

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**Date of decision: **14.07.2023**

Name of the Builder		Vatika Limited	
Project Name		Vatika India Next	
1.	CR/6280/2022	Esha Chugh V/s Vatika Limited & Anr.	Mr. Abhijeet Gupta Mr. Venket Rao
2.	CR/6281/2022	Yogesh Chugh V/s Vatika Limited & Anr.	Mr. Abhijeet Gupta Mr. Venket Rao

CORAM:	
Sh. Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Vatika India Next being developed by the same respondent/promoter i.e., Vatika Ltd. The terms and conditions of

the application form fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of assured return and the execution of the conveyance deeds.

3. The details of the complaints, reply status, unit no., date of booking, total sale consideration, amount paid up, and relief sought are given in the table below:

Project: Vatika One on One, Sector 16, Gurugram, HR-122012					
Clause 2 of Application form Assured return paid @120.28/- till completion of the building.					
1	2	3	4	5	6
Sr. no	Complaint no./title/reply status	Unit no. & area admeasuring	Booking date Date of	Total sale consideration/ Amount paid	Relief sought
	CR/6280/2022 Esha Chugh V/s Vatika Limited & Anr.	A9/31.	24.07.2021	TC: Rs. 44,89,550/- AP: Rs. 4,48,955/-	1. Refund
2.	CR/6281/2022 Yogesh Chugh V/s Vatika Limited & Anr.	A9/33.	24.07.2021	TC: Rs. 44,89,550/- AP: Rs. 4,48,955/-	1. Refund
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)					

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the application form executed between the parties inter se in respect of said unit for not handing over the possession by the due date, seeking award of delayed

possession charges, assured return and the execution of buyer's agreement.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR 6280/2022 titled as Esha Chugh Vs. M/s Vatika Limited & Anr.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges, assured return, execution of conveyance deeds.

A. Project and unit related details

8. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR 6280/2022 titled as Esha Chugh Vs. M/s Vatika Limited & Anr.

S. No.	Heads	Information
1.	Name and location of the project	"Vatika India Next-2 at Sector 88B, Gurugram, Haryana.
2.	Nature of the project	Plotted colony
3.	Area of the project	NA
4.	DTCP License	NA
5.	RERA registered/ not registered	Not registered
6.	Date of booking	24.07.2021 (Page 15 of complaint)
7.	Unit no.	A9/31 admeasuring 69.07 sq. Yds.
8.	Due date of possession	Cannot be ascertained
9.	Total consideration	Rs. 44,89,550/-
10.	Total amount paid by the complainants	Rs. 4,48,955/-
11.	Request for refund	15.04.2022 (page 27 of complaint)
12.	Date of offer of possession to the complainants	Not offered
13.	Occupation certificate	Not obtained

B. Facts of the complaint

9. That relying on the assurances, representations, and warranties of respondent no. 2, the complainant through the expression of interest for plot dated 24.07.2021 booked a plot no. A9/31 admeasuring 69.07sq. yards in the project of respondent no.1. The complainant paid Rs 4,48,955/-, Rs 2,00,00 and Rs 2,48,955 towards the expression of interest for the said unit.
10. That the complainant's dream of owning a plot has been shattered by the respondents in a most unlawful and illegal manner. It is anticipated that the project was launched with an intention to cheat and harm the innocent complainant.

11. That the respondents failed in complying with all their obligations, not only with respect to representations made to the complainant but also with respect to the concerned laws, rules and regulations thereunder. Till date the project has not been registered with the Authority.
12. That the complainant relying on the claims of respondent no. 2 that the project will be soon RERA registered, booked the said unit in the project of respondent no.1. Had the complainant known about the false claims and representation of respondents, the complainant would not have booked the said unit.
13. That the respondents continue to follow their utterly unlawful conduct. After having booked the unit, the respondent no. 2 informed the complainant that the size of the plot has been increased from 69.07 sq. yds. to 113 sq. yds., i.e., an increase of 64%, without due consent of the complainant. Such unilateral increase in the area of the plot creates huge difference in the total sales consideration of the plot. If the complainant would have such huge investment, she would have booked 2 plots/a bigger plot at the beginning only.
14. That moreover, the respondent no.1 is also demanding the 30% of the total amount sales consideration of the plot admeasuring 113 sq. yds. without executing any agreement for sale and without having obtained RERA registration.
15. That the complainant expressed her interest to buy the plot admeasuring 69.07 sq. yds. @Rs 65,000/- with total sales consideration of Rs 44,89,550/- and is unable to pay for such unilateral increase in the area and price of the unit. Therefore, the

complainant requested to refund the total amount paid by her vide letter dated 15.04.2022 to respondent no.1 which has been duly received by respondent no.1 on 19.04.2022.

