

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

Complaint no. : 2085 of 2019
Date of filing : 17.05.2019
First date of hearing: 12.09.2019
Date of decision : 21.02.2023

1. Shri Ram Parkash Arora
2. Smt. Anita Arora

Both RR/o:- B-309, Lok Vihar, Pitampura, Delhi - 110034 **Complainants**

Versus

M/s Vatika Limited,
Office:- Vatika Triangle, 7th floor, Sushant Lok Phase-I,
Gurugram, Haryana-122002

Respondent

CORAM:

Sh. Vijay Kumar Goyal
Sh. Ashok Sangwan
Sh. Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Venkatesh Ramu & Sh. Sukhbir Yadav Advocate for the complainants
Sh. Venkat Rao Advocate for the respondent

ORDER

1. The present complaint 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 to the allottee as per the agreement for sale executed inter se them.

2. Since the buyer's agreement has been executed on 03.08.2010 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.

A. Project and unit related details

3. The particulars of the project, the details of 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.	Name and location of the project	"Signature 2 Villa" at Vatika India Next", Sector 82, 82A, 83, 84 and 85, Gurugram Note: - Earlier it was "Bellevue Residences"
2.	Nature of the project	Residential township
3.	RERA registered/ not registered	Not registered
4.	Payment plan	Construction linked plan
5.	Buyer's agreement	03.08.2010 (Page 53 of complaint)
6.	Villa no.	39/360/Simplex/BR admeasuring 360 sq. yard. (Page 46 of complaint)
7.	Possession clause	11.1 Schedule for possession of the said unit

		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. However, in case of the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clause (12.1), (12.2), (12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement.
8.	Notice for termination	04.03.2011 (page 104 of complaint)
9.	First addendum to the agreement	07.02.2012 (page 115 of complaint)
10.	Due date of possession	03.08.2013
11.	New unit	3/360/Simplex/ST82D1-7 (page 115 of complaint)
12.	Payment plan	Construction Linked Plan
13.	Total consideration	Rs. 1,36,41,058.29/- (as per SOA dated 07.02.2019 annexed at page 129 of the complaint)
14.	Total amount paid by the complainants	Rs. 40,95,756.20/- (as per SOA dated 07.02.2019 annexed at page 129 of the complaint)
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

4. The complainants have made the following submissions in the complaint:
- i. That a villa booked by the complainants and to be delivered by the respondent/promoter was supposed to be a simplex villa under the name of "Bellevue Residences" having 2161 sq.ft. of built-up area and was to be constructed on a 360 sq. yards plot in the respondent's township called "Vatika India Next".
 - ii. The respondent accepted the above booking for the villa and the initial booking charges of Rs. 7,50,000/- on 28.06.2010 from the complainants. The total sales consideration for the aforesaid villa was to be Rs 1,36,41,058/-. The respondent had offered a substantial discount on the price list of the villas and plots to the complainants if they made their booking on or before 30.06.2010 and in light of the discount being made available, they booked the aforesaid villa on 28.06.2010 itself and made the initial booking charges of Rs 7,50,000/- on the spot itself. Thereafter, the respondent confirmed the booking for the villa and allocated villa bearing unit no 39/260/Simplex/Br vide letter dated 17.07.2010 to the complainants. As per the terms of purchase of this villa, the complainants were required to make payments to the respondent promoter as per a construction linked plan, and it was to deliver this aforesaid villa within three years from the date of receipt of booking for the villa. The complainants made payments to the respondent

promoter as per the construction linked plan and communication(s) received from the respondent promoter.

- iii. The builder buyer agreement was signed between parties on 03.08.2010, subsequent to the acceptance of the aforesaid villa booking by the respondent promoter. The complainants received a notice for termination vide letter dated 04.03.2011 from the respondent promoter citing non-payment of an amount of Rs 13,53,305/-. Subsequent to the receipt of that letter and personal meetings between the complainants and the respondent promoter's officials, they made the above payments in addition to the demanded interest towards delay in payment towards the cited milestone. It is thus pointed out that the respondent/promoter had categorically stated that the development work at the site had commenced on an earlier date i.e. 15.01.2011 and had charged the instalment plus service tax plus interest towards delay in receiving payment towards the cited milestone. Subsequent to making the above payments, the complainants had not received any demand for payments towards the next milestone for construction of the villa. After a gap of almost 10 months, the complainants received a letter dated 20th January 2012 from the respondent promoter stating "... that there are certain fine tunings that are being carried out in the layout to make it more efficient". And that the Bellevue Villas would henceforth be addresses as "Signature 2 villas" and that the respondent promoter is initiating a re-allotment process. The complainants had responded to that letter vide email

