

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

Complaint no.	:	2333 of 2021
Date of Filling Complaint:	:	03.06.2021
First date of hearing	:	11.08.2021
Date of decision	:	18.04.2023

1. Ajit Singh 2. Pardeep Singh Both RR/o: Village and Post office Sikhanderpur Badha, Tehsil and District Gurugram.	Complainants
Versus	
M/s Vatika Limited R/o: Unit no. A-002, INXT City Centre, ground floor, block A, Sector 83, Vatika India Next, Gurugram	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rishabh Gupta (Advocate)	Complainants
Sh. C.K Sharma (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees 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.	Project name and location	"Vatika India Next", Sector 82A, Gurugram.
2.	Project area	1.6 acres
3.	Nature of the project	Residential township
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid/renewed up to 31.05.2018
5.	Name of licensee	Browz Technologies Pvt. Ltd. & 38 others.
6.	HRERA registered/ not registered	Not registered
7.	Occupation certificate	Not obtained
8.	Payment plan	Development linked payment plan
9.	Plot no.	Plot no. 303, block C. (Page 59 of complaint)
10.	Plot measuring	240 sq. yds.
11.	Date of addendum	21.10.2013 (annexure C2, page 111 of complaint vide which new unit instead of old one was allotted to the complainants)
12.	New plot no.	9/Townsend Avenue/240 sq. yd/Sector 82A (annexure C2, page 111 of complaint)
13.	Date of execution of plot buyer's agreement	28.11.2009 [Page 51 of complaint]



14.	Subsequent allottee	February 2011 (as alleged by complainant at page 15 of complaint)
15.	Possession clause	<p>10. Handing over possession of the said plot to the allottee</p> <p><i>That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this agreement unless there is a delay or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said 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 promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement. The promoter, upon completion of development work in the said township and carving out, demarcation and measurement of plots shall offer in writing to the allottee to take over physical possession of the said plot in terms of this agreement within thirty days from the date of issue of such notice and the promoter shall hand over vacant possession of the said plot to the allottee subject to the allottee having complied with all the terms and</i></p>



		<i>conditions of this agreement and is not in default under any of the provisions of this agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the promoter in this regard. (Emphasis supplied)</i>
16.	Total consideration	Rs. 56,62,600/- as per statement of account dated 24.03.2021 (Page 117 annexure C-4 of complaint)
17.	Total amount paid by the complainants	Rs. 36,85,607/- as per statement of account dated 24.03.2021 (page 117 annexure C-4 of complaint)
18.	Due date of possession	28.11.2012
19.	Initiation of possession	06.09.2016 (page 30 of reply) *Note: Not valid as OC is not received yet.
20.	Notice for termination	11.03.2020 (annexure R3, page 39 of reply)
21.	Letter for cancellation of booking application form cum recovery notice.	26.08.2020 (annexure C3, page 113 of complaint)
22.	Occupation certificate	Not obtained
23.	Delay in handing over possession till date of decision i.e., 05.07.2022	9 years 7 months 7 days

B. Facts of the complaint

The complainants have made following submissions in the complaint:

3. That the respondent advertised about its project under the name "Vatika India Next" situated in sector 82A, Gurugram showing to be consisting of many advance technologies and infrastructure. In pursuant to the lucrative offer and strong market hold of the respondent, the original buyers namely Sh. Rajneesh Kumar Singh



and Smt. Richu Singh, shown interest and agreed to purchase a plot measuring 240 sq. yards in that project. They paid a sum Rs. 13,97,663/- as booking amount of the said plot to the respondent. A plot buyer agreement was executed on 28.11.2009 between them whereby they opted for possession payment scheme offered by developer. According to the plot buyer agreement, the respondent allotted, plot no 303, in block C, measuring 240 sq. yards for the basic sale price of Rs 47,52,000/- and the total sale consideration was agreed as Rs 47,88,000/-.

