

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

**Complaint no. :** 4229-2021  
**First date of hearing:** 23.11.2021  
**Date of decision :** 05.07.2022

Sh. Sanjay Gupta S/o Laxmi Narayan Gupta  
**R/o:** - 203, Arya Nagar, Alwar, Rajasthan

**Complainant**

Versus

M/s Vatika Sovereign Park Pvt. Ltd.  
**R/o:** Flat n. 621-a, 6<sup>th</sup> floor, Devika towers, 6,  
Nehru Place, New Delhi-110019  
M/s Vatika Limited  
**Regd. office:** Vatika Triangle, 4<sup>th</sup> floor, Sushant  
Lok-phase 1, Block A, Mehrauli Gurugram Road,  
Gurugram-122002

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri. Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Ms. Daggar Malhotra Advocate for the complainant  
Ms. Ankur Berry Advocate for the respondents

**ORDER**

1. The present complaint dated 29.10.2021 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	Sovereign Park, Sector 99, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project Area	10.43125 acres
4.	DTCP Licence	119 of 2012 dated 06.12.2012 valid upto 05.12.2016 (Area admeasuring 10.03 acres) 65 of 2013 dated 20.07.2013 valid upto 19/07/2017 (Area admeasuring 00.40 acres)
5.	RERA registered/ not registered	<b>Registered vide registration no. 285 of 2017 dated 10.10.2017 valid upto 09.10.2022</b>
6.	Occupation certificate	Not obtained
7.	Payment plan	Possession linked payment plan
8.	Allotment letter	25.06.2013 (page 77 of complaint)
9.	Date of execution of builder buyer's agreement	<b>14.10.2014</b> (page 17 of complaint)
10.	Unit no.	1802, 18th floor, building A admeasuring 2600 sq.ft. (page 20 of complaint)
11.	Total consideration	Rs. 2,26,67,000/- (page 20 of complaint)
12.	Total amount paid by the complainant	Rs. 1,93,17,611/- (page 126 of complaint)



13.	Due date of delivery of possession	14.10.2018
14.	Offer of possession	Not offered
15.	Delay in handing over of possession till date of decision i.e., 05.07.2022	3 years 8 months 21 days

**B. Facts of the complaint**

3. That a builder buyer agreement was executed on dated 14.10.2014 between the parties and allotted unit no. 1802 in tower-A, having 2600 sq. ft. super area in the respondents' project namely, "Sovereign Park" located in Sector-99, Gurugram. The total sales price of the same being Rs.2,26,67,000/-.
4. That the respondent raised demand for payment as per the schedule of payment mentioned in the builder buyer agreement and the payments of the same were made promptly and timely by the complainant. Till end of the year 2015, the payments were demanded and accordingly paid in Vatika Limited's account in the year 2016 onwards, payments were demanded in respect of the said unit in "Sovereign Park" in the name of Vatika Sovereign Park Private Limited and were therefore paid in that account timely without any default. Till date, the complainant has paid a total of Rs. 1,93,17,611/- i.e., approx. 90% sale consideration. As per clause 13 of the builder buyer agreement, possession of the said unit was to be delivered within 48 months from the date of execution of the builder buyer agreement i.e., 14.10.2018.
5. The construction is not complete till date. There has been a delay of 3 years from the due date of possession on the part of the respondents. The complainant enquired on several occasions about

the status of the construction and possession delivery date but all in vain. Accordingly, this present complaint is being filed by the complainant seeking refund.

**C. Relief sought by the complainant:**

6. The complainant has sought following relief:

i. Direct the respondent to pay interest/charges for delay on Rs. 1,93,17,611/- i.e., total paid amount @ prescribed rate of interest from 14.10.2018 i.e., the due date of possession as per builder buyer agreement, till the date of actual handing over of the physical possession of the flat to the complainant.

7. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

8. No reply has been filed by respondent no. 1

**D. Reply by the respondent no. 2:**

9. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the BBA dated 14.10.2014, as shall be evident from the submissions made in the following paras of the present reply.

10. That the complainant has himself violated the obligations as set within the section 19 of the RERA Act and has further breached the terms of the BBA dated 14.10.2014. The complaint has been filed by



the complainant by hiding the true facts of the case and by placing half-baked truths. Thus, the complaint ought to be outrightly dismissed with heavy costs.