dated 25th January 2012 expressing concern about the specifications relating to the size, location, sitemap, sector and ancillary details about the Signature 2 Villas, in addition to non-receipt of the attachments mentioned in the letter dated 20th January 2010 of the respondent-promoter. It is thus clear that the respondent promoter had misrepresented that development work at the site had commenced on 15.01.2011 and had falsely charged the complainants the milestone linked instalment in addition to service tax and penalty towards delayed payment.

- iv. Subsequent to the receipt of the aforesaid letter of 25.01.2012, the complainants met the representatives/executives of the respondent promoter at the respondent's office on 13th February 2012 and agreed to a re-allotment of the villa based upon their commitment that the new villa would be constructed and handed over very soon. The new villa unit no. now allotted on 23.02.2012 to the complainants was 3/S-7/360/Simplex, after a period of 1 years and 6 months of signing the builder buyer agreement. Until that time the complainants had made payments totalling to Rs 40,95,756.20 to the respondent promoter. And these payments included charges towards service tax, interest on overdue payment demands, and also an instalment payable 'On start of Development work at site'.
- v. It came to the notice of the complainants much later that even though no development work had commenced at either the old site for the Bellevue Villa nor the new site for the Signature 2 villa later allotted to the

complainants, the respondent promoter had fraudulently made the complainants pay the construction linked Installment towards the milestone termed "On start of development work at site". The complainants had been making several visits to the respondent promoter's office and were being repeatedly assured that the new Signature 2 Villa would be deliver soon to them. In addition, the respondent/promoter did not let the complainants visit the site(s) allocated for the villa on each and every occasion that they desired to view the progress citing some or the other reason thus ensuring that they were unable to personally view the actual progress at site.

- vi. It is highlighted that the next milestone against which the subsequent payment instalment was payable by the complainants to the respondent promoter, which was the completion of foundation DPC of the unit was never achieved by the respondent promoter, despite the passage of almost 8 years and 8 months from the time of original booking and over 7 years from the date of re-allotment. Despite the passage of almost 8 years from the time that the respondent promoter had received a substantial amount of Rs 40,95,756/- from the complainants towards the villa booked by them. The respondent-promoter has not made any progress in commencing the construction of the villa booked initially and later re-allotted by the respondent promoter. The respondent promoter did not attempt any voluntary correspondence with the complainants with respect to the progress of work/construction of the booked villa(s) and false assurance

were deliberately being offered by the officials of the respondent promoter during each and every interaction that the complainants had with them, whether in person or on phone.

- vii. The complainants interacted on telephone with one Mr. Ankit Nagpal in the client services department of the respondent promoter's office, who gave them an appointment at the respondent's office on the 7th February 2019 in connection with the above referred email of 1st February 2019. Firstly, the complainants met the respondent promoters' officials Mr. Sumit Arora and Mr. Ankit Nagpal in person at their office on the 07.02.2019 and devasted to be informed from these officials that there was no 360-yard based Simplex Signature 2 villa available to be delivered to them and that the complainants would be forced to take a near complete duplex villa at currently prevailing prices from the respondent promoter. These officials informed about the complete background of the booking, follow up, re-allotments, further follow ups about progress in the construction by the complainants and also the fact that they are a senior citizen and that they should not be made to run around repeatedly to get possession of a property which they booked almost nine years ago. Those officials then, on the 07.02.2019 itself, organized the first to visit to the Vatika India Next township after the meeting so that they could review the progress of construction of villa and inspect some alternate villa options.