4. Thereafter, in month of February 2011, the original buyers transferred their right in the allotted unit in favour of complainants and the respondent also made an endorsement to this effect accepting the transfer of said unit.
5. That as per clause no. 10 of the plot buyer agreement, the possession of the allotted unit was to be handed over within 36 months from the date of execution of that agreement dated 28.11.2009 which comes to 27th November 2012. All the terms of the plot buyer agreement remained the same and unaltered by transferring the said plot to the complainants. However, till date, no possession has been handed over to the complainants. Whenever they tried to contact the respondent, it used to give false assurances to them about the completion of the project and revised date of possession. They regularly contacted the respondent telephonically to get the final date of possession but with malafide intention, it was not giving the positive answer to their requests. Thereafter they visited the office of the respondent to inspect the spot and status of the construction when they came to know that it has scrapped the project "Vatika India Next" and is transferring

the plots booked by customers in another project called "Townsend Avenue" situated at Sector- 82A, Gurugram. The complainants meet the officials of the respondent and asked the reasons for such transfer but no response to this effect was given and ultimately, the plot of the complainants was also transferred to project "Townsend Avenue" without their consent and without approval. Being gullible persons and with an intention to safe the money deposited; the complainants agreed to such transfer. Thereafter, an addendum to the plot (Vatika India Next) builder buyer agreement dated 21.10.2013 was issued to the complainants allotting a new plot no. 9 measuring 240 sq. yards situated in Sector- 82A, Gurugram. The respondent issued plot reference no. 9/Townsend Avenue/ 240 sq. yards/ Sector- 82A, in project "Townsend Avenue". It was categorically mentioned in the addendum letter dated 21.10.2013 that all other terms and condition of the builder buyer agreement dated 28.11.2009 and consequent documentation and understandings in this regard executed between the parties herein shall remain and hold good and valid for this new allotted plot no. 9/Townsend Avenue/ 240 sq. yards/ Sector- 82A and all the payment received on account of old plot no. C-204/303 were treated as part payment of sale consideration of new plot No. 9/Townsend Avenue/ 240 sq. yards/ Sector- 82A and constituted a valid discharge to such effect. Thus, in view of the said letter, all the terms of the builder buyer agreement dated 28.11.2009 would be binding upon the parties and they are under a legal obligation to perform their part of contract and terms of the agreement.

6. That the complainants paid a sum of Rs. 36,85,607/- out of total sale consideration of Rs. 56,62,600/- according to the payment plan and

instalments as and when demanded by the respondent company without any delay.

7. The complainants asked the officials of the company to get the final date of delivery of possession of the plot. But the representative of the company informed them that their plot has been cancelled and gave a letter dated 26.08.2020 along with statement of account to them. It is submitted that the letter as such was never received by the complainants and falsely, it has been stated that the respondent issued letter dated 11.03.2020 and 12.12.2016 to them for any demand. It is submitted that the respondent has unilaterally and arbitrarily cancelled the plot falsely stating about previous letters. No such letters were received by the complainants. They were and are still ready and willing to purchase the said plot and never thought of cancellation of that unit. The respondent being in a dominant position and with an ill motive to grab the money of the complainants, had cancelled the booking of the unit intentionally and deliberately. The respondent has no legal right to cancel the unit without any reasonable and legal ground.
8. That the complainants requested the respondent many times to set aside cancellation issued vide letter dated 26.08.2020 and restore the booking of the plot in the same name but it, with malafide intention, had not paid any heed to their request and is not bent upon to alienate the said plot to other third party. It is submitted that the respondent has no right and title to alienate the said plot to create any third-party interest as the complainants had never backed out from the terms of the agreement dated 28.11.2009. It is the respondent, who has failed to perform its part of contract to deliver the possession of the said plot on time. The respondent has



failed to fulfil its obligations as under builder Buyer agreement and also has failed to provide any offer of possession of the said unit till now. It is clear cut case of abuse of the dominant position of the respondent in the market and such an act needs to be penalized against the respondent.

9. That the complainants after exhausting all their patience served a legal notice dated 29.4.2021 through their counsel Sh. Rishabh Gupta and requested to set aside the cancellation issued vide letter dated 26.08.2020 and restore the plot booked by them and raise demand if the construction of the plot is complete and completion certificate has been obtained. It was also requested to provide final revised date of possession of the said plot but no reply has been received by them from the respondent and its officials. Hence, this complaint.

C. Relief sought by the complainants:

- i. Direct the respondent to set aside the cancelation issued vide letter dated 26.08.2020 and restore the booking of the plot in the name of complainants.
- ii. Direct the respondent to pay the delayed charges at the prescribed rate of interest on amount paid by the complainant i.e., Rs 36,85,607/- w.e.f. due date of possession till offer of actual of actual and physical possession.