16. That thereafter, a series of discussions were undergone between the complainant and the respondents, after which, respondents no. 1 and 2 noting their grave default and unlawful acts, agreed to refund the amount paid by the complainant. The respondent no.1 vide email dated 07.07.2022 sent some documents including undertaking to the complainant to be executed. These documents were utterly one-sided and loaded with terms heavily favouring the respondent no. 1 and against the complainant, looking at which, the complainant vide email dated 07.07.2022 asked the respondent no.1. to refund the payment upon which the documents could be executed.
17. That the undertaking contained many one-sided and arbitrary clauses. The clauses of the undertaking states that the undertaking shall be a full and final settlement and that the complainant cannot raise any claim with respect to the said unit in the future including but not limited to any interest on the amount paid by the complainant and no right of future litigation is left with the complainant. It is a settled matter of law that such agreements are void under section 28 of the Indian Contracts, Act, 1962; mandatorily requiring the complainant to agree to such one-sided terms shows the highly unlawful and malafide conduct of the respondent no. 1. Moreover, the letter subject "cancellation of property __ in ___" also gave an undertaking for acceptance for

deduction of non-refundable amounts, which was never agreed between the parties.

18. It is pertinent to mention that the intentions of respondents have been malafide since the beginning. Firstly, without the RERA registration of the project the respondents represented the false status of project registration. Respondent no. 2 guaranteed the complainant that the registration is in process and the same shall be completed in a short span of time, thus, fraudulently causing the complainant to book a unit in the project of the respondent no.1. respondent no. 2 secondly, unilaterally, without taking any consent or intimation, increased the area of the plot and illegally demanded the 30% of the total sales consideration of the unit admeasuring 113 sq. yds. (after increasing the area of the unit by 64%) from the complainant. Thirdly, the respondent no. 1 on the request of the complainant to refund the amount paid by the complainant, sent a one-sided and arbitrary undertaking to be signed by the complainant as a pre-condition of refund disentitling the complainant to raise any further claim including interest on the amount and further litigation with respect to he said unit. Through the commission of these acts, the respondents have violated several provisions of the Act.
19. That the respondents have forced the complainants to suffer grave, severe and immense mental and financial harassment with no fault on their part. The complainant wrongly imposed her trust and investment after relying on respondents' false and fake promises, which lured them to book the said unit in the aforesaid project of the

respondent no. 1. The respondents have trapped the complainants in a vicious circle of mental, physical and financial agony, trauma and harassment.

20. That the claim of refund of the deposited amounts along with interest is not barred, in any manner whatsoever. That the non-allotment/non-execution of builder buyer agreement does not bar the present claim of refund, as has been held in a catena of judgments. The respondent instead of fulfilling its obligations has malafidely issued a unilateral cancellation letter dated 07.09.2022 wherein the date of expression of interest has been wrongly noted as 13.05.2022, when in fact the actual date of expression of interest is 24.07.2021. That it is undoubtedly clear that this unilateral cancellation letter is issued by the respondent after complainant has raised the demand for a refund.
21. That the complainant strongly opines that the method chosen by the respondents in duping the complainant amounts to unfair trade practices for which the respondents are liable to be punished in accordance with the law. The respondent has utterly failed to fulfill his obligation which has caused mental agony, harassment, and huge losses to the complainants, hence the present complaint.

C. Relief sought by the complainants:

22. The complainant has sought following relief(s):
- i. Direct the respondent no. 1 to refund the total amount paid by the complainant and interest @ MCLR + 2% on the total amount paid by the complainant from the respective date of payment.

- ii. to set aside the unilateral and one-sided cancellation letter issued by the respondent no. 1 and refund the amount paid by the complainant.
23. Though, the respondent put in appearance through its counsel Sh. Venket Rao and submitted that both the parties have reached an amicable solution and respondent is ready to refund the full amount received by it from the complainant alongwith interest at the prescribed rate i.e., 10.70% per annum from the date of payment of each deposit and till its realization but till now the respondent neither file any settlement deed nor any reply of the complaint. So, in such a situation the authority was left with no alternative but to struck off the defence of the respondent for not filing the reply.
24. 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 submission made by the parties.

D. Jurisdiction of the authority.

25. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

26. 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

27. 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:

13. 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.

28. So, in view of the provisions of the Act of 2016 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 complainant at a later stage.
29. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters**

and Developers Private Limited Vs State of U.P. and Ors.” 2021-2022(1)RCR(C), 357 and followed in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016

30. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainants

E.I Direct the respondent to refund of the entire amount paid by the complainants to the respondent for the said unit.

31. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on

failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

32. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021.
33. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022, it was observed:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for

interest for the period of delay till handing over possession at the rate prescribed"

34. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
35. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
36. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid along with interest. However, section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided 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

37. 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.
38. 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., **14.07.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
39. The authority hereby directs the promoter to return the amount received by the complainant with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount paid on account of assured return may adjusted from the refundable amount.

G. Directions of the authority.

- i. The respondent/promoter is directed to refund the entire amount paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real

Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount. The amount paid on account of assured return may adjusted from the refundable amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
40. Complaints stand disposed of.
41. File be consigned to registry.



(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram
14.07.2023



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GURUGRAM