

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Order pronounced on: 08.08.2023**

Name of the Builder		Vatika Limited	
Project Name		Vatika One on One	
1.	CR/1058/2022	Rajesh Khanna & Anubha Khanna V/s Vatika Limited	Mr. Garvit Gupta Mr. Venket Rao
2.	CR/1458/2022	Chaturbhuj Singla & Tripti Agarwal V/s Vatika Limited	Mr. K.K. Kohli Mr. Venket Rao

CORAM:	
Shri Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Bellevue Residence being developed by the same respondent/promoter i.e., Vatika Ltd. The terms and conditions of the application form fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter to deliver timely

possession of the units in question, seeking award of delay possession charges, possession and the execution of the conveyance deeds.

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

Project: Bellevue Residences" at sector 82, Vatika India Next, Gurgaon, Haryana						
Notice for termination: 08.12.2021 (page 75 of complaint)						
1	2	3	4	5	6	7
Sr. no	Complaint no./title/ status	Unit no. & area admeasuring	Allotment letter	Date of BBA Due date	Total sale consideration/ Amount paid	Relief sought
1.	CR/1058/2022 Rajesh Khanna & Anubha Khanna V/s Vatika Limited Received	19/240/ Simplex/BR admeasuring 1527 (Page 42 of complaint). Changed no. 15/ST82D-1-9/ 240/ Simplex/82D1 (Page 65 of complaint).	07.01.2010	15.01.2010 (Page 40 of complaint) 15.01.2013	TC: Rs. 76,42,760/- AP: Rs. 16,65,680/-	1. DPC 2. Conveyance Deed 3. Possession
2.	CR/1458/2022 Chaturbhuj Singla & Tripti Agarwal V/s Vatika Limited.	18/240/ Simplex/BR Admeasuring 240 sq.ft. (Annexure C1, page 39 of complaint) 11/240/Simplex/ 82 D1-4 (Page 113 of complaint)	07.01.2020	06.09.2010 (page 65 of complaint) 06.09.2013 Subsequent Allottee: 22.05.2012	TC: Rs. 77,23,243/- AP: Rs. 17,53,333/-	1. DPC 2. Conveyance Deed 3. Possession
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)						

A. Unit and project related details

4. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over

the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Bellevue Residences" at sector 82, Vatika India Next, Gurgaon, Haryana
2.	Welcome letter dated	07.01.2010 (page 35 of complaint)
3.	Date of buyer agreement	15.01.2010 (Page 40 of complaint)
4.	Villa no.	19/240/Simplex/BR admeasuring 1527 (page 42 of complaint)
5.	Addendum to the plot dated 07.06.2012	15/ST 82 D-1-9/240/Simplex/82D1 (page 65 of complaint)
6.	Possession clause	<p>11.1 Schedule for possession of the said unit</p> <p>The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the 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 clause (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</p>

		<i>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 any of the terms or conditions of this Agreement.</i> (Emphasis supplied)
7.	Due date of possession	15.01.2013 [Due date of possession calculated from the date of BBA]
8.	Total sale consideration	Rs. 76,42,760/- as per SOA dated 29.03.2022 (page 37 of reply)
9.	Amount paid by the complainant	Rs. 16,65,680/- as admitted by the respondent in termination letter (page 76 of complaint)
10.	Occupation certificate	Not obtained
11.	Offer of possession	Not offered
12.	Notice for termination	08.12.2021 (page 75 of complaint) Due to GAIL Pipeline

B. Facts of the complaint:

5. The complainants have made the following submissions in the complaint:
 - a. That the respondent provided false and incorrect statements in respect of said villa and said project and the complainants have thereby lost their hard-earned money facing humiliation and harassment, physical as well as mental in the hands of respondent and therefore the respondent is liable to compensate the losses caused to the complainants due to the fraudulent and unfair trade practice on the part of respondent as per section 12 of the RERA, 2016 and rules thereunder.
 - b. That the respondent acted in a very deficient, unfair, wrongful, fraudulent manner by not allotting the said unit to the

complainants. The respondent is therefore, liable to pay the damages and compensation for the monetary loss and harassment suffered by the complainants due to the aforesaid illegal and wrongful acts of respondent.

- c. That the respondent is guilty of deficiency in service, unfair trade practice, giving incorrect and false statement while selling the said unit to the complainants within the purview of provisions of the RERA 2016 and applicable rules. The complainants have suffered losses on account deficiency in service, unfair trade practice, giving incorrect and false statement.
- d. That the respondent is required to offer the possession as required under law as the complainants have waited for a long time period of 12 years since the booking of the said villa. The respondent by citing false reasons terminated the agreement unilaterally without taking into consideration that the complainants had in the hope of possession of the said unit had invested in the said project and parked their hard-earned money for the past 12 years and more. Further, the respondent terminated the allotment in view of its inability to complete construction while it has actually the possession of the said land and can complete the construction of the villa as is evidenced from the pictures annexed to the present complaint.
- e. That that the agreement is unfair and one-sided and loaded with terms such as clauses 12.5 which involve unilateral termination of the agreement and entitle the Respondent to gain undue advantage over the complainants and indirectly penalising the consumers. There is no parity in the remedies available to the

complainants and the respondent showing biased and unfair trade practices of the respondent.