- viii. The complainants were taken by the staff of the respondent promoter and shown several villas and plots in the Vatika India Next township. The complainants were given to understand that there were both simplex and duplex villas available on plot sizes of 360 sq. yd. and also plots of different sizes still available for purchase from the respondent's side. The respondent's official Mr. Sumit Arora assured the complainant that he would communicate the final commercial details for all the available options to them latest by Monday, 11th February 2019 after speaking with the management. The complainants waited for the inputs with regard to the availability of ready or near ready villas from the above-named officials of the respondent promoter but had not received any response. The complainants are given to understand that several persons/parties who had booked their villas with the respondent promoter on dates much after had made their booking for the villa were delivered their villas or alternate properties by the respondent promoter.
- ix. The respondent promoter has not made any offer till date to the complainants for any alternate property, and during every interaction that they had with the respondent false and misleading promises were repeatedly made assuring of progress being made to deliver the booked villa towards which substantial sums of money were collected by the respondent promoter from the complainants. In light of the deliberate lack of response from the respondent promoter, the complainants were then left with no option but to



send a legal notice to the respondent on the 20th of February 2019 requesting it to make available the details of the Signature 2, 360 yard Simplex Villa from the respondent's inventory of unsold/unregistered villas upon the terms of the original booking within a period of three weeks from the date of dispatch of the legal notice.

- x. A response dated 28.03.2019 to the aforesaid legal notice was received by the complainants advocate on 02.04.2019 from M/s IndusLaw, the respondent's legal representative. The response to the legal notice was a typical boilerplate letter, the essence of which claimed that the complainants were totally at fault and had misrepresented facts. This response to the legal notice was also to the effect that there was no default of the respondent/promoter, so much so, that the tone and tenor of the letter was intended to intimidate the complainants.
- xi. It is thus obvious that the respondent promoter through its officials, agents and employees have been and continue to orchestrate fraud by deliberately delaying the possession of the villa(s) to the complainants, and, on the contrary, have been handing over similar villas and/or alternative properties to other persons and parties for most obvious reasons. Thus, it is very clear that the respondent promoter had accepted the booking of the villa and continues to change the allotment of the villa at the respondent's whims and fancies, is nothing but an orchestrated plan with a clear intent to perpetrate fraud and misuse/misappropriate the hard earned money of the complainants.

Such brazen actions by the respondent has caused immense suffering, grief and health issues to the complainants, who are senior citizens who continue to wait for the property booked by them almost nine years ago.

C. Relief sought by the complainants

5. The complainants have filed the present compliant for seeking following reliefs:

- i. To be allotted and promptly be delivered a villa of the type initially booked upon the original terms of booking with the respondent, or alternatively, a duplex villa on a plot of same area at the price prevailing on the date of original booking of the villa by the complainants.
- ii. To additionally receive interest at the prescribed rates on all payments received by the respondent from the complainants until the payment is due towards the next milestone with regard to the construction linked plan for the booked villa from the respective dates of receipt of payments by the respondent.
- iii. To reverse and remove all the incorrectly levied charges under the description "interest on overdue amounts" since no demand has been raised with regard to the 4th instalment milestone till date.
- iv. To reverse and remove the charges shown towards VAT registration in the account statement provided by the respondent-promoter to the complainant, since the same is not yet due and also as no demand has been raised till date.



- v. The respondent to be imposed with exemplary punishment and/or fine in accordance with the Act, based upon the facts of the matter mentioned hereinabove, and.
6. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
 - i. That the complainants have come before the Authority with ulterior motive. The complaint has been filed by the complainants just to harass the respondent and to gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants a 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, if at all the contents of the complaint are taken to be correct and true.
 - ii. That right from the very beginning, the complainants have been extremely irregular with regard to payment of the instalments according to the schedule of payment as agreed upon by the parties in terms of the buyer's agreement. Consequently, the respondent had to



issue payment request letters to give the complainants notice of due dates for the payments to be made and payment request reminders calling upon them to pay the amounts that had become due on account of failure of them to adhere to the schedule of payment in terms of the buyer's agreement.

- iii. That it is brought to the knowledge of the hon'ble authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of their intention. Before signing the agreement, the complainants were well aware of the terms and conditions as imposed upon the parties under the builder buyer agreement and only after through reading, the said agreement was signed and executed. It is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent/company are nothing but an afterthought, hence the present complaint filed by the complainants deserves to be dismissed with the heavy costs.
- iv. That the various contentions raised by the complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. It is further submitted that none of the relief as prayed for by the complainants are 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



resources of the hon'ble authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed. It is extremely important to state that the present authority is not the right forum for the relief sought by the complainants. The complainants are attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case. The main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainants and against the respondent and hence the complaint deserves to be dismissed. The respondent craves leave of this hon'ble authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants.

