

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

Complaint no. : 3022 of 2021  
First date of hearing : 29.09.2021  
Date of decision : 26.09.2023

Raj Kumar Maggon  
R/o: D-82, Westend Heights, DLF Phase-V,  
Sector-53, Gurugram, Haryana-122006.

**Complainant**

Versus

M/s Vatika Ltd.  
**Regd. Address:** Vatika triangle, 4<sup>th</sup> floor, Sushant Lok,  
Phase 1, Block A, M.G. Road, Gurugram,  
Haryana-122002.

**Also at:** Unit-A-002, ground floor, Block-A  
Vatika INXT City Center, Sector-83, Gurugram,  
Haryana-122012.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Shri Raj Kumar Maggon  
Shri Sumesh Malhotra  
Shri Venket Rao

Complainant in person  
Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 12.08.2021 has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

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

S.No.	Heads	Information
1.	Project name and location	"Signature Villa 2, Vatika India Next", Sector 82, 82A, 83, 84 and 85, Gurugram, Haryana
2.	Date of builder buyer agreement executed between Vishwas Kohli (original allottee) and the respondent in respect of unit no. 27/360/Simplex/BR in the project 'Bellevue Residences'	22.12.2009 [Page 36 of complaint]
3.	Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement executed by original allottee on (In respect of unit no. 44/360/Simplex/ST.82D1-7)	25.05.2012 [Page 81 of complaint]
4.	Complainant is subsequent allottee and the builder buyer agreement	22.08.2012

	dated 22.12.2009 was endorsed in favour of the complainant on	[Page 82 and 87 of complaint]
5.	Welcome letter issued in favour of the complainant (In respect of unit no. 44/360/Simplex/ST.82D1-7)	07.12.2012 [Page 125 of complaint]
6.	Letter by respondent calling upon the complainant to carry out re-allotment	15.12.2017 [Page 129 of complaint]
7.	Villa/Unit no. and size	27/360/Simplex/BR on 360 sq. yds. having built-up area of 1920 sq. ft. [Page 39 of complaint]
	Change in unit	44/360/Simplex/ST.82D1-7/ Signature 2 Villa on 360 sq. yds. having built-up area of 1920 sq. ft. [Page 81 of complaint]
8.	Possession clause as per builder buyer agreement dated 22.12.2009	<b>11.1. Schedule for Possession of the Unit</b> The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/ said Unit within a period of <b>three from the date of execution of this Agreement.</b> However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and Clause (38) or due to



		failure of Applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by the terms or conditions of this Agreement.  [Page 43 of complaint]
9.	Due date of possession	22.12.2012
10.	Total consideration	₹ 1,27,47,924/- [As per statement of account dated 12.07.2022 at page 37 of reply]
11.	Amount paid by the complainant	₹ 41,17,256/- [as per statement of account dated 12.07.2022 at page 37 of reply]
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant made the following submissions in the complaint:

- i. That given the representations and warranties of the representative of the respondent company and also considering the reputation of Vatika, the complainant agreed to book a residential independent villa plot, admeasuring 360 sq. yards and having a built up area of 1920 sq. ft. in the project being developed

- by the respondent company in the name and style of "Bellevue Residencies" (now known as Signature Villas 2) in Vatika India Next, a residential township in Sectors - 82, 82A, 83, 84 & 85 of Gurugram (Haryana). The said residential independent villa plot was to consist of duplex floors having 1920 sq. ft. of built-up area and preferential location, charges by the respondent.
- ii. That the representatives of the respondent, in order to sell the villa unit, introduced one Mr. Vishwas Kohli. At this stage, it came to be known to the complainant that Mr. Vishwas Kohli was the original allottee of a unit bearing no. HSG-008/Plot no. 44/ ST. 82D1-7/360/Simplex/82D1/Vatika India Next, Signature Villa 2 admeasuring 360 sq. yards with built up area 1920 sq. ft. as per the buyer agreement dated 22.12.2009 who wanted to exit the project. Seeing the complainant as a gullible customer with a considerable corpus of lifetime savings, the representatives of the respondent lured the complainant to book the villa unit from the respondent company.
- iii. That the transfer was arranged and fixed by the respondent company to facilitate sale of the villa unit to the complainant and the complainant was made to sign numerous one-sided standard form agreements provided by the respondent company which on the face of it, contained many arbitrary and unfair charges. It also

became apparent while executing the transfer documents provided by the respondent company that the original allottee had been defaulting in making payments and as such the respondent company had always been trying to get rid of the original allottee and substitute him with an allottee possessing better sense of fiscal honesty and responsibility. There was pending interest on delay payable by the original allottee, but complainant was forced to bear the same as well as transfer charges. The complainant paid the transfer charges including taxes amounting to ₹ 1,01,124/- and the interest on delay payments by the original allottee amounting to ₹ 1,75,132/-.

