



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

**Complaint no. :** 106 of 2022  
**First date of hearing:** 02.02.2022  
**Date of decision :** 28.02.2023

1. TD Arora  
2. Sunita Arora  
Both RR/o: -C-78, Sudhant lok-II, Sector 56, Gurugram,  
Haryana

**Complainants**

Versus

M/s Vatika Limited.  
**Regd. Office at:** 7<sup>th</sup> floor, Vatika Triangle, Mehrauli-  
Gurugram Rad, Shushant Lck-I, Gurgaon, Haryana.

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Sh. K.K. Kohli  
S/Sh. Venket Rao, Pankaj  
Chandola & Mayank Grover,

Advocate for the complainants  
Advocates for the respondent

**ORDER**

1. The present complaint dated 11.01.2022 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                | "Bellevue Residences" Sector 82, Gurugram   |
| 2.    | Project area                             | 393.358 acres   |
| 3.    | Nature of the project                    | Residential plotted colony  |
| 4.    | DTCP license no. and validity status     | 113 of 2008 dated 01.06.2008 valid up to 31.05.2018   |
| 5.    | RERA Registered/ not registered          | <b>Not registered</b>   |
| 6.    | Plot no.                                 | 48/240/Duplex/BR (Page 34 of complaint)   |
|       | New Villa vide addendum dated 29.10.2012 | 35/240/Duplex/ST.82D1-3 (page 25 of reply)  |
| 7.    | Area admeasuring                         | 2659 sq.ft.   |
|       | New area                                 | 3045 sq.ft. (as alleged by the respondent as page 4 of reply).  |
| 8.    | Date of execution of buyer's agreement   | 29.10.2010 (as per page 53 of complaint)  |
| 9.    | Possession clause                        | <b>11.1 Schedule for possession of the said independent dwelling unit</b><br><i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to <b>complete construction of the said unit within a period of three years from the date of execution of this Agreement</b> unless</i> |

|     |  |  |
|-----|--|--|
|     |  | 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 allottee(S) to pay in time the price of the said apartment unit along with all other charges and dues in accordance with the schedule of payments given in annexure III 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 the Agreement.<br><br><i>(Emphasis supplied)</i> |
| 10. | Due date of possession                         | 29.10.2013 (calculated as three years from the date of execution of buyer's agreement)   |
| 11. | Total consideration                            | Rs. 1,15,45,721/- as per SOA dated 19.07.2022 (page 30 of reply)   |
| 12. | Total amount paid by the complainants          | Rs. 86,55,828/- as per SOA dated 19.07.2022 (page 30 of reply)   |
| 13. | Reminder for intimation of possession          | 22.02.2022 (page 27 of reply)  |
| 14. | Occupation certificate /Completion certificate | Not received   |
| 15. | Offer of possession                            | Not offered  |

**B. Facts of the complaint**

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

- I. That in 2009, the respondent issued an advertisement announcing launch of residential project namely 'Bellevue Residences' having its project at Sector-83, Gurugram, Haryana and thereby invited applications from prospective buyers for the



purpose of allotment in the said project. Believing on representations and assurances of it, they signed an application form for plot under construction linked payment plan & paid an initial amount of Rs. 10,00,00/-. Subsequently, they were allotted plot bearing no. HSG/-008/plot no. 35/ST in the above said project.

- II. That the complainants contacted the respondent on several occasions on regular basis but it was never able to give any satisfactory response to them. They kept pursuing the matter with its representatives as to when would they deliver the project and why construction was going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of some dispute with the landowners and shortage of labour etc.
- III. That after losing all hope from the respondent and having shattered and scattered dreams of owning a unit and also losing considerable amount of money the complainants never received any letter of possession and till now the project is far from complete and habitable. Hence, they are constrained to approach the Authority for redressal of their grievance.
- IV. That the complainants set out the various deficiencies in services, unfair and restrictive trade practices adopted by the respondent in sale of units and the provisions allied to it. The modus operandi adopted by the respondent, from its point of view may be unique and innovative but from the consumers point of view, the



strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as there was breach of contract by not implementing the services/utilities as promised in the brochure or through not delivering the project in time. The respondent not only failed to adhere to the terms and conditions of buyer's agreement dated 29.10.2010 but also illegally extracted money from the complainants by stating false promises and statements.

- V. That herein that as per clause 11 (a) of the buyer's agreements, which was signed on 29.10.2010, details of which are attached, the possession of the said unit was supposed to be delivered within thirty-six months from the date of execution of buyers' agreement i.e., by 29.10.2013. It would be appreciated that the offer of possession of the unit has been made after a delay of more than seven years.
- VI. That it has been held by the Honourable NCDRC, New Delhi in various cases that offering of possession, conditional on the payment of charges which the buyer is not contractually bound to pay as per the buyer's agreement, cannot be considered to be a valid offer of possession. In any case if builder creates an agreement which is not ethically correct or entraps the complainants in feeble situation can't be held valid.
- VII. The grievance of the complainants relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the



services committed by the respondent in regard to the plot offered to them, including few demands which are not as per the buyers' agreement and hence are unjustified and illegal. The complainants have paid more than 90% of the total payment of Rs. 84,35,886/- as per details attached with the offer of possession.

VIII. The grievance of the complainants is that the respondent has in an unfair manner siphoned of funds meant for the project 'Vatika India Next' and utilized the same for respondent's own benefit for no cost. The respondent being builder and developer, whenever in need of funds from bankers or investors ordinarily has to pay heavy interest per annum. However, in the present scenario, the respondent utilized funds collected from the complainants for respondent's own good in other projects, being developed by the respondent, due to which the project is delayed for almost a period of more than five years and is not in a position to be completed soon.

