

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

Complaint no.	:	1260 of 2022
Date of Filing Complaint:	:	03.06.2021
First date of hearing	:	11.08.2021
Date of decision	:	21.04.2023

1. Rakesh Singla 2. Rakhee Singla Both RR/o: 601, Spring Exotica 2, Vasna Bhayli Road, Near White House, Vasna, Vadodara, Gujarat-390007.	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 Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Nipun Rao (Advocate)	Complainants
S/Sh. Venket Rao & Pankaj Chandola(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 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 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.	Completion certificate	Not obtained
8.	Allotment letter in favour of original allottee	17.03.2010 (annexure C1, page 44 of complaint)
9.	Date of builder buyer agreement	25.05.2010 (page 49 of complaint)
10.	Subsequent allottee	14.01.2016 (page 61 of complaint)
11.	Allotment letter in favour of complainant	14.01.2016 (annexure C4, page 65 of complaint)
12.	Plot no.	21, Park B1, West Street, Sector 85B, Vatika India Next (page 44 of complaint)
13.	Addendum letter	30.09.2019 (annexure C5, page 66 of complaint)



14.	New unit	78b, Signature Avenue, Vatika India Next (annexure C5, page 66 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</i></p>

		<i>subject to the Allottee having complied with all the terms and conditions of this Agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the Promoter in this regard.</i>
16.	Due date of possession	25.05.2013
17.	Total sale consideration	Rs. 94,66,632/- as per SOA dated 07.07.2021 (annexure R 112, page 35 of reply)
18.	Paid up amount	Rs. 55,14,150/- as per SOA dated 07.07.2021 (annexure R 112, page 35 of reply)
19.	Intimation of possession	24.02.2020 (annexure R9, page 30 of reply)
20.	Notice for termination	11.03.2020, 05.11.2020 (annexure R 9, 10, page 33, page 81 of reply)
21.	Letter of cancellation	31.08.2021 (annexure C 15, page 87 of complaint)

B. Facts of the complaint

The complainants have made following submissions in the complaint:

- 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. Devender Bharadwaj & Mrs. Reeta Bhardwaj, shown interest and agreed to purchase a plot measuring 300 sq. yards in that project. They paid a sum Rs. 8,20,500/- as booking amount of the said plot to the respondent. The respondent issued a welcome letter in favour of the original allottees on 17.03.2010 and allotted plot bearing no. 21/Park B1

West Street/85, measuring 300 sq. yards, in block 85B, Sector 85B. A plot buyer agreement was executed on 25.05.2010 between them whereby they opted for development linked plan offered by developer. According to the plot buyer agreement, the respondent allotted, plot no 21/Park B1 West Street/85, measuring 300 sq. yards, in block 85B, Sector 85B for the total sale consideration was agreed as Rs **82,50,000/-**.

4. That, the original allottees transferred their right of purchase of the said plot to Mr. Harsh Dhingra and Smt. Amrita Dhingra. The respondent made endorsement to this effect on 21.06.2012 and the said plot was transferred in favor of erstwhile allottees in the record of respondent. The erstwhile allottees also paid Rs. 75,000/- as administrative charges for such transfer in their name. All the terms and conditions of plot buyer agreement dated 25.05.2010 remained same. Thereafter, the respondent issued a welcome letter dated **06.07.2012** in favor of erstwhile allottees. The erstwhile allottees transferred their right of purchase of the said plot by entering into agreement of sale dated **11.01.2016** with Mr. Rakesh Singala and Mrs. Rakhee Singla. The respondent made endorsement on the buyer's agreement to this effect on **14.01.2016** and the said plot was transferred in the name of present complainants in the record of respondent company. The complainants paid a sum of Rs. 3,00,000/- as administrative charges for such transfer in their name. All the terms and conditions of plot buyer agreement dated 25.05.2010 were remained same and on the same day, the respondent issued a welcome letter dated **14.01.2016** in favor of the complainants.