11. That the complainant has come before the hon'ble authority with un-clean hands. The complaint has been filed by him just to harass the respondents and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottees malicious intention to earn some easy buck. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required. Thus, only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
12. It is further pertinent to mention that the respondent company was facing umpteen roadblocks in construction and development work in projects beyond its control as the follows:
  - a. Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar **Gas Pipeline** by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the Township, including that of independent floors.

- b. Non acquisition of land by Haryana Urban Development Authority to lay down of Sector roads 75 Mtrs and 60 Mtrs wide and the consequent litigation for the same, the issue is even yet not settled completely.
- c. Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of ground water.
- d. Delay in removal/ re-routing of **defunct High Tension Line of 66KVA** in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
- e. Total and Partial **Ban on Construction** due to the directives issued by the National Green Tribunal during various times since 2015.
- f. The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble supreme court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- g. **Additionally**, it imposed a set of **partial restrictions**, some of which are:
1. No construction activities between 6 pm till 6 am (174 days).
  2. Stop page of the usage of Diesel Generator Sets (128 days).



3. Stop entry of Truck Traffic into Delhi.
  4. Close brick kilns, Hot Mix plants and Stone Crushers.
  5. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
  6. This year, partial restrictions continued to be in place in NCR region.
- h. The several stretches of total and partial construction **restrictions** have led to **significant loss of productivity in construction** of the projects. The respondents have also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- i. That the respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide external development works & infrastructure development works.
- j. That it is submitted that upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the government authorities. The incompleteness of such development works resulted in minor alterations in timelines



of the project, however the respondent yet managed to complete the project. It is pertinent to mention that in the matter titled, Credai-NCR vs. Department of Town and Country Planning, Government of Haryana & Another before the competition commission of India – case no. 40 of 2017, it has been opined and well conveyed by the hon'ble commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended and the respondent lacked any control in the subsequent deference of the project.

- k. That since the hurdles faced were beyond the control of the respondent, there was unintentional delay in completion of the project. It is further submitted that, it was never the intention of the respondent not to complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.
- l. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead the hon'ble authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the hon'ble authority. That the present



complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

15. 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.

**F. Jurisdiction of the authority**

16. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

**F. II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the*

*allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

17. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on the relief sought by the complainant:**

**G.I Delay possession charges**

18. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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."*

19. Clause 9 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

**9. Schedule for possession of the said residential unit**



*The company 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 48 (Forty Eight) months 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 or due to failure of Allottee(s) to pay in time the price of the said Residential Plot along with all other charges and dues in accordance with the Schedule of Payments given in Annexure II or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.*

20. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even formalities and documentation etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. This is just to comment as to how the builder has misused his dominant position and drafted such clause in the agreement and the allottee is left with no option but to sign on dotted lines.
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at

18%. 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.*

22. 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.
23. 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., 05.07.2022 is 7.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.70%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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 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;"*

25. Therefore, interest on the delay payments shall be charged at the prescribed rate i.e., 9.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
26. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings regarding contraventions as per provisions of rule 11(4)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 9 of the builder buyer's agreement executed between the parties on 14.10.2014, possession of the booked unit was to be delivered within a period of 4 years from the date of signing of the agreement which comes out to be 14.10.2018. Since, the respondent has not offered possession of the unit to the complainant till now, accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the builder buyer's agreement dated

14.10.2014 to hand over the possession within the stipulated period.


27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such, the complainant is entitled for delayed possession charges @9.50% p.a. w.e.f. 14.10.2018 till the actual handing over of possession, as per provisions of section 18(1) of the Act read with rule 15 of the rules and 19(10) of the Act of 2016.

#### **H. Directions of the authority**

28. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent shall pay the interest at the prescribed rate i.e., 9.70% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 14.10.2018 till the date of handing over the possession.
  - ii. The arrears of interest accrued till date of offer of possession shall be paid to the complainant within a period of 90 days from the date of this order failing which legal consequences would follow.



- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the builder buyer's agreement. The respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.
29. Complaint stands disposed of.
30. File be consigned to registry.

v.1 -   
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. K.K. Khandelwal)  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2022

**HARERA**  
**GURUGRAM**