- iv. That the complainant being an accommodating and sincere person made all payments requested by the respondent company and executed all the necessary transfer documents provided by the respondent company and given the same, the villa unit was purchased/booked by the complainant. In the manner above, buyer's agreement dated 22.12.2009 including all its addendums and annexures (hereinafter "BBA") executed between the original allottee and the respondent company was endorsed in the name of the complainant, all the payment receipts and as such the complainant was possessed with all the rights of the original allottee by stepping into the shoes of the original allottee.

- v. That on a perusal of the BBA, it became apparent that the respondent company had re-allotted the villa unit instead of an older villa unit bearing no.27 /360/Simplex/BR admeasuring 360 sq. yards having built up area of 1920 sq. ft. vide addendum to the BBA dated 25.05.2012. This was highly suspicious, and no reason was given to the complainant for the same by the respondent. Accordingly, the complainant was allotted unit no. HSG-008/Plot No. 44/ST.82D1-7/360/Simplex/82D1/ Vatika India Next, Signature Villa 2, Vatika India Next, Gurgaon - 122004, admeasuring 360 sq. yards with built area 1920 square feet in the project and stood transferred in the name of the complainant by the respondent company vide welcome letter dated 07.12.2012 issued by respondent to complainant.
- vi. That pertinently, the terms of the BBA, made applicable upon the complainant and the respondent, specifically as per clause 11.1, the possession of the unit villa was supposed to be delivered within 3 years from the date of execution of the BBA i.e. by 22.12.2012. Further, even the addendum letter dated 25.05.2012, except for effecting change in the unit no. due to the re-allotment, did not affect other terms and conditions of the BBA. Regardless, certain terms and conditions of the BBA were not only unfair and arbitrary, but the one-sided standard form BBA drafted and

provided by the respondent is replete with unfair and usurious terms and clauses lopsidedly in favour of the respondent. As the copy of the BBA was only shared with the complainant after execution of the transfer docket provided by the respondent and payments thereof made by the complainant, therefore complainant has no knowledge at the time of purchase and re-allotment in terms of the usurious and one-sided terms of the BBA.

- vii. That no possession date is in sight as the possession of the Villa Unit should have been handed over by December 2012, however, on the said date, it is nowhere near completion and the construction at the project site was yet to pick pace. Over the years, the complainant has attempted many times to enquire about the villa unit but have always been ignored or given a standard evasive reply. The complainant was told to wait and were assured of possession, along with handsome compensation.
- viii. That thereafter, the complainant was shocked to receive a re-allotment letter dated 15.12.2017 whimsically citing "certain fine tunings & amendments in the master layout necessitated due to architectural and other related considerations" and arbitrarily initiating a re-allotment process.
- ix. That the complainant had paid exorbitant and arbitrary amounts for the unit no. HSG-008/Plot No. 44/ST.82D1-



7/360/Simplex/82D1/ Vatika India Next, Signature Villa 2, admeasuring 360 sq. yards with built area 1920 square feet and also paid preferential location charges for the same, does not accept such arbitrary terms and seeks possession along with interest for the delay.

- x. That the respondent continues to pressurise the complainant to accept the re-allotment, but the complainant seeks possession of the villa unit and the applicable interest on the time value of the money paid to the respondent time to time in terms of the imposed construction linked plan as well as compensation. The complainant has even visited site of the project and was astonished to see that the construction of the project was not only delayed but the respondent had no execution of work at the project under process.
- xi. That the complainant approached the respondent with his grievance. However, was assured that the respondent shall adequately compensate them for the period of delay in possession at the time of possession and the respondent is making every endeavour to complete the project. Given the delay, the complainant had to make alternate arrangements for accommodation. The complainant has been requesting the respondent company for grant of possession along with

compensation and interest in terms of the Act and rules made thereunder.

