



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

Complaint no. : 1233 of 2021
First date of hearing: 01.04.2021
Date of decision : 02.12.2022

1. Vikas Gill
2. Mahender Singh Gill
Both RR/o: -177 Gf Today Blossom 1 Sector 47
Gurugram

Complainants

Versus

M/s Vatika Limited.

Regd. Office at: Unit no. A 002 Inxt City Centre Ground
floor, block A, Sector 83 Vatika India Next, Gurugram

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Sukhbir Yadav
Sh. Harshit Batra

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 08.03.2021 has been filed by the complainant/allottees 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 under the provision of the



Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Vatika India Next, Sector 82, 82A, 83,84,85, Gurugram
2.	Project area	281.58 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	i. 113 of 2008 dated 01.06.2008 valid up to 31.05.2018 ii. 71 of 2010 dated 15.09.2010 valid up to 14.09.2018
5.	RERA Registered/ not registered	Not registered
6.	Plot no.	4, St 83B-14, Sector 83 B/VIN (Page 38 of complaint)
	changed plot no.	5/M-4.1/83 M/240 sq. yds (page 65 of complaint)
	Finally allotted unit	25,K-16, Vatika India Next, Gurgaon (page 130 of complaint)
7.	Date of buyer agreement	08.09.2011 (page 35 of complaint)
8.	Possession clause	9. Handing over possession of the said plot to the allottee <i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of three</i>



		<i>years from the date of execution of this Agreement</i> <i>(Emphasis supplied)</i>
9.	Subsequent allottee	28.12.2011
10.	Due date of possession	08.09.2014
11.	Total consideration	Rs. 1,11,97,997/- as per SOA dated 27.04.2018 (page 132 of complaint)
12.	Total amount paid by the complainants	Rs. 1,12,41,494/- as per SOA dated 27.04.2018 (page 132 of complaint)
13.	Occupation certificate /Completion certificate	Not received
14.	Offer of possession	13.04.2016 (page 77 of complaint) <i>Not valid as the OC of the project is not obtained by the respondent till now.</i>

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- I. That in the month of December 2010, Mr. Ram Avtar Yadav & Munish Yadav (original allottees) relied on representation & assurances of the respondent booked a plot bearing plot no.4 street 83 B-14, Sector - 83 admeasuring 240 sq. yds. in the project "Vatika India Next" marketed and developed by it under development linked payment plan for a total sale consideration of Rs.1,10,63,520/- including basic sales price, development charges, etc.



- II. That on 20.12.2010, respondent issued a payment receipt in favour of the original allottees of the booking an amount of Rs. 11,06,352/-. Thereafter, on 08.09.2011, a pre-printed, unilateral, arbitrary builder buyer's agreement was executed inter-se the respondent and the original allottees. According to clause 9 of the buyer's agreement, it has to give possession of the said plot within a period of 3 years from the date of execution of this agreement. As per the buyers agreement, the due date of possession was on 08.09.2014.
- III. That the complainants purchased the plot from the original allottees of the respondent and it endorsed the plot in their name in its record and on buyers' agreement on 28.12.2011. On 13.03.2012, the respondent sent a letter to the complainants in respect of plot no. 4/ST 83B-14/SECT-83B/VIN and the same was endorsed in the name of complainants.
- IV. That on 09.05.2013, the respondent sent a letter to complainants regarding revision in the numbering system of plot no. 4/ST 83B-14/Sector-83B/240 to 5/M-4.1/83M/240sq. yds in sector - 83.
- V. That on 02.08.2013, the respondent sent a letter of payment of instalment due on commencement of electrification work and demanded a payment of Rs. 11,06,352/-.
- VI. That on 17.12.2015, the respondent issued an intimation of possession letter and demanded Rs. 6,28,907/-. The allotted plot was still not ready for possession and the basic amenities were



yet not been developed. Therefore, this offer of possession was not tenable in the eyes of law.