8. 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

The authority observed that it has territorial as well as 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 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

10. Section 11(4)(a) of the Act 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) The promoter shall-
(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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the reliefs sought by the complainants

F. I Delay possession charges

12. **Relief sought by the complainants:** Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the proposed date of delivery of possession as per buyer's agreement till the date of handing over the possession.

13. In the present complaint, 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."

14. Clause 11.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11.1 Schedule for possession of the said unit

The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/said Unit within a period of three years from the date of execution of this agreement. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clauses (12.1),(12.2),(12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by any of the terms or conditions of this Agreement."

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants 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 a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject floor and to deprive the allottees of their 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.

16. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges at the prescribed rate. 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.

17. The legislature in its wisdom in the subordinate legislation under the 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.

18. 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., 21.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

19. **Rate of interest to be paid by complainants/allottees for delay in making payments:** 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;"*

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

21. 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 11.1 of the agreement executed between the parties on 03.08.2010, 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 03.08.2013. The respondent has failed to handover possession of the subject apartment 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 03.08.2010 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.

22. 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 @ 10.70% p.a. w.e.f. 03.08.2013 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.

F.II Possession

23. The complainant booked a villa in the project of the respondent and in consonance of same, a buyer's agreement dated 03.08.2010 was executed

inter-se parties. It is an undisputed fact that the complainant has already paid an amount of Rs. 40,95,756/- towards total consideration of Rs. 1,36,41,058/-. The respondent sent a letter namely "notice for termination" dated 04.03.2011. However, there is nothing on record to substantiate the fact that the said notice was proceeded by cancellation by the respondent-builder. Thereafter, re-allotment of complainants' unit was done vide letter dated 20.01.2012 followed by an addendum dated 07.02.2012 w.r.t. re-allotted unit. The complainants approached the Authority seeking possession of the allotted villa as one of their relief, whereas the respondent on the other hand, submitted that the said unit not available due to passing of GAIL pipeline over the allotted area and further submitted that there is no alternative unit available in the project. In view of submission by the respondent, the Authority vide order dated 28.07.2021, directed the respondent to file an affidavit wherein stating details of sold & un-sold inventory. However, it has failed to provide any details w.r.t inventory at the project site. During the course of proceedings, the complainant contested the allegations raised by the respondent w.r.t non-availability of any plot in the project and submitted that the builder-respondent is selling other units of the similar project in open-market. In view of same, Local Commission (Shri Laxmi Kant Saini, CA) was appointed by the Authority vide order dated 21.02.2022 to verify revenue/receipt from sale of the project inventories including checking for agreement for sale/BBAs and other transaction

documents, CRM system, bank account of the company and other documents with an objective to find out unauthorized sale of plots in the project by the promoter. Despite that no solution could be arrived at.

24. The Authority observes that it is high headedness on part of the respondent that despite booking of the subject unit way back in 2010, the respondent is now denying providing possession of the unit to the complainants. As per proceedings dated 21.04.2022, the respondent agrees to provide any alternative plot to the complainants and the complainants agreed to the same.
25. In view of submission of the parties, the respondent is directed to provide alternative plot/unit to the complainants at the same rate at which the unit was earlier purchased. The rationale behind same is simple, that the allottees booked the unit/villa in the project way back in 2010 and paid the amount then only, in a hope to get the possession.
26. Moreover, the interest (DPC) component is levied to balance the time-value component of the money however, the same is made applicable on the amount then paid by the allottee for the delay in handing over of the possession by the respondent and the same is balanced vide provision of section 2(za) of the Act. The complainants cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.

F.III VAT

27. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only and if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority.


G. Directions of the Authority


28. 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) of the Act:

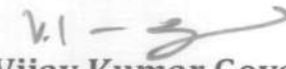
- i. The respondent is directed to offer possession of the alternative plot/villa/unit as agreed between the parties, at the same rate and specifications at which the unit was earlier purchased within two months from date of this order.
- ii. The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 03.08.2013 till the actual handing over of possession or offer of possession + 2 months whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.



- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. 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.
 - vi. The respondent shall not charge anything from the complainants which is not the part of the agreement.
29. Complaint stands disposed of.
30. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2023