- xii. That it has now come to the knowledge of the complainant, the respondent, is deliberately avoiding to handover possession of the villa plots, despite the complainant having been more than eager to pay the balance payment on possession in terms of the payment plan and take possession of the villa unit. It has been learnt that the respondent company is selling the same plot to new customers at higher rates of the present times, in complete disregard of all assurances, warranties, representations and promises made to the complainant as well as the executed BBA. In furtherance of its illegal design and mala-fide intent, the respondent has formed a new brochure for attracting new customers for project now branded as Signature Villas (formerly Bellevue Residencies) and is using advertisements for the same.
- xiii. That there being a delay of over 9 years in offering possession and thereafter, having taken no steps to handover possession despite having received all payments due towards the unit in question in terms of the payment plan and the complainant has been paying rent, the complainant has come before the authority for seeking following relief.

**C. Relief sought by the complainant**

4. The complainant has filed the present complaint for seeking following relief:
- i. Direct the respondent to pay interest at the prescribed rate on account of delay in handing over the possession till realisation of the same as well as handover of the possession in view of violation of section 18 of the Act.
  - ii. Direct the respondent to handover possession of the villa unit no. HSG-008/Plot No. 44/ST.82D1-7/360/Simplex/82D1/ Vatika India Next, Signature Villa 2, Vatika India Next, Gurgaon - 122004, admeasuring 360 sq. yards with built area 1920 square feet as per the BBA dated 22.12.2009 in its project Signature Villa 2 (formerly known as Bellevue Residencies), Sector 82, Gurugram, without forcing the complainant to sign any indemnity or undertaking or opt for some other project.
  - iii. Direct the respondent to pay an amount of ₹ 1,50,000/- as litigation expenses.
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 has contested the present complaint on the following grounds:

- i. That in the year 2008, Mr. Vishwas Kohli (herein referred to as 'Erstwhile Allottee'), learned about the project launched by the respondent titled as 'Bellevue Residences - India Next City' situated at Sector 82, Gurgaon and approached the respondent repeatedly to know the details of the said project. After having keen interest in the project constructed by the respondent, the erstwhile allottee booked a villa on a plot bearing admeasuring 360 sq. yds. having super built-up area of 1920 sq. ft. in the said project on 22.04.2008.
- ii. That as per the said booking application form dated 22.04.2008, the erstwhile allottee was under an obligation to pay the instalment as demanded on stipulated in regard to the aforesaid booking. On 22.12.2009, a BBA was executed between the original allottee and the respondent wherein unit no. 27/360/Simplex/BR admeasuring to 360 sq. yd. for a total sale consideration of ₹ 1,27,48,000/-. In spite being aware of the payment plan and even after agreeing to make the instalment payment, the erstwhile allottee failed to pay the instalment amount as and when demanded by the respondent in compliance with the payment

plan. The respondent being a customer centric company, issued a credit note of an amount of ₹ 8,03,000/- against the discount offered to the erstwhile allottee on 02.06.2009. And, upon not receiving the said payment, the respondent was bound to issue various payment reminder dated 28.07.2008, 18.05.2009, 31.12.2010 and 25.01.2011 calling upon the erstwhile allottee to make the instalment payment. The respondent on 14.02.2011 was again bound to issue a notice of penal interest and final grant of time to erstwhile allottee for not making the payments as per agreed terms. However, the erstwhile allottee again ignore the same, the respondent was constrained to issue termination notice dated 04.03.2011 calling upon the erstwhile allottee to clear the dues pending before 11.03.2011 failing which the respondent shall terminate the unit allotted to him.

- iii. That further on 25.05.2012, an addendum was executed between the complainant and the respondent for the said villa and re-allotted a new villa bearing no. 44/360/Simplex/ST.82D1-7 in the project Signature Villa 2.
- iv. That on filing of a joint application for assignment of the allotment by the erstwhile allottee and the complainant, the allotment was endorsed in the name of the complainant on 22.08.2012. The complainant had approached the erstwhile allottee and later on the

company after satisfying himself in respect of the status of the project and the complainant agreed to abide by the terms of the BBA dated 22.12.2009. The complainant was well aware of the exact status of the project and agreed to purchase the said villa upon his own judgement and investigation.