5. That as per clause 10 of the plot buyer agreement, the respondent has proposed to hand over the possession of the subject plot within 3 years from the date of execution of the builder buyer agreement i.e., on or before 25.05.2013 to the complainants but the respondent company has completely failed to perform its part of contractual obligation and has failed to provide possession of the plot.
6. The complainants in the complaint are subsequent allottees and have purchased the plot in question from the erstwhile allottees vide agreement to sell dated 11.01.2016 and an endorsement to that effect has been made by the respondent on the buyer's agreement on 14.01.2016. Therefore, the complainants are entitled to delayed possession charges under proviso to section 18(1) of the Act w.e.f. 14.01.2016 i.e., the date on which the complainants stepped into the shoes of the erstwhile allottees in terms of the order passed by the authority in complaint titled as ***Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)***.
7. That, the complainants visited the office of the respondent company asking the status of the construction of plot where the officials of the respondent have stated that the project "Vatika India Next" plotted colony where the plot no. 21/Park B1 West Street/85b, measuring 300 sq. yards, in Block- 85B, Sector- 85B allotted to the complainants has been changed due to certain unexplained reasons and, new plot in project "Signature Avenue" would be allotted to them. To this effect, an addendum letter dated 30.09.2019 allotting a new plot no. 78B/ Signature Avenue Vatika India Next Townsend Avenue/ 327.96 sq. yards, in lieu of

old plot, was given to them stating that all the term and condition of the plot buyer agreement dated 25.05.2010 to remain unaltered and should remain same and binding on the parties. Due to increase in the area of the plot by 27.96 sq. yards, the respondent has increased the sale price of the plot by **Rs. 12,34,301/-** beside the basic sale price of **Rs. 82,50,000/-**. Thus, the total price sale consideration of plot no. 78B in Signature Avenue has become **Rs. 94,84,301/-**.

8. That, whenever the complainants tried to contact the respondent, it used to give false assurances to them about the completion of the project and due date of possession. They regularly contacted the respondent through telephonically to get the final date of possession but the respondent with malafide intention were not giving the positive answer to their request.
9. That, vide letter dated 24.02.2020, the respondent issued intimation of possession to the complainants and raised demand of Rs. 50,12,158/- to be remitted by 07.03.2020. It is pertinent to mention here that the respondent has offered possession of the subject plot without obtaining completion certificate/part completion certificate in respect of the part of the project where the plot in question is situated. Therefore, the said offer of possession is not valid in the eyes of law.'
10. That, the complainants were ready and willing to make the balance payment but, as the respondent failed to provide the requisite documents, they chose not to make the requisite payment as the offer of possession was illegal. The complainants had also approached the bank for sanction of loan for the payment

- of the balance consideration but, it failed to provide the requisite and essential documents of the plot/project, consequently, the bank refused to provide the loan amount to them.
11. Thereafter, nationwide lockdown due to Covid-19 was imposed by the Government of India on 24.03.2020. Ministry of Housing and Urban Affairs has issued office memorandum dated **13.05.2020** considering the COVID period as force majeure to extend the registration of the projects. Thereafter, relaxation has been granted by this authority vide order dated 26.05.2020 to the promoters by allowing extension of registration. On similar lines, no adverse action shall be initiated against the allottee as well for remittance of outstanding dues. During the nationwide lockdown, most of the people of the nation were in a state of cash crunch and lost their jobs. Similar is the situation of the complainants herein, therefore, they are also entitled to get the benefit of 6 months period for remitting the outstanding dues.
12. That, out of nowhere the respondent send the termination letter dated 11.03.2020 to the complainants mentioning that the complainants have not made the requisite payment in reference to the letter dated 24.02.2020, and in the event if the complainants do not make the payment on or before 7 days of this letter then the respondent will cancel/terminate the plot in question with immediate effect. On dated 05.11.2020 the respondent again sent a termination letter on similar terms as that of letter dated 11.03.2020. The complainants have been relentlessly communicating through emails, letters and by visiting the office and insisting upon the respondent to take the balance

consideration and to execute and register the sale deed of the plot in their favour, but it has been avoiding the complainants' legitimate requests on one pretext or the other. The complainants' again send a reminder letter dated 17.08.2021 through email to execute and register the sale deed of the plot in favor of the complainants, but all went in vain.

13. That, on 31.08.2021 respondent send the letter for cancellation of builder buyer agreement cum refund letter to the complainants. It is pertinent to mention here that the respondent has failed to remit/refund the balance amount refundable under the said letter which further shows the malpractice on the part of the respondent. It is submitted that the respondent has unilaterally and arbitrarily cancelled the plot. The complainants were and are still ready and willing to purchase the said plot and never thought of cancellation of this plot. 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 plot intentionally and deliberately. The respondent has no legal right or title to cancel the plot without any reasonable and legal ground. That the respondent has made an invalid offer of possession as the respondent had not obtained CC/Part CC, other necessary documents of the project/plot till date, making the offer of possession invalid. That, further the complainants asked the reason for the cancellation of plot, but no reasonable answer was given by the respondent. Taking law in hands and unilaterally and arbitrarily manner, with an ill motive to usurp the money of the gullible customer, the respondent cancelled the booking. Thus, the

respondent has played an unfair trade practice and made deficiency in services harassing the complainants by cancelling the booking without any legal reasonable ground.

