less 3% discount on it which comes to Rs 84,000/-) and paid an amount of Rs 2,75,898/- as booking amount on 21.12.2009. It was represented to the buyers by the respondent/builder that the allotted unit had front and rear lawns for their exclusive views. The possession of the allotted unit was to be handed over within a period of 3 years. It is the case of the complainant that though the unit was booked in the year 2009 but the allotment of the same was done on 18.07.2011 vide annexure P3. Later on, the unit was changed to sector 83K, plot no 50, ST, K-8.1, level- 1 in place of plot no 11 Emilia GF, ST- 82E-3, Sector 82 E Vatika India Next. It is the case of complainant that as per term of allotment the possession of the unit was to be offered within 3

years from the date of allotment but no progress in this regard was made. Rather, a new unit mentioned above was allotted instead of old one but with an increase in area as well as cost. Though no unit buyer agreement was executed between the parties, but the respondent/builder sent an addendum to the document qua the unit and also raised different demands on 12.02.2015 and on some other dates. Neither any compensation for delayed possession was offered nor possession of the allotted unit was given to the complainant. Rather on 14.11.2018 the complainant received an intimation without regard to termination of builder buyer agreement due to inability of the respondent/builder to execute and carry out all the necessary work for the completion of the unit and offering refund of the amount already deposited with it beside interest. So, on these broad averments the complainant filed the complaint seeking possession of the allotted unit besides DPC and compensation.

C. Relief sought by the complainant:

- i. Seeking possession of the allotted unit without any increase in unit's price.
- ii. Seeking delay possession charges for failing to hand over possession of the allotted unit.

D. Reply by the respondent.

- i. But the case of respondent as setup in the reply is that though the unit was booked but its total sale consideration was Rs.



27,58,985/- instead of Rs.27,16,000/-. It was denied that the possession of the unit was to be offered within three years. It was pleaded that the old unit was replaced with new unit on 18.07.2011. There was a builder buyer agreement between the parties executed on 28.07.2011 and the total amount paid by the allottees was Rs 16,84,169/-. It was further pleaded that vide letter dated 10.07.2013, the allottees were informed about change of unit its area and the total sale consideration. It was denied that the demands raised against the new unit were wrong or illegal in any manner. the averments made in this regard are false. It was denied that complainant represented with the answering respondent about the problems being faced by him. In fact due to same circumstances beyond the control of respondent/builder, the unit of the complainant could not be developed, and which ultimately led to its cancellation and offering refund all other averments made in the complainant was denied in toto.

- ii. Some preliminary objections were also taken with regard to maintainability of the complaint and jurisdiction of the authority to proceed with the complaint.
4. During the course of arguments, the respondent/builder placed on file an affidavit of its AR Shri Vipin Kumar Maria along-with approved layout map as annexure A1 and which was taken on record.

5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provision of section 11(4)(a) of the Act 2016.

F. Findings on the relief sought by the complainant

F.I Delay possession charges

- i. **Relief sought by the complainant:** Seeking delay possession charges for failing to hand over possession of the allotted unit.
6. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation 18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

7. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.



Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

8. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the case.
9. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
10. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by*

the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

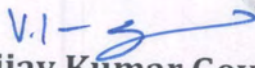
11. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention of the section 11(4)(a) of the Act by not handing over possession, it is an evident that on 21.12.2009 the complainant along with his wife Mrs. Seema Verma booked a unit in the project of respondent known as Vatika India Next by paying sum of Rs 2,75,898/- and which led to allotment of unit bearing no. GF, plot 11, ST- E3/180/GF/82E/Vatika India Next, Sector 82, Gurgaon. A sum of Rs 16,84,169/- was paid by the allottees against the allotment of that unit. However later on the respondent/builder vide addendum annexure P/8 changed unit no. as well as its area to Sector 83K, plot no 50, ST. K-8.1, Level 1. An addendum in this regard was also sent to the allottees in pursuant to builder buyer agreement dated 28.07.2011 although the same is not on record. It is also a fact that after that the respondent/builder started raising various demands against the new unit without completing work at the site. It ultimately led to issuance of letter dated 14.11.2018 i.e. termination of builder buyer agreement and offering refund of the

amount already deposited besides interest calculated @6% per annum. Though a perusal of affidavit dated 25.08.2021 filed by Shri Vipin Kumar Maria on behalf of respondent/builder shows that no approved unit is left in unsold inventory for sale as on date as of similar to the unit of complainant, but the authority is of the view that the allottees have already paid a sum of Rs 16,84,169/- to the respondent/builder. So, they are entitled to that amount besides interest @9.30% per annum from the date of each payment. It is also observed that a suitable unit in the project of the respondent/builder be offered to the buyers within 2 months after adjusting the amount paid by them besides interest accrued thereon by way of delay possession charges and that would be counted as settlement towards the allotment of the new unit. It is hoped that the respondent/builder would take a lenient view in the matter keeping in a view the investment made by the buyers in the year 2009 and waiting for about 12 years for their dream house.

F. Directions of the authority

13. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - i. The allottees have already paid a sum of Rs. 16,84,169/- to the respondent/builder. So, they are entitled to that amount

- beside interest @9.30% per annum from the date of each payment.
- ii. The respondent is directed to allot a new unit. A suitable unit in the project shall be offered to complainant by the respondent within a period of 2 months after adjusting the amount paid by the allottees besides interest accrued thereon by way of delay possession charges and that would be counted as settlement towards the allotment of the new unit.
 - iii. It is considered significant that the developer shall take a lenient view in this context.
14. Complaint stands disposed of.
 15. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2021

Judgement uploaded on 16.09.2021.