- v. That the delay in the project is due to reasons beyond the control of the respondent company. Clause 12 of the BBA provides 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 completion of the project and had also agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to act or notice or notification issued by the Government or Public or Competent Authority. Further, as per clause 31 of the BBA, the complainant was well aware that the respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under 'Force Majeure'.
- vi. That since the starting the respondent was committed to complete the project and has invested each and every amount so received from the complainant towards the agreed total sale consideration. The project was hindered due to reasons beyond the control of the respondent:

- *Laying of GAIL Pipe Line and loss of land in ROU Alignment of GAIL corridor-* That the respondent has planned the whole township prior to the GAIL notification which came during the year 2009 and after this the respondent gave detailed representation to the GAIL authorities and HUDA administration for re-routing the GAIL pipeline since the respondent has received license in the township and had sold villas to third parties based on approved lay-out plans. Meanwhile, during the pendency of granting 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. Although GAIL had reduced the ROU by 10 mtrs., but since they had denied the re-routing of the GAIL corridor, the respondent not only lost the number of plots & villas but had to re-design the project land that consumed the money and time. Hence, the construction of the project got delayed.
- *Acquisition of sector road land parcels in the township-* The delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy acquisition of 24 mtrs. Road has resulted in massive delay in laying of services, thus impacting development.

- *Acquisition of sector roads by government notifications and orders-* Since, the 24m road / sectoral plan roads function as sub-arterial roads of the development and also serves as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e., water supply, sewerages, drainage, electricity etc., it is important to have the same in the township. Two sector roads are falling in the project land and due to non-acquisition of the same, the respondent has totally lost the road connectivity and supply of construction materials etc. to the project land has become a big challenge.
- vii. That as per clause 12.5 of the BBA, in case the respondent is not in position to deliver or handover the possession of the project then in that case the liability of the respondent shall be limited and restricted to the refund of the amount paid by the complainant along with simple interest of 6%. That the construction of the villa in question was interrupted due to reasons which were beyond the control of the respondent as stated above. As on 23.08.2012, an amount of Rs.41,17,256/- has been paid by the complainant against the total sale consideration of the villa and is evident from the endorsement that the complainant has not paid an amount of Rs.86,30,668/- which is still pending.



- viii. That the respondent was committed to complete the project and has invested each and every amount towards the construction of the same. However, due to the reasons beyond the control of the respondent as stated above, it has become impossible for the respondent to fulfil the contractual obligations as promised under the agreement and the said agreement has become void in nature. The agreement between the complainant and the respondent has been frustrated as it is impossible for the respondent to provide the possession of the subject villa. As per doctrine of frustration as enshrined under section 56 of the Act, where the performance of the contract has been frustrated and the performance of it has become impossible to perform due to any unavoidable reason or condition, the remedy is compensation in case of breach of contract. The respondent herein has already offered to provide refund of the amount paid along with rate of interest.
7. Copies of all the relevant documents have been filed and placed on 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 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**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

10. Section 11(4)(a) of the Act, 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) The promoter shall-

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.I Possession and delay possession charges**

12. **Reliefs sought by the complainant:** The below-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected:

- i. Direct the respondent to pay interest at the prescribed rate on account of delay in handing over the possession till realisation of the same as well as handover of the possession in view of violation of section 18 of the Act.
- ii. Direct the respondent to handover possession of the villa unit no. HSG-008/Plot No. 44/ST.82D1-7/360/Simplex/82D1/ Vatika India Next, Signature Villa 2, Vatika India Next, Gurgaon - 122004, admeasuring 360 sq. yards with built area 1920 square feet as per the BBA dated 22.12.2009 in its project Signature Villa 2 (formerly known as Bellevue Residencies), Sector 82, Gurugram, without forcing the complainant to sign any indemnity or undertaking or opt for some other project.

13. 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."*

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

**"11.1. Schedule for Possession of the said Unit**

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

*(Emphasis supplied)*

15. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the builder buyer agreement. In the present complaint, the builder buyer agreement was

executed on 22.12.2009. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 22.12.2012.

16. The authority observes that the aforesaid builder buyer agreement dated 22.12.2009 was executed between Vishwas Kohli (original allottee) and the respondent in respect of unit bearing no. 27/360/Simplex/BR in the project namely 'Bellevue Residences'. Thereafter, an Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement was executed by the original allottee on 25.05.2012 in respect of Plot no. 44/360/Simplex/ST.82D1-7/ Signature 2 Villa on 360 sq. yds. having built-up area of 1920 sq. ft. The complainant is subsequent allottee and the builder buyer agreement dated 22.12.2009 was endorsed in his favour on 22.08.2012. Subsequent thereto, the respondent had issued allotment letter in favour of the complainant on 07.12.2012. The complainant has filed the present complaint on 12.08.2021 seeking possession of villa/unit bearing no. 44/360/Simplex/ST.82D1-7/ Signature 2 Villa, Vatika India Next and delay possession charges as per proviso to section 18 (1) of the Act.

