

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

**Complaint no. :** 2989 of 2021  
**First date of hearing :** 29.09.2021  
**Date of decision :** 26.09.2023

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

**Complainants**

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 complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 05.08.2021 has been filed by the complainants/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 allottee 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	"Signature Villa 2, Vatika India Next", Sector 82, 82A, 83, 84 and 85, Gurugram, Haryana
2.	Date of builder buyer agreement executed between Arvind Kumar Swarnkar (original allottee) and the respondent in respect of unit no. 19/ 240 / Duplex / BR in the project 'Bellevue Residences'	14.04.2011 [Page 35 of complaint]
3.	Complainants are subsequent allottee and the builder buyer agreement dated 14.04.2011 was endorsed in favour of the complainants on	07.09.2011 [Page 78 of complaint]



4.	Date of re-allotment in favour of the complainants (In respect of unit no. 19/ 240 / Duplex / BR)	20.01.2012 [Page 96 of complaint]
5.	Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement	08.02.2012 [Page 98 of complaint]
6.	Date of re-allotment letter (In respect of Plot no.8 / 240 / Duplex / ST. 82 D1-10 / Signature 2 Villa)	23.02.2012 [Page 99 of complaint]
7.	Date of addendum letter (In respect of unit no. 28, S-4, Signature Villa 2, Vatika India Next)	29.11.2019 [Page 109 of complaint]
8.	Villa/Unit no. and size	19/ 240 / Duplex / BR on 240 sq. yds. having built-up area of 2659 sq. ft. [Page 96 of complaint]
	Change in unit	Plot no.8 / 240 / Duplex / ST. 82 D1-10 / Signature 2 Villa on 240 sq. yds. having built-up area of 2659 sq. ft. [Page 99 of complaint]
	Finally allotted unit	28, S-4, Signature Villa 2, Vatika India Next having built-up area of 3045 sq. ft. [Page 109 of complaint]
9.	Possession clause - 11.1	<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



		<p>within a period of <b>three years 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.</p> <p>[Page 43 of complaint]</p>
10.	Due date of possession	14.04.2014
11.	Total consideration	₹ 1,03,72,003/- [As per statement of account dated 15.09.2021 at page 40 of reply]
12.	Amount paid by the complainants	₹ 36,01,509/- [as per statement of account dated 15.09.2021 at page 40 of reply]
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint**

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

- i. That believing on the representations and warranties of the representative of the respondent company and also considering

the reputation of Vatika, the complainants agreed to book a residential independent villa plot, admeasuring 240 sq. yards and having a built up area of 2659 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 2659 sq. ft. of built-up area and preferential location.

- ii. That as most of the inventory of the respondent company was underwritten by brokers, the representatives of the company facilitated sale between the original buyer i.e., Mr. Arvind Kumar Swarnkar, with whom a buyer's agreement was executed by the respondent company on 14.04.2011 and subsequent to execution of transfer documents dated 26.08.2011 the same was endorsed vide endorsement dated 07.09.2011 in favour of the complainants. Accordingly, the complainants were allotted unit no. 19/240/Duplex/BR, Vatika India Next (hereinafter "Unit 1") in the said project and stood transferred in the name of the complainants by the respondent company vide welcome letter (undated) issued by respondent to complainants for which the respondent company

also charged transfer charges to the tune of ₹ 36,000/- and delay interest from the original allottee.

- iii. That pursuant thereto, re-allotment letter dated 20.01.2012 was issued by the respondent to the complainants for unit no. 19/240/Duplex/BR, Vatika India Next. Citing "certain fine tunings that are being carried out in the layout to make it more efficient" as a reason for re-allotment, invited the complainants to visit their office on 08.02.2012 for executing necessary documents for having the unit re-allotted to them. Having regard to the same, the complainants being oblivious of the ill intent of the respondent visited the office of the respondent, where in they were forced to surrender their booked villa plot i.e. Unit 1 and opt for new villa plot bearing no. 08/240/Duplex/ST82D1-10 admeasuring 240 sq. yards and having built up area of 2659 sq. ft. (hereinafter "Unit 2") and were made to execute an addendum letter dated 08.02.2012 to the buyer's agreement dated 14.04.2011, adjusting the payments received against the Unit 1 towards the Unit 2. It is only after having executed the said addendum, keeping the other terms and conditions of the allotment same and to hold good, the allotment letter dated 23.02.2012 was issued by respondent to complainants allotting unit no. 08/240/Duplex/ST82D1-10.