14. That, the complainants again send an email dated 02.09.2021 and further requesting the respondent to initiate the process of execution of sale deed and accept the balance payment but the respondent had not paid any heed to the legitimate request of the complainants. The complainants again contacted the respondent on 10th January 2022 with an intention to make the full payment and secure the possession of the plot, but the respondent denied accepting the payment. From the booking date till March 2022, the respondent has received an amount of Rs. 55,14,150/- time to time from the complainants out of total sale consideration of Rs. 94,84,301/- but no possession has been handed over of their plot.
15. The complainants paid the instalments on timely basis as and when was demanded by the respondent company without any delay with a hope to get timely delivery of possession of plot. The complainants opted the development linked plan as provided by the respondent company. And till date the complainants have made payment of Rs. 55,14,150/- as the same is evident of statement of account issued by the respondent on 30.09.2019 and cheque dated 04.03.2020.
16. That, the complainants requested the respondent many times to set aside this cancelation letter dated 31.08.2021 and restore the plot booking in the same name but the respondent company, 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 any third-party interest as the complainants had never backed out from the terms of the agreement dated 25.05.2010. It was the respondent, who has failed to perform its part of contract to deliver the possession of the said plot on time.

17. That, the respondent has failed to fulfil its obligations as under plot 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 their dominant position of the respondent in the market and such an act needs to be penalized against the respondent.
18. Thus, the respondent in the given circumstances, has voluntarily committed breached terms of the plot buyer agreement dated 25.05.2010 and have acted arbitrarily for cancelling the unit and forfeiting the amount paid by the complainants for which it should be even prosecuted criminally for cheating, fraud and criminal breach of trust.

C. Relief sought by the complainants:

- i. Direct the respondent to set aside the letter of cancellation dated 31.08.2021 in view of proviso to section 11(5) of the Act and restrain the respondent from creating any third-party interest in respect of the said plot, till final decision of the present complaint.
- ii. Quash the letter of offer of possession dated 24.02.2020 being invalid in the eyes of law.
- iii. Direct the respondent to handover the possession of the subject plot along with prescribed interest per annum from

- the promised date of delivery i.e., 25.05.2013 of the plot in question till handing over/actually delivery of the said plot.
- iv. Direct the respondent to register the conveyance deed, in accordance with section 17 of RERA, 2016.
 - v. Direct the respondent to charge interest on delay payments as per the prescribed rate of interest as per section 2(za) of the Act read with rule 15 of the rules.
 - vi. Direct the respondent not to charge anything from the complainants which are not part of the plot buyer agreement.

D. Reply by the respondent

19. That the complainants herein have failed to provide the correct/complete 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.
20. That the complainants have not approached the Authority with clean hands and has suppressed relevant facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- 21.
22. At the outset, in around July 2010, Mr. Devender Bharadwaj and Mrs. Reeta Bharadwaj (herein referred to as '**Original Allottee**') learned about the project launched by the respondent titled as '**Vatika India Next**' (herein referred to as '**Project**') situated at Sector 85 Gurgaon and approached the respondent repeatedly to know the details of the said project. The original allottee further inquired about the specification and veracity of the project and

- was satisfied with every proposal deemed necessary for the development of the project.
23. That after having keen interest in the project constructed by the respondent the original allottee desired to book a unit and applied for the same vide application form dated 18.12.2010 and paid an amount of Rs. 8,20,500/- for further registration. The original allottee herein were well aware of each and every terms of the application and agreed to sign without any protest any demur.
 24. That on 25.05.2010, a plot buyer agreement was executed between the original allottee and the respondent for the said plot bearing no. 21, Park B1 West Street, Block 85B3rd Court Street, for a total sale basic consideration of Rs. 82,50,000/- in the aforesaid project of the respondent. It is submitted that the original allottee were well aware of the terms and conditions of the project and agreed to sign upon the same upon their own judgment and investigation.
 25. It is a matter of fact, that time was essence in respect to the allottees obligation for making the respective payment and, as per the agreement so signed and acknowledged the allottee was bound to make the payment of instalment as and when demanded by the respondent. Despite being aware of the payment schedule the original allottee have failed to comply with the payment schedule even after being reminded for the same and, as a result the respondent herein was bound to issue another payment reminder dated 29.12.2010; calling upon the original allottees to pay the amount of Rs.8,20,500/- as due on commencement of construction work at the site.