17. The case of the respondent is that due to change in the alignment of the GAIL pipeline, the villa/unit in question is not available and in view of the same an offer for refund to the complainant was made on 08.12.2021. However, the counsel for the complainant stated that the

letter dated 08.12.2021 was never received by him and it has come to his notice when the reply was filed by the respondent. Thus, vide order dated 28.10.2022, the respondent was directed to submit the detailed copies of plan at the time of allotment and subsequent changes, variations which have led to the omission of the plot along with detailed justification within 2 weeks.

18. However, the respondent failed to place on record the aforesaid requisite documents and thus, vide order dated 13.01.2023, the respondent was again directed to file the above information within 15 days along with a cost of Rs.10,000/- to be paid to the complainant. Also, the counsel for the complainant stated that the plot alleged to be affected by GAIL pipeline is in fact available at the site and being offered for sale through agents of the respondent at much higher price instead of offering the same to the complainant-allottee who is waiting for possession since last 10 years. The counsel for the complainant requested for deputation of local commission to visit the site to check and ascertain the availability of the plot at site as being shown in photographs submitted during proceedings. In view of above, vide order dated 13.01.2023, the authority ordered appointment of Local Commission to ascertain the same.
19. The Local Commission submitted its report on 09.02.2023 and the relevant findings are reproduced as under:

**"Conclusion:**

**A.** The present site conditions clearly show that the said plot (Plot no. 44, D1-7, Signature Villa 2, Vatika India Next, Sector 82) has not been clearly demarked at the site. The vacant space is available on ground for development of captioned pocket/plot and **the captioned unit area has not been affected by any GAIL pipeline.** Till now, the captioned pocket area has not been developed by the respondent-promoter and some unauthorised JHUGGEES/Labour Huts have been erected in that pocket area. No development work i.e., road work/water supply/sewerage/stormwater/electricity/street lights etc. has been started/carried out by the respondent promoter in captioned pocket area. Also, no construction activity has been started by the respondent-promoter on captioned plot/site till now.

**B.** The photographs captured from the captioned site are attached herewith which clearly shows the present position/ condition of the captioned site. (Attached as Annexed "E")"

20. Thereafter, during proceedings on 14.03.2023, the counsel for the complainant stated that the subject unit is in existence and is being sold through sister concern of the respondent. The complainant was directed to file an application within 3 days in the registry of the authority and the respondent was directed to file response to the said application. Thereafter in view of the application dated 14.03.2023 moved by the complainant, the authority vide order dated 09.05.2023 directed the respondent to maintain status quo on the unit of the complainant till the next date of hearing.
21. The respondent vide application dated 17.07.2023 submitted that earlier the respondent company has submitted that the plot in question is not available due to some reasons beyond the control of the company. Furthermore, it was stated that the respondent company is unable to handover the possession of the subject unit for the reasons also

mentioned in the report of Local commission. It was further stated that *"However, considering the interest of Complainant-Allottee, the Respondent, being a customer centric company, has decided and willing to provide the Complainant the interest on the paid amount at prevailing RERA rate and to offer an alternate unit of choice of the Complainant at prevailing market rates. The amount paid and accrued interest on the paid amount shall be adjusted against the alternate unit by the Respondent Company immediately."*

22. Vide order dated 01.08.2023, it was recorded by the authority as under:

*"The counsel for the respondent states that the unit is not available at present because there is encroachment by some persons and some Jhuggis/labour huts have been erected in that pocket area and hence no development has been made by the respondent. The respondent could not allot the unit to the complainant. He further states that an alternate unit may be given to the complainant. The counsel for the complainant states that he is not interested to allot any alternate unit and he wants the possession of the unit booked."*

23. On consideration of the above-mentioned facts, the authority observes that the respondent vide written reply filed on 21.07.2022, has contended that the subject villa/unit is not available due to GAIL Pipeline and reasons beyond the control of the respondent. Vide orders dated 28.10.2022 and 13.01.2023, the respondent was directed to place on record layout plan at the time of allotment and subsequent changes and variations leading to omission of subject villa plot/unit. However, in utter disregard to the directions of the authority, the respondent failed to place the requisite documents on the record. Also, vide order



dated 13.01.2023, a Local Commission was appointed to ascertain the status of the subject unit and as per the report of the Local commission, the pocket of land where the subject unit is situated has not been developed and the said unit is not affected by any GAIL pipeline. However, the said pocket has some unauthorised 'Jhuggies/labor huts'.