- VII. That on 13.04.2016, the respondent sent an offer of possession letter to the complainants and requested to take the physical possession of the unit and also stated that "this letter is valid only up to 05.05.2016 after which, penalties/holding charges would be applicable in terms of plot buyers agreement".
- VIII. That on 26.02.2018, the complainants wrote a complaint to commissioner of police, Gurugram against the respondent for taking necessary legal action and for registration of criminal case/FIR against Vatika Limited on various issues i.e., the complainants in march 2012 booked plot no.4, the third plot on ST 83B 14, the layout also shows park measuring 1.03 acres in ST 83B-15 and the plot connected to 1.03 acre park via 18 mtr. sector road. But on 09.05.2013, Vatika changed the location of the plot vide letter Ref#12-01-0069209, plot numbered 5/ST 4.1/83M/240. When they raised concern to it on 12.05.2013 to the respondent/developer that it was just numbering change & everything else like area, plot location remains same. On 02.08.2013, promoter/developer raised a demand for electrification work of the block of Rs. 11,06,352/- and the same was paid by them but when they visited the project site, they were shocked to saw that even the levelling & demarcation of the plot cluster was not started. On receiving an offer of possession on



13.04.2016, they again visited the project site and were once again shocked to see that the physical location of the plot & the layout was not matching with the latest layout plan shared with them. There was no road in front of the plot and nearby location was not fenced. The complainants also asked for the delayed possession interest charges from it due to the delay in handing over the plot as they have also paid full sale consideration of the plot. Despite paying total sale consideration of the plot, it changed the layout plan & numbering of the plot multiple times without their consent. They also annexed supporting documents for proof. The adjoining land belongs to other persons and they fenced the land, therefore, development and infrastructure work could not be completed. Every time, the numbering was changed by respondent/ developer, and they sent a letter saying that it is just a numbering change and asked their signature on it.

- IX. That on 24.04.2018, the respondent issued an addendum to the agreement of plot which was duly executed by the complainants and allotted the new plot no. 25, K - 16, in Vatika India Next for plot measuring 241.38 sq. yd. As per terms of said addendum "all other terms and condition of the builder buyer agreement dated 08.09.2011 and consequent documentation and understanding in this regard executed between the parties herein shall remain and hold good and valid for this new allotted unit no. 25, K-16, in Vatika India Next, Gurgaon - 122004 and all payment



received on account of old unit no. 5, M-4, Vatika India Next, Gurgaon - 122004 shall be treated as part payment of sale consideration of new unit no. 25, K-16, Vatika India Next, and shall constitute a valid discharge to such effect. All terms & conditions of the executed builder buyer's agreement shall remain the same & binding on the parties.

- X. That as per the statement of account issued by the respondent the complainants have paid Rs. 1,12,41,494/-. They have paid more than 100% of the total sale consideration. The respondent/promoter again changed the numbering as well as the location of the plot and allotted plot no. TWN-003/ 25/ K-16/ 83K/ 240/ Sector-83 without even the consent of the complainants.
- XI. That on 20.02.2021, the complainants visited the project site and were shocked to saw that the physical location of the plot & layout were not matching with what was shown by respondent/promoter in the latest layout plan. There was no road in front of the and nearby location was not fenced.
- XII. That the complainant had availed the plot loan from India Bulls Housing Finance Ltd. against the said plot. The respondent issued permission to mortgage that plot in favour of the "India Bulls Housing Finance Ltd." on 29.08.2013.
- XIII. That, since 2014 the complainants are contacting the respondent telephonically and sending emails, and making efforts to get



possession of the allotted plot but all went in vain. Despite several telephonic conversations and email requests & personal site visits by them, it failed to give the complete offer of possession of the plot with all agreed amenities.

- XIV. That the work on other amenities, like roads, water connection, sewerage connection, etc. is not yet completed. Now it is more than 10 years from the date of booking and even the basic amenities of the plot are not completed and it clearly shows the negligence of the builder. As per project site conditions, it seems that the project would further take more than a year to complete in all respect, subject to the willingness of the respondent to complete the project.
- XV. That it is clear unfair trade practices and breach of contract and deficiency in the services of the respondent and much more a smell of playing fraud with them and others and is prima facie clear on the part of it which makes them liable to answer the authority and hence this complaint as prayed above.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the respondent to handover the possession of the unit along with delayed possession interest @prescribed rate from the due date of possession till the actual date of possession.
 - II. Direct the respondent to provide area calculation.