IX. The complainants have paid the respondent a sum of Rs. 20,37,060/- as per the MOU dated 02.05.2013 furnished by the respondent to the complainants and the possession of flat was due on 20.06. 2016. Hence, there is a delay of more than five years.

X. That the cause of action accrued in favour of the complainants and against the respondent on the date when the respondents



advertised the said project, it again arose on diverse dates when the shop owners entered into their respective agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to that day, it continues to arise as the shop owners have not been delivered the shops and the infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day to day basis.

- XI. It is stated that the project of the respondent is registered with the Haryana Real Estate Regulatory Authority. Hence, the said complaint is amenable to the territorial jurisdiction of the Authority. The delay in compensation for the consideration paid by the complainants, for the unlawful loss and mental agony, falls within the pecuniary jurisdiction of this forum.

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

4. The complainants have sought following relief(s).
  - I. **Direct the respondent to handover the possession of the allotted unit.**
  - II. **Direct respondent to pay delay possession charges.**
  - III. **Direct the respondent party 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 contravention 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 the complainants, have failed to provide the correct facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains
- b) That the complainants have not approached the Authority with clean hands and suppressed relevant facts and the same should be dismissed with cost.
- c) That after having keen interest in the project constructed by the respondent, they decided to book one plot vide application form dated 06.01.2010, upon their own judgment and investigation and paid booking amount of Rs. 10,00,000/-.
- d) That on 29.10.2010, a buyer's agreement was executed between the parties and wherein plot bearing no. 8/240/duplex/BR admeasuring to 2659 sq.ft. was allotted to the complainants for an agreed total sale consideration of Rs. 1,03,65,125/-. It is submitted that the complainants were well aware and satisfied with every proposal deemed necessary for the development of the project in question.
- e) Further, on 29.10.2012, an addendum was executed between the parties, via which they were re-allotted a new villa bearing no. 35/240/duplex/82D1-3 in the project Signature 2 villa. It is pertinent to mention that the complainants are well aware of the re-





- allotment and accepted the same after being fully satisfied without any protest or demur.
- f) That the complainants requested the respondent for change of payment plan from special home loan linked to construction linked payment plan and the same was duly by the respondent as such the total sales consideration of the said villa was also changed from Rs. 1,003,65,125/- to Rs. 94,13,125/-.
- g) That the respondent has sent reminder of intimation of possession to the complainant's on 22.02.2022 for handing over the said unit and email for the same. The respondent has also mentioned in the intimation letter of possession that after completion of the construction of the said unit, the final area of said unit is 3045 sq.ft. due to that total the sale consideration of the property has increased from Rs. 94,13,125/- to RS. 1,15,45,721/-. Thus, now the complainants would pay of R+s. 43,93,168/- which are pending from dated 11.02.2022.
- h) That on date 22.02.2022, the complainants are not taking possession of the said unit. The respondent has received only partial amount of Rs. 86,55,828/- towards the agreed total sales consideration and still a substantial amount of money was due and payable on account of the complainants.
- i) That despite, being aware of the payment schedule the fact that timely payment being essence for completion of the project, the complainants failed to make the requisite payment of the instalment as and when demanded by it in compliance with the payment schedule and have merely paid an amount of Rs.86,5,828/- towards the total agreed sale consideration of Rs. 1,15,45,721/-.



- j) That the complaint is filed by the complainants on baseless and absurd grounds. It is clearly mentioned under clause 12 of the agreement that in case of any unforeseen circumstances faced by the respondent in mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- k) That as per the agreement executed for the said unit, the complainants were well aware that the respondent would not be liable for not fulfilling the obligations under the agreement if such obligations are delayed due to laying of GAIL pipelines, acquisition of sector road land parcels in the township and various orders passed by the NGT.
- l) That despite being aware of the payment schedule the complainants have failed to make the requisite payment of the instalment due towards the said villa. It is submitted that the complainants had paid an amount of Rs. 86,55,828/- towards the total sale consideration of the said unit and a huge amount of Rs. 47,38,478/- as on date is still pending.
- m) It is further submitted that as per the agreement so signed and acknowledged the respondent was not under any obligation to issue or send any reminder or demand notice calling upon the complainants to make the requisite payment and was duty bound to comply with the same.
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.

**F. Findings on the relief sought by the complainants.**

**F.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. 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."*

13. Clause 11.1 of the agreement to sell provides for handing over of possession and is reproduced below:

***11.1. Schedule for possession of the said independent dwelling unit***

*The Company based on its present plans and estimates and subject to all just exceptions, contemplate 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 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., 28.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
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., 10.70% 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 11.1 of the agreement executed between the parties on 29.10.2010, the possession of the subject unit was to be delivered within three years from the date of execution of agreement. Therefore, the due date of handing over possession was 29.10.2013. 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 29.10.2010 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.

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 @ 10.70% p.a. w.e.f. 29.10.2013 till the actual handing over of possession or offer of possession after obtaining occupation certificate + 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 to the complainants' interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 29.10.2013 till the actual handing over of possession or offer of possession + 2 months whichever is earlier.
- ii. The arrears of such interest accrued from 29.10.2013 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall






take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

23. Complaint stands disposed of.
24. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Ashok Sangwan)**

Member

Dated: 28.02.2023