24. It is to be noted that on one hand the respondent is contending that the subject villa/plot/unit has ceased to exist due to GAIL Pipeline and reasons beyond the control of the respondent, thus in view of the same, the possession has not been handed over to the complainant and on the other hand, the respondent has submitted that the subject plot has not been handed over and possession has been delayed due to unauthorised encroachment on the said land. The respondent cannot blow hot and cold at the same time.
25. As far as the contention of the respondent is concerned that possession could not be handed over due to unauthorized encroachment, this contention is not tenable as the same is not corroborative by the circumstances narrated herein above and the documents available on record. If that would have been the position and the factual matrix, then the factum of such encroachment should have been disclosed by the respondent while filing of reply or during the pendency of the complaint. Further, this fact of unauthorized jhuggies was brought before the authority through the report of local commission and only

thereafter, the respondent has admitted the same vide application dated 17.07.2023. So, the plea of the respondent w.r.t. not developing the subject unit due to unauthorized jhuggees is nothing but ploy to defeat the legitimate claim of the complainant-allottee and deprived him of his valuable rights in that property. It is also pertinent to note that the respondent has never issued any cancellation letter against the subject unit nor has ever communicated such difficulties to the complainant. Further, authority observes that the respondent has neither availed any appropriate legal measure to remove such encroachment nor has approach competent court/forum/authority for redressal of their grievance against the encroachment. In view of the above, the respondent is obligated to remove the encroachment on the subject unit/project and develop the same in terms of the said builder buyer agreement and handover the possession of the subject unit to the complainant after receiving occupation certificate or completion certificate from the competent authority.

26. **Admissibility 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.*

27. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
28. 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., 26.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
29. The definition of term 'interest' as defined under section 2(z) 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;"*

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.

31. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, 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 builder buyer agreement. The builder buyer agreement dated 22.12.2009 was executed between Vishwas Kohli (original allottee) and the respondent in respect of unit bearing no. 27/360/Simplex/BR in the project namely 'Bellevue Residences'. Thereafter, an Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement was executed by the original allottee on 25.05.2012 in respect of Plot no. 44/360/Simplex/ST.82D1-7/ Signature 2 Villa on 360 sq. yds. having built-up area of 1920 sq. ft. i.e, the unit in question. The complainant is subsequent allottee and the

builder buyer agreement dated 22.12.2009 was endorsed in his favour on 22.08.2012. By virtue of clause 11.1 of the builder buyer agreement executed between the parties on 22.12.2009, the possession of the said unit was to be delivered within a period of 3 years from the date of execution of the builder buyer agreement. Therefore, the due date of handing over possession comes out to be 22.12.2012. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part 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 complainant as per the terms and conditions of the builder buyer agreement dated 22.12.2009 executed between the parties. Further no OC/part OC or CC/part CC has been granted in respect of 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.

32. The complainant is also seeking relief of possession. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. The respondent is

directed to offer the possession of the allotted unit within compliance of section 11(4)(b) of the Act after obtaining the completion certificate or occupation certificate from the relevant competent authority. Further, the complainant is also directed to take the possession of the allotted unit in compliance of obligation conferred upon him under section 19(10) of Act within two months of the occupation certificate after payment of such outstanding dues.

33. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. due date of possession i.e., 22.12.2012 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.II Litigation cost**

**Relief sought by the complainant:** Direct the respondent to pay an amount of ₹ 1,50,000/- as litigation expenses.

34. The complainant is also seeking relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and

section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the authority**

35. 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 the interest at the prescribed rate i.e. 10.75 % p.a. w.e.f. due date of possession i.e., 22.12.2012 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.
- ii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-

promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

- iii. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate or occupation certificate from the competent 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 plot/unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.
- iv. Vide order dated 13.01.2023, a cost of ₹ 10,000/- was imposed upon the respondent to be paid to the complainant, has not been paid by the respondent so far. The respondent is directed to pay the said cost to the complainant.
- v. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
- vi. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the




possession is delayed. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent-promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

36. Complaint stands disposed of.


37. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

  
(Ashok Sangwan)

Member

 v.1-3  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.09.2023

**HARERA**  
GURUGRAM