- iv. That the terms of builder buyer agreement dated 14.04.2011 (BBA), executed between the original buyer and the respondent company, were made applicable upon the complainants and as per clause 11.1 of the BBA, the possession for the said unit was supposed to be delivered within 3 years from the date of execution of the buyer's agreement. Further, the addendum letter dated 08.2.2012, except for effecting change in the unit no. of the 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 one-sided standard form buyer's agreement drafted by the respondent. As the copy of the agreement was only shared with the complainants for the first time on 08.02.2012, therefore complainants have no knowledge at the time of purchase and transfer of Unit 1 in their name of the usurious and one sided terms of the BBA.
- v. That the possession of the unit 2 should have been handed over by April, 2014, however, on the said date, the project was nowhere near completion and the construction at the project site was yet to pick pace. The complainants wrote email dated 10.04.2015 to the respondent seeking possession of the Unit 2. However, the complainants were told to wait and were assured of possession of the Unit 2, along with handsome compensation.

- vi. That thereafter, the complainants were shocked to again receive another re-allotment letter dated 15.12.2017 from the respondent for Signature Villa Unit no. 08/240/Duplex/ST82D1- 10. This time again the respondent cited "certain fine tunings & amendments in the master layout necessitated due to architectural and other related considerations" for re-allotment. Upon protest by the complainants, the respondent company informed them that they do not possess the land parcel on which the said Unit 2 and related development was to come up and therefore, the complainants have no choice but to opt for re-allotment in terms of the letter dated 15.12.2017. The complainants after initial protest inter-alia vide letter dated 02.05.2018, had to give in to the said re-allotment of the unit. However, with the assurance that this time the handover of possession will happen within few months of execution of the fresh addendum for reallocation, the complainants executed the Addendum Letter dated 29.11.2019 to the buyer's agreement dated 14.04.2011 in respect of new unit no. 28/S-4/Signature Villa/Vatika India Next (hereinafter "Unit 3").
- vii. That thereafter, the complainants visited the project site and were astonished to see that the construction of the said project was not only delayed but the respondent had no execution of work at the project under process. The complainants immediately went to 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 complainants had to make alternate arrangements for accommodation. The complainants had written emails dated 24.03.2020 and 01.02.2021 to the respondent seeking update on possession handover, however, the respondent has been either ignoring or giving evasive replies to the said emails.

- viii. That it has now come to the knowledge of the complainants, the respondent, is deliberately avoiding to handover possession of the villa plots, despite the complainants having been more than eager to pay the balance payment on possession in terms of the payment plan and take possession of the property in question. It has been learnt that the respondent company is selling the same plots to new customers at higher rates of the present times, in complete disregard of all assurances, warranties, representations and promises made to the complainants as well as the executed BBA. In furtherance of its illegal design and malafide 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.



ix. That there being a delay of over 7 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 complainants have been paying rent, the complainants have come before the Authority for seeking following relief.

**C. Relief sought by the complainants**

4. The complainants have filed the present compliant 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. 28, S-4, Signature Villa 2, Vatika India Next admeasuring 240 sq. yds. having built up of 3045 sq. ft. in its project Signature Villa 2 (formerly known as Bellevue Residencies), Sector 82, Gurugram, without forcing the complainants 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 2011, Mr. Arwind Kumar Swarnkar (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 plot bearing priority no. SM/240/008, admeasuring to super area of 1577 sq. ft. in the said project on 21.05.2008.
- ii. That as per the said booking application form dated 21.05.2008, the erstwhile allottee was under an obligation to pay the instalment as demanded on stipulated in regard to the aforesaid booking. 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. And, upon not receiving the said payment, the respondent was bound to issue various payment reminder dated 18.05.2009, 31.10.2008, 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 on filing of a joint application for assignment of the allotment by the erstwhile allottee and the complainants, the allotment was endorsed in the name of the complainants on 26.08.2011. The complainants had approached the erstwhile allottee and later on the company after satisfying themselves in respect of the status of the project and the complainants agreed to abide by the terms of the BBA dated 14.04.2011.
- iv. Further on 08.02.2012, an addendum was executed between the complainants and the respondent for the said villa and re-allotted a new villa veering no. 08/240/Duplex/ST. 82D1-10 in the project

Signature 2 villa. That the complainants accepted the said allotment and knew that the allotment is being made on tentative basis and the same will be subject to change based upon the change of numbering scheme at later. The complainants were well aware of the exact status of the project and agreed to purchase the said villa upon their 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 complainants were 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 complainants 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 complainants 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 21.11.2014, an amount of Rs.36,01,509/- has been paid by the complainants against the total sale consideration of the villa and is evident from

the endorsement that the complainants have not paid an amount of Rs.67,60,494.21/- 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 complainants 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 complainants at a later stage.

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

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

12. **Reliefs sought by the complainants:** The below-mentioned reliefs sought by the complainants 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. 28, S-4, Signature Villa 2, Vatika India Next admeasuring 240 sq. yds having built up of 3045 sq. ft. in its project Signature Villa 2 (formerly known as Bellevue Residencies), Sector 82, Gurugram,

without forcing the complainants to sign any indemnity or undertaking or opt for some other project.