26. It is submitted that since starting the respondent was committed to complete the construction of the project and has invested each and every amount so received towards the construction of the same. However, the original allottee herein have failed to comply with the payment schedule and considering the same the respondent issued a payment reminder dated 14.01.2011, for an amount of Rs. 8,20,500/- which was due upon the commencement of construction work at the site. On non-payment of the instalment the respondent herein was bound to issue another payment reminder calling upon the original allottee to make the earlier instalment as due and payable on 02.02.2011, towards the said plot.
27. It is pertinent to mention herein that the original allottee were aware that the payment was essence of time and agreed to pay the instalment as and when demanded by the respondent towards the said plot in question but, have failed to make the payment as and when demanded by the respondent.
28. Thereafter, on 21.06.2012, the original allottee due to non-payment of the instalment and other reasons best known to them decided to transferred and endorsed the said plot in favour of Mr. Harsh Dhingra and Mrs. Amrita Dhingra and, owing to the request made by the original allottee the respondent recorded the said transfer and accordingly issued a welcome letter on 06.07.2012.
29. It is to note, that the second allottee, were well aware of the exact status of the project and agreed to purchase the said plot upon their own judgment and investigation. However, the respondent herein is not aware of the claims and representations made by the

- original allottee to the second allottee and in the interest of justice should not be made liable for the same.
30. It is submitted that in around October 2016, the second allottee due the reasons best known to them assigned their rights upon the said plot in question in the name of Mr. Rakesh Singala and Mrs. Rakhee Singala. The complainants were aware of the exact status of the project and agreed to purchase the said plot upon their own judgment and investigation. Also, it is pertinent to note, that the complainants stepped in as an allottee based upon their understanding with the second allottee and the respondent herein were completely unaware of the same as to what promises or commitments were made or represented by the second allottee at the time of endorsement. Thereafter, on the request and transfer application made by the second allottee the respondent herein transferred the said plot in the name of the complainant.
31. It is submitted that the complaint are filed by 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 respondent in the mid-way of development of the subject project, then extension time would be granted for the completion of the project.
32. It is submitted that as per the agreement executed for the said plot, the complainant was well aware that respondent should not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under the category of force majeure.

33. It is submitted that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/ modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time. Subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the Township owing to the initiation of the GAIL corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /group housing/commercial/institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
34. That the respondent had planned the whole township prior to GAIL notification which came during the year 2009 and after this notification, Vatika Limited submitted a detailed representation to the Gail authorities and HUDA administration for re-routing of the GAIL pipeline since the company had received the licenses in the township and had sold the plots to third parties based on approved layout plan.

35. That Based on our representation, a letter no dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa- Gurugram -Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram.
36. A meeting was held between Gail and the administrator Huda on 07.07.2009 to discuss feasibility which was approved. GAIL requested the administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana.
37. Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approx... 90-100 plots effect due to this layout of GAIL pipeline.
38. Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, Vatika Limited applied for license pertaining to the said project. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide its letter dated 04.03.2011 that passes through the Project Land.
39. Although GAIL had reduced the ROU by 10 mtrs, but since they had denied the re-routing of the GAIL corridor, Vatika not only lost number of plots but had to re-design the Project Land that consumed money and time and hence the construction of project get delayed.

40. The Govt of Haryana had notified Gurgaon Manesar Urban complex 2021 vide their notification dated 05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. accordingly. The acquisition process of sector roads was initiated by the Govt. in the year 2010.
41. However, the acquisition of sector dividing road 84/85 was de-notified by the Govt in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr. roads have resulted in massive delay in laying of services, thus impacting development.
42. It is pertinent to bring into the knowledge of the Authority that the respondent herein had duly updated and intimated the complainants about the exact status of the project and respondent. Also, the complainants were aware that the project in question was obstructed due work been conducted by the HUDA at the project site.
43. That the respondent vide email dated 27.12.2018 and 18.04.2019, evidently intimated the complainants that the plot so allotted in the aforesaid project has to be re-allotted due to high-tension wire and road alignments by the HUDA and for the said reason the respondent were not able to deliver the possession of the said plot.