III. Direct the respondent to provide the latest layout plan of the plot allotted to the complainants.

5. 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.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

- a) That at the outset, respondent humbly submits that each and every averment and contention, as made in the complaint, unless specifically admitted, be taken to have been categorically denied by it and may be read as travesty of facts.
- b) That the complaint filed before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. They have misdirected themselves in filing the above captioned complaint before the authority as the relief being claimed by them, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the authority.
- c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- d) That the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in annexure 'A', which is required to be executed *inter se* the parties. It is a matter of record



and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between the parties. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the builder buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint for interest, as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to them. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before the authority.

- e) That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, they are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- f) That the complainants have not come with clean hands before the authority as they have filed the consumer complaint bearing number 303/2016 before District Consumer Forum, Gurugram and its present status is not available with the respondent.
- g) That apparently, the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for,



are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to them.

- h) That without prejudice to the aforementioned submissions, it is submitted that even otherwise, the complainants cannot invoke the jurisdiction of the authority in respect of the unit allotted to them, especially when there is an arbitration clause provided in the buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicably failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an Alternative Dispute Redressal Forum, invoking the jurisdiction of the authority, is misconceived, erroneous and misplaced.
- i) That initially the unit was booked by the first allottee and the buyer's agreement was signed between them on 08.09.2011. Thereafter, the original allottees transferred the unit to the complainants and finally, the buyer's agreement was endorsed in their name on March 2012. It is further submitted that, since the complainants are subsequent allottees, the period for calculating the date of handing over of possession has to be done from the date of endorsement.
- j) That the total sale consideration of the plot purchased by the complainants was Rs. 1,11,97,997/-. However, it is submitted that the sale consideration amount was exclusive of the STP, gas pipeline, stamp duty charges, VAT and other charges to be paid by them at the applicable stage. It is submitted that the original allottees and the complainants agreed that the payment would be



made as per the payment plan annexed with the buyer's agreement and the copy of same was read over to them. The original allottees and complainants defaulted in making timely payments towards the agreed sale consideration of the unit from the very inception. Therefore, in the facts and circumstances detailed above, they have grossly failed to adhere to the payment plan and as such have severely defaulted in payment of installments qua the purchase of the said unit. It is submitted that under such facts and circumstances they are not entitled to any relief as prayed for by them in the complaint.

- k) That the respondent submits that the plot in question cannot be handed over at this stage as approach road was not constructed in view of the status qua order by Hon'ble Punjab and Haryana High Court in CWP No. 2689/2018.
- l) That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. A builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other perspective buyer does not reach in time. The problems and hurdles faced by the developer or it has to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material

suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer / builder in proceeding towards timely completion of the project.

7. 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 and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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;

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.

11. So, in view of the provisions of the Act 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 complainants.

G.1 Direct the respondent to handover the possession of the unit along with prescribed interest per annum from the promissory date of delivery till actual delivery of the unit in question.

12. The complainants intend to continue with the project and are 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."

13. Clause 9 of the agreement to sell provides for handing over of possession and is reproduced below:

9. Handing over possession of the said plot to the allottee

*The Company based on its present plans and estimates and subject to all just exceptions, contemplates to **complete construction of the said unit within a period of three years from the date of execution of this Agreement***

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. Payment of delay possession charges at prescribed rate of interest:

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.

16. 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 cases.
17. 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., 02.12.2022 is **8.35%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.35%**.
18. 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 allottee, 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;"*

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.35%** by the respondent /promoter which is the same as is being granted her in case of delayed possession charges.
20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 9 of the agreement executed between the parties on 08.09.2011, the possession of the subject apartment was to be delivered within three years from the date of execution of agreement. Therefore, the due date of handing over possession was 08.09.2014. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the

complainants as per the terms and conditions of the agreement dated 08.09.2011 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.35% p.a. w.e.f. 08.09.2014 till the actual handing over of possession or offer of possession + 2 months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

22. 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 respondent is directed to pay interest at the prescribed rate of 10.35% p.a. for every month of delay from the due date of possession i.e., 08.09.2014 till the actual handing over of possession or valid offer of possession after obtaining CC or OC + 2 months whichever is earlier
 - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;



- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.35% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation & latest layout plan of the plot allotted to the complainants.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
23. Complaint stands disposed of.
24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)
Member

Dated: 02.12.2022