D. Reply by the respondent

- a. The complaint filed by the complainants before the Id. authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Id. 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 this Id. authority. Further, without prejudice to the aforementioned, even if it was to be assumed though not admitted 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.

- b. That the previous allottees and the complainants have miserably and wilfully failed to make payments in time or in accordance with the terms of the allotment/plot buyer's agreement. It is submitted that they have frustrated the terms and conditions of the plot buyer's agreement, which were the essence of contract between the parties. Therefore, the complainants now cannot invoke a particular clause, and the complaint is not maintainable and should be rejected at the threshold. The complainants have also misdirected in claiming interest on account of alleged delayed offer for possession besides the fact that the Authority cannot said to be any alleged delay in offering of the possession. It has been categorically agreed between the parties that subject to the allottees having complied with all the terms and conditions of the plot buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the promoter contemplates to complete construction of the said plot within a period of 3 years from the date of execution of the agreement unless, there shall be delay due to reasons beyond



the control of the promoter or due to failure of allottees to pay on time the price of the said plot.

- c. That initially, the plot was booked by Mr. Rajneesh Kumar Singh and Mrs. Richu Singh and the plot buyer's agreement was signed between the original allottees and respondent on 28.11.2009. Thereafter, the plot buyer's agreement was endorsed in the name of the complainants in February, 2011. It is 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.
- d. That the original allottees and complainants have failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter and plot buyer's agreement and as such the complaint is liable to be rejected. Out of the total sale consideration of Rs. 56,62,600/-, the amount actually paid by the original allottees, and complainants is Rs. 36,85,607/- i.e. around 65% of the sale consideration of the unit. There was an outstanding amount of Rs. 37,88,090/- payable by the complainants. It is submitted here that the respondent vide its demand letters dated 23.06.2016, 12.08.2016, 19.08.2016 & reminder dated 03.08.2016, raised various demands but complainants never paid any heed to the same. Thereafter on 06.09.2016, the respondent had intimated the complainants about the possession formalities and its demand, but they never paid the outstanding dues. Thereafter, the respondent vide its another reminder letter dated 07.10.2016 once again reminded the complainants to clear the outstanding dues but never paid the



said amount. Thereafter on 12.12.2016, the respondent issued another letter as final opportunity to pay the outstanding dues, but complainants again did not pay any heed to the same. Thereafter on 11.03.2020, the respondent issued notice for termination to the complainants to clear all outstanding dues, but they once again did not come forward to make the payment. Having no other alternate, the respondent was therefore constrained to cancel the booking of the complainants vide cancellation letter dated 26.08.2020 and now they are left with no right, title, interest etc, in the present unit. As a matter of fact, the respondent has duly transferred the said plot to some other person and also executed conveyance deed in favour of buyer.

e. It is to be appreciated that a builder constructs a project phase wise for which it gets payments from the prospective buyers and the money received from them is further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that 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. It is relevant to note that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers such as the complainants and creates obstacles in the hand of developer/builder in proceeding towards timely completion of the project.

10. 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.

11. Both the parties have also filed written submissions to substantiate their pleas, and which have been taken on record.

E. Jurisdiction of the authority

12. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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, 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

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.

13. 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

E. Findings on the relief sought by the complainants:

E.I To Set aside the cancellation of the allotted plot issued vide letter dated 26.08.2020

13. The complainants submitted that they visited to the respondent's office to get the final date of delivery of possession of the plot where the representative of the company informed them that booking of their plot has been cancelled and the respondent gave a letter dated 26.08.2020 along with statement of account to them. They further submitted that they never received the above said letter. But the respondent denied that it has unilaterally and arbitrarily cancelled the booking of the allotted unit. So, keeping in view of the facts, the authority observes that the allottees paid a sum of Rs. 36,85,607/- out of total consideration of Rs. 56,62,600/- i.e., more than 64% of the total sale consideration. Though the allottees have not made