44. The respondent vide same email dated 27.12.2018, while intimating the complainants about the status of the project and their inability to handover the possession of the said plot, also offered the complainants either to opt for refund of the amount invested by the complainants or to take another unit being developed by the respondent in Sector 84, Gurgaon.
45. That vide email dated 13.08.2019, the respondent even shared the costing details of another Unit for which the complainants were willing and ready to take in place of the said plot. On 23.08.2019, on the request of the complainants the respondent herein re-allotted the said plot in question and offered a new unit bearing no. 78b admeasuring to 372.96 Sq. yards in the project titled as 'Signature Avenue Vatika India Next' situated at Sector 82, Gurgaon Haryana.
46. Thereafter, the complainants vide letter dated 30.09.2019, while admitting that HUDA's zone mapping clearance would take minimum 2-3 years for re-planning of this entire block and accepted the re-allotment being done by the respondent. It is a matter of fact, that the complainants since starting even at the time of the purchase of the earlier plot in the year 2016 and even at the time of hindrances in the construction in the year 2019, were well aware of the exact status of the project and owing to the same the respondent instead of cancelling the unit offered another unit to the complainants and the same was well accepted.
47. It is a matter of fact, that the complainants herein were aware of every terms of the said agreement and agreed to sign upon the same after being satisfied with each and every term without any

protest or demur. It is submitted that as per the agreement so signed and acknowledged the complainants knew that the possession of the said unit was subject to timely payment of amount due by the complainant.

48. It is a matter of fact, that the complainants after stepping in as the subsequent allottee have not paid even a single penny more than what was actually paid by the original and the second allottee. Since beginning the respondent had been running behind initially the original allottee then the second allottee and finally the complainants for the payment of instalment as and when due. It pertinent to mention that apart from the obstruction in between the construction non-payment of instalment as per the payment schedule had been a major reason for non-completion of the project.
49. That soon after the re-allotment the respondent herein vide intimation of possession dated 24.02.2022, intimated the complainants that the said Unit in question was completed and ready for construction and also requested the complainants to clear the balance outstanding of Rs. 50,12,158.42/- due towards the said unit. Despite, after offering the possession of the said unit and requesting to take possession after clearing the dues the complainants herein failed to come up and upon not receiving any response from the complainants the respondent herein was bound to issue a notice of termination of 11.03.2020.
50. Further, vide email dated 23.10.2020, the respondent intimated the complainants that they have obtained all the necessary approvals deemed necessary for offering possession and again

requested the complainant to take the possession of the said unit. The respondent also requested the complainants to clear the dues for avoiding cancellation but, the same was left ignored by the complainants.

51. That upon not receiving the said instalment the respondent instead of straight-away cancelling the unit called upon and requested to clear the outstanding due on account of the complainants vide notice of termination dated 05.11.2020. It is imperative to note, that since starting the respondent herein had been taking a customer centric approach towards the complainants and have provided more than sufficient time to the complainants for clearing the dues.
52. That almost after **16 (sixteen)** months from the date of offering possession the respondent herein was constrained to cancel the unit of the complainants on 31.08.2021. It is to note, that since starting the respondent herein had been running behind the complainants for the payment of the respective instalment and on account of non-payment the respondent herein had no option except to cancel the said unit.
53. That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Ld. Authority and in the interest of justice.
54. 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.

E. Jurisdiction of the authority

55. 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

56. 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

57. 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.

58. 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 31.08.2021

59. The complainants submitted that Mr. Devender Bhardwaj and Mrs. Reeta Bhardwaj, the original allottees booked a plot in the respondent's project namely "Vatika India Next" and who were allotted a plot bearing no. 21/Park B1 West Street/85B admeasuring 300 sq. yards on 17.03.2010. A buyer's agreement dated 25.05.2010 was executed between them and the respondent and the due date of possession being agreed upon as 25.05.2013. Thereafter, the original allottees transferred their rights in the said plot to Mr. Harsh Dhingra and Smt. Amrita Dhingra who became allottees vide endorsement dated 21.06.2012. Subsequently, those allottees transferred their right in the said plot by entering into agreement of sale dated 11.01.2016 with the complainants and an endorsement to that effect was made by the respondent on the buyer's agreement on 14.01.2016.