13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

14. Clause 11.1 of the 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 years from the date of execution of this Agreement**. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and Clause (38) or due to failure of Applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by 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 14.04.2011. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 14.04.2014.

16. The authority observes that the aforesaid builder buyer agreement dated 14.04.2011 was executed between Arvind Kumar Swarnkar (original allottee) and the respondent in respect of unit bearing no. 19/240/Duplex/BR in the project namely 'Bellevue Residences'. The complainants are subsequent allottee and the builder buyer agreement dated 14.04.2011 was endorsed in their favour on 07.09.2011. Subsequent thereto, the respondent had issued allotment letter in favour of the complainants on 20.01.2012. Thereafter, an Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement was executed by the complainants on 08.02.2012 in respect of Plot no.8/240/Duplex/ST.82D1-10/Signature 2 Villa and consequently, the respondent again issued re-allotment letter on 23.02.2012. Later on, another addendum to builder buyer agreement was executed on 29.11.2019 whereby villa/unit bearing no. 28, S-4, Signature Villa 2, Vatika India Next i.e., the unit in question was allotted in favour of the complainants. The complainants have filed the present complaint on 05.08.2021 seeking possession of villa/unit bearing no.

28, S-4, Signature Villa 2, Vatika India Next and delay possession charges as per proviso to section 18 (1) of the Act.

17. The authority observes that the letter dated 29.11.2019 states that 'all the terms and conditions of the executed builder buyer's agreement shall remain same and binding on the parties'. It is further states as under:

*"That we are fully aware of the present construction status of the re-allotted unit/project and unequivocally and unconditionally agree that I am not entitled to any compensation for delay possession of the re-allotted unit or it getting relocated.*

*This Addendum shall be considered as an integral part & parcel of the Builder Buyer's Agreement dated 14/4/2011 modifying only those terms as have been specifically mentioned hereinabove, all other terms and conditions of the Builder Buyer's Agreement dated 14/04/2011 shall remain unaltered and effective."*

18. The authority is of the view that the Hon'ble Supreme Court and various High Courts in a plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as ***Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan*** (decided on 02.04.2019) as well as by the Hon'ble Bombay High Court in the ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***. A similar view has also been taken by Hon'ble Apex court in ***IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.*** (Civil appeal no. 5785 of 2019 dated 11.01.2021) as under:



*".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.*

*In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."*

19. In light of the aforesaid reasons, the authority is of the view that it cannot take into consideration such clauses in the addendum/letter dated 29.11.2019. Further, such clauses cannot take the statutory rights of the one who is in recessive position. In the interest of natural justice, such clauses in the addendum/letter cannot be taken into consideration by this authority while adjudicating statutory rights of the complainants. Hence, the authority does not place reliance on the said clause and is of the view that it will not take away the rights of the allottees to claim statutory relief i.e. delayed possession charges as per the provisions of section 18 of the Act.
20. Additionally, 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 complainants was made on 08.12.2021. However, the counsel for the complainants stated that the letter dated 08.12.2021 was never received by them and it has

come to their notice when the reply was filed by the respondent. Further, the counsel for the complainants stated that the villas have been constructed both in front and left and right side of the allotted villa and it is not understandable as to how a major pipeline can affect only their allotted unit. 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.

21. 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 complainants. Also, the counsel for the complainants 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-allottees who are waiting for possession since last 10 years. The counsel for the complainants requested for deputing 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.

22. The Local Commission submitted its report on 01.02.2023 and the relevant finding are reproduced as under:

*"Conclusion:*

- A. Present site conditions clearly shows that the said plot (Plot no. 28, S-4, Signature Villa 2, Vatika India Next, Sector 82) is a developed plot and clear/ free from all encroachments. As on date all services i.e road/water supply/ sewer/electricity etc. are functional/operational at the captioned project site. The said unit is not affected by any GAIL pipeline. As on date no construction activity has been started by respondent promoter on the captioned plot/ site.*
- 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")"*

23. Thereafter, during proceedings on 14.03.2023, the counsel for the complainants stated that the subject unit is in existence and is being sold through sister concern of the respondent. The complainants were 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 moved by the complainants, the authority vide order dated 09.05.2023 directed the respondent to not to create third party rights till the next date of hearing.