payments as per payment plan but it cannot be ignored by the authority that the respondent is also in default as the due date of possession was 28.11.2012 and it has not obtained the OC/CC till date. The letter of cancellation of the allotted unit was issued by the respondent/builder on 26.08.2020 i.e., after coming into force the Act of 2016 and the same is violating of the provisions of regulation framed by the authority on 05.12.2018 which provides that only a reasonable amount can be deducted from the deposited amount and the remaining amount has to be remitted to the allottee on cancellation. There is nothing on the record to show that the cancellation of the plot issued vide letter dated 26.08.2020 was ever received by the complainants either through mail or by post. No doubt, the respondent could have cancelled the allotment of the unit in favour of the complainants but only after following the due procedure of law. It is not proved that after completion of the project, the respondent has obtained part CC/CC and offered possession of the allotted unit in the project to other allottees. The cancellation of the unit was made after the Act of 2016 cum into force. So, as per clause 9.2 of model agreement for sale, an allottee is entitled to stop making further payments to the promoter as demanded from him if the completion of the construction/development of the project is not as per milestones. Even there is nothing on the record to show that after cancellation of the unit and deduction of 10% of the basic sale price, the balance amount was remitted/ sent to the allottees either through cheque or bank draft. Lastly, while filing written reply as well as making written submissions, it is pleaded on behalf of the respondent that after cancellation, the unit has been allotted to someone else and even

conveyance deed vide vasika no. 5309 dated 04.01.2021 has been executed. A perusal of copy of conveyance deed filed during the course of submissions shows somewhat different facts and it was alleged that a fraud has been played by the respondent not only upon the original allottees but also on the complainants and requested Authority to impose heavy costs on the respondent. A perusal of that documents shows that while executing conveyance deed on 04.01.2021, there are specific recitals w.r.t. execution of plot buyer agreement dated 29.09.2009 by the respondent with Col. Ram Naresh i.e., the original allottee qua the unit allotted later on vide addendum dated 21.10.2013. Neither that fact was disclosed by the respondent while making allotment in favour of original allottees Rajneesh Kumar Singh & Richu Singh nor there is any whisper of the same in agreement dated 28.11.2009 executed between them. Even, after that unit was endorsed in favour of the complainants by the respondent, the factum w.r.t. earlier allotment of the unit in question and having a buyer's agreement dated 29.09.2009 with Col. Ram Naresh was not disclosed. The same came to light only when the respondent filed written submissions and which points towards a grave irregularity committed by the respondent upon the complainants. If the position was such as setup by it in the written reply, then why it re-allotted the unit in favour of the original allottees, endorsed in favour of the complainants, subsequently changed vide addendum dated 21.10.2013 and continued to receive the payments up to 23.12.2013 i.e., 65% of the total sale consideration of Rs. 56,62,600/- Thus, keeping in view all these facts, the cancellation of allotment of the allotted unit is held to be bad in the eyes of law

but since third party rights have been created over that unit, so restoration of the allotment of that unit in favour of the complainants is not possible. Hence, in such a situation, the only alternative left for the respondent is to allot an alternative unit of the same size and area (if possible or some other area suitable to the complainants) at the same price at which the old unit was allotted to them within a period of two months from the date of order by adjusting the amount paid by them to it along with delay possession charges from the due date i.e., 28.11.2012 till the date of allotment of the alternative unit. The complainants would also be entitled to seek suitable compensation for illegal cancellation of the allotted unit by filing a separate complainant before adjudicating officer, if so, advised.

F. Directions of the authority

24. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016

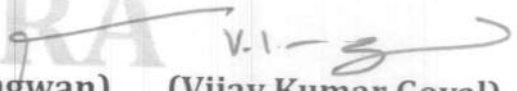
- i. The respondent is directed to allot an alternative unit of the same size and the same area (if possible or some other area suitable to the complainants) at the same price at which the old unit was allotted to them within a period of two month from the date of order by adjusting the amount paid by them against the cancelled unit along with delay possession charges from the due date i.e., 28.11.2012 till offer of possession + 2 months or actual handover of possession whichever is earlier at the prescribed rates i.e., 10.70% p.a.



- ii. The arrears of interest accrued till date of possession of the alternative unit shall be adjusted against sale consideration of alternative plot to be paid by the complainants.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period to the respondent.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% 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.
 - v. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.
25. Complaint stands disposed of.
26. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.04.2023