60. It is further submitted that the allotted unit was changed by the respondent and a new plot in another project bearing no. 78B/Signature Avenue Vatika India Next Townsend Avenue/327.96 sq. yard was allotted to them on the basis of addendum dated 30.09.2019. The total sale consideration of the plot was mentioned as Rs. 94,84,301/- against which the complainants had already paid Rs. 55,14,150/- as it is evident from the statement of account dated 07.07.2021. It is pleaded that an intimation w.r.t to possession of the allotted unit was given to the complainants vide letter dated 24.02.2020 besides raising demand for Rs. 50,12,158/-. Though, the complainants represented against illegal demand and offering possession without receipt of completion certificate but with no positive results leading to sending letters of termination on 11.03.2020, 05.11.2020 and finally cancelling the allotment of the unit. This action of respondent has been challenged being wrong illegal and against the provision of buyer's agreement and addendum to the same. Though, the respondent admitted the complainants to be allottees of the unit but justified its cancellation on the ground of non-payment of dues despite raising demands and as per buyer's agreement.
61. It is not disputed that the complainants had already paid more than 50% of the sale consideration of the allotted unit and were offered its possession on 24.02.2020 without receiving completion certificate and raising demand of the amount due. It is well settled that possession of the unit cannot be offered without receiving its completion certificate. Secondly, while cancelling the

allotment of the unit vide letter dated 31.08.2021, the respondent did not send any amount after deducting the earnest money even upto now. So, on both these counts, the action of respondent in offering possession of the allotted unit without completion certificate and its cancellation after deducting the earnest money and sending the due amount is not sustainable and is liable to set aside.

F.II Delay possession charges

62. In the present complaint, the complainant intends to continue with the project and is 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

63. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:.

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

"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 conditions of this Agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the Promoter in this regard."

64. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to in numerous terms and conditions, force majeure circumstances and in numerous terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement 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.
65. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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.

66. 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.
67. 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., 21.04.2023 is 8.70% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% p.a.
68. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid*

69. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
70. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of buyer's agreement executed between the parties on 25.05.2010, the possession of the booked unit was to be delivered within 48 months from the date of execution of this agreement. The due date of possession is calculated from the date of execution of buyer's agreement i.e., 25.05.2010 which comes out to be 25.05.2013. But before that due date the respondent send a notice for termination of the unit on 11.03.2020 & 05.11.2020 and ultimately leading to cancellation of that unit vide letter dated 31.08.2021. While, discussing above it has been held that cancellation of the allotment in favour of the complainant is illegal. It has also come on record that prior to receipt of occupation certificate though, an intimation of

possession of the allotted unit was given to the complainants but that was not valid one. The due date for completion of the project and offer of possession of the unit has already expired more than 9 years back. The complainants stepped into the shoes of the previous allottees on 14.01.2016 and the possession of the allotted unit has not been offered to them even upto now. So, they are entitled to delay possession charges @ 10.70% P.A. w.e.f. 14.01.2016 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

F.III Conveyance deed

71. With respect to the conveyance deed, the provision has been made under clause 16 of the buyer's agreement and the same is reproduced for ready reference.

16. Conveyance of title of the said plot

That the Promoter, its Associates Companies, its subsidiary Companies, its collaborators or Attorneys duly appointed in this regard, as the case may be, shall prepare and execute along with the Allottee a deed in the manner as may be prescribed by the Govt. of Haryana to convey title/rights in the said plot in favour of allottee but only after receiving full payment of the total price of the said plot and all securities including maintenance security deposits, interest, penal....."

72. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title

documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate

73. As OC of the unit has not been obtained, accordingly conveyance deed cannot be executed without unit come into existence for which conclusive proof of having obtained OC from the competent authority and filing of deed of declaration by the promoter before registering authority.

G. Directions of the authority

74. 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 offer the possession of the allotted unit within 30 days after obtaining OC from the concerned authority. The complainant 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.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e., 10.70 % per annum for every month of delay on the amount paid by the complainants from the date of endorsement i.e., 14.01.2016 till offer of possession + 2 months or actual handover of possession, whichever is earlier. The arrears of

- interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- iii. The arrears of interest accrued till date of possession of the alternative unit shall be adjusted against its sale consideration to be paid by the complainants.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period to the respondent.
 - 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 buyer's agreement.
75. Complaint stands disposed of.
76. File be consigned to registry.


(Sanjeev Kumar Arora)

Member


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.04.2023