24. 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. However, due to some technical and human error on the records of the respondent company, the plot in question was displaying in the unsold





stock of the company and the sales team considering the same as unsold, accepted the booking from M/s Felisa Developers Pvt. Ltd. and transferred the same in the name of M/s Felisa Developers Pvt. Ltd. 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."*

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

*"The counsel for the respondent states that the unit in question is not available at present because third party rights have already been created mistakenly on the said unit, hence an alternate unit may be allotted to the complainant, but the respondent shows his inability to offer any alternative plot. The complainant on other hand stated at bar that despite filing of an affidavit that it does not have unsold unit available for sale due to GAIL Pipeline. Then, how it has created third party rights against subject unit of the complainant."*

26. 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. In between this time period, the respondent had further transferred the subject unit to some M/s Felisa Developers Pvt. Ltd. by way of executing a builder buyer agreement 17.10.2022 and thereafter 'M/s Felisa Developers Private Limited entered into an agreement to sell dated 09.12.2022 with Mr. Shivam Sahdeo, Devrath Kumar and Harsh Vats. The complainants vide application dated 21.08.2023 have stated that Mr. Shivam Sahdeo is an employee of the respondent company and the entire allotment is a sham to cause prejudice to the complainants as the intention of the respondent has turned malafide due to increase in the price of the units over the period of time. 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 subject unit is developed plot and clear/ free from all encroachments having all services fully functional and the said unit is not affected by any GAIL pipeline.

27. 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 complainants and on the other hand, the respondent has effectuated transaction towards



selling of the subject unit. The respondent cannot blow hot and cold at the same time. Further, upon checking the status of M/s Felisa Developers Pvt. Ltd. on the website of ministry of corporate affairs (MCA), it is observed that the email id of the M/s Felisa Developers Pvt. Ltd. is shown as 'secretarial@vatikagroup.com' and it is highly probable that the M/s Felisa Developers Pvt. Ltd. is a sister concern of the respondent company.

28. As far as the contention of the respondent is concerned that this further sale has been mistakenly effectuated due to human and technical error, this contention is not tenable as the same is not corroborated 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 further sale of the subject unit should have been disclosed by the respondent during the pendency of the complaint. Further, the fact of creation of 3<sup>rd</sup> party right was brought before the authority by the complainants vide application dated 14.03.2023 and only thereafter, the respondent has admitted the same vide application dated 17.07.2023. So, the plea of the respondent w.r.t. sale of the subject unit vide BBA dated 17.10.2022 is nothing but an afterthought ploy to defeat the legitimate claim of the complainant-allottees and deprived them of their valuable rights in that property. It is also pertinent to note that the respondent has never issued any cancellation letter against the

subject unit and thus, it can be said that such creation of third-party right is nothing but complete abuse of the process of law and high handedness of the respondent. Moreover, the conveyance deed has not been executed in respect of the subject unit till date. So, the plea of respondent/builder w.r.t. creation of this party rights in respect of the subject unit vide BBA dated 17.10.2022, in favour of M/s Felisa Developers Pvt. Ltd. is after thought just to escape the consequences of the case and defeat the just and genuine claim of the complainants. It is admitted fact that at present, there is no title in favour of M/s Felisa Developers Pvt. Ltd. and the complainants have preferential rights on the said plot, therefore, to prevent the misuse of dominant position of the respondent and to protect the right of bonafide purchasers i.e., the complainants herein and applicability of lis pendens, the transaction in respect of M/s Felisa Developers Pvt. Ltd. is declared null and void. Thus, the re-allotment/ new allotment of the subject unit vide BBA dated 17.10.2022 and any transaction effectuated thereafter, is ordered to be se-aside and the unit is ordered to be restored to its original position in favour of the complainants.

29. From the foregoing paras of the order, a prima facie case for legal action is made out against the respondent for making false statement before the authority in its reply as well as during the arguments, for which separate legal proceedings be initiated.



30. **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.*

31. 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.
32. 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%.
33. 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;”*

34. Therefore, interest on the delay payments from the complainants 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.
35. 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 14.04.2011 was executed between Arvind Kumar Swarnkar (original allottee) and the respondent. The complainants are subsequent allottee and the builder buyer agreement dated 14.04.2011 was endorsed in their favour on 07.09.2011. Subsequent thereto, the

respondent had issued allotment letter in favour of the complainants on 20.01.2012. By virtue of clause 11.1 of the builder buyer agreement executed between the parties on 14.04.2011, 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 14.04.2014. 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 complainants as per the terms and conditions of the builder buyer agreement dated 14.04.2011 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.

36. The complainants are 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 complainants are also directed to take the possession of the allotted unit in compliance of obligation conferred upon them under section 19(10) of Act within two months of the occupation certificate after payment of such outstanding dues.

37. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. due date of possession i.e., 14.04.2014 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 complainants:** Direct the respondent to pay an amount of ₹ 1,50,000/- as litigation expenses.

38. The complainants are 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the authority**

39. 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., 14.11.2014 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 10th 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 complainants w.r.t. obligation conferred upon them 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 complainants, has not been paid by the respondent so far. The respondent is directed to pay the said cost to the complainants.
  - v. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees 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 complainants are 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 complainants-allottees 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.

39. Complaint stands disposed of.

40. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.09.2023

**HARERA**  
**GURUGRAM**