- f. That the complainant had no option but to accept the terms of the buyer agreement without any negotiation because of the assurance given by the respondent that they will stick to their assurances and promises. However, evidently, the respondent has miserably failed in keeping their promises and assurances causing irreparable losses and injury to the complainant.
- g. That if the builder creates an agreement which is not ethically correct or entraps the complainant in feeble situation can't be held valid. Such one-sided agreements have consistently been held to be unfair not only by the Authority but also by the Hon'ble Supreme Court.
- h. That the respondent is well aware that the project is over delayed and hence are liable to pay interest as per the provisions of the Act 2016 and the provisions of Rules, 2017. According to sections 18(1) and 19(7) of the Act 2016 read with Rule 15, the respondent is liable to pay the allottee interest for delaying the possession in violation of the terms of the buyer's agreement.
- i. That the cause of action accrued in favor of the complainants and against the respondent on diverse dates when the complainants were first offered the flat, subsequently a letter of allotment letter was issued to the complainant and when again the respondent entered into their respective agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse

delayed the handing over of the possession to the complainant and beyond any reasonable measure is continuing to this day, it continues to arise as the complainants have not been provided the necessary possession of his/ her unit being the moral and legal responsibility of respondent and the respondent have not been provided till date and the cause of action is still continuing and subsisting on day to day basis.

C. Relief sought by the complainants:

6. The complainants have sought following relief(s):

- i. Direct the respondents to let out the unit in question, in terms of the buyers' agreement to hand over the possession of said unit in question with all amenities and specifications as promised, in all completeness without any further delay.
- ii. Direct the respondent to pay the balance amount due to the complainants from the Respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the sale deed together with the unambiguous intimation/offer of possession.
- iii. Direct the respondent to execute the conveyance deed in favour of the complainants.
- iv. Direct the respondent not to ask for any charges which is not as per the buyer agreement.
- v. Direct the respondent not to charge holding charges from the complainants.

D. Reply by respondent:

7. The respondent made the following submissions in its reply:

- (a) That the present complaint, filed by the complainants, are bundle of lies and hence liable to be dismissed as it is filed without any cause of action.
- (b) That the complainants herein have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- (c) That the complainants have not approached the Authority with clean hands and has suppressed relevant facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.
- (d) That at the outset, in around December 2009, the complainants, learned about the project launched by the respondent titled as 'Bellevue Villa' situated at Sector 82 and 83 Gurgaon and approached the respondent repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
- (e) That after having keen interest in the project constructed by the respondent the complainant desired to book a unit and applied for the same vide application form dated 01.12.2009 and paid an amount of Rs. 8,86,000/- for further registration. The complainants herein were aware of each and every term of the application and agreed to sign without any protest any

demur. The respondent vide welcome letter allotted a villa bearing no. 19/240/Simplex/BR, admeasuring to 240 Sq. ft. in the aforesaid project for a total sale consideration of Rs. 84,00,400/- in favour of the complainants.

- (f) That on 15.01.2010, a builder buyer agreement was executed between the parties for the said unit bearing no. 19/240/Simplex/BR in the aforesaid project of the respondent. The complainants herein were well aware of the terms and conditions of the project and agreed to sign upon the same upon their own judgment and investigation. Thereafter, on 20.01.2012, the respondent upon considering certain unforeseen circumstances beyond the control and the interest of the allottee(s) vide re-allotment letter dated 20.01.2012, was bound to re-allot the unit of the complainants from Signature 2 Villas to new Signature 2 villa. Further, on 14.05.2012, an addendum was executed between the complainants and the respondent for the unit bearing no. 15 on street 4 admeasuring to 1427 sq. ft. super area in the project Signature 2 Villas. It is pertinent to mention that the complainants were well aware of the re-allotment and accepted the same after being fully satisfied without any protest or demur.
- (g) That the complainants herein were aware of every terms of the said agreement and agreed to sign upon the same after being satisfied with each and every term without any protest or demur. As per the agreement so signed and acknowledged the complainants knew that the possession of the said unit was subject to timely payment of amount due by the complainant.

Despite, being aware of the payment schedule and the fact that timely payment is essence for completion of the project. The Complainants have failed to make the requisite payment of the instalment as and when demanded by the Respondent in compliance with the payment schedule and have merely paid an amount of Rs. 16,65,680/- towards the total agreed sale consideration.

- (h) That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time. Subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /Group Housing/ Commercial /Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.

- (i) That based on our representation, a letter no dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa- Gurugram -Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram.
- (j) A meeting was held between Gail and the administrator Huda on 07 July 2009 to discuss feasibility which was approved. GAIL requested the administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana.
- (k) That on 05-Aug-2009, by District town planner to Gail India, proposed re-routing of gas pipeline should be through green belt/ corridor proposed master plan.
- (l) Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approx... 90-100 plots effect due to this layout of GAIL Pipeline.
- (m) Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, Vatika Limited applied for license pertaining to the said Project. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide its letter dated 04.03.2011 that passes through the project land.
- (n) Although GAIL had reduced the ROU by 10 mtrs, but since they had denied the re-routing of the GAIL corridor, Vatika not only lost number of plots but had to re-design the project land that

consumed money and time and hence the construction of project get delayed.

(o) 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 which are explained hereinabove and not repeated herein for the sake of brevity, it has become impossible for the Appellant to fulfil the contractual obligations as promised under the agreement and the said agreement has become void in nature.

(p) That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before the Authority and in the interest of justice.

8. 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 submission made by the parties. The written submissions made by both the parties along with documents have also been perused by the authority.

E. Jurisdiction of the authority:

9. 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

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

E. II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

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.

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

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

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

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

F. Findings on the relief sought by the complainants:

- F.1 Direct the respondent to pay interest @18% p.a. as payments, towards delay in handing over the property in question as per provisions of the Act, 2016 Rules 2017.**

15. 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.

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

17. Schedule for possession of the said unit

The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of three years from the date of execution of this Agreement

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reasons beyond the control of the seller. The drafting of the clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. **Payment of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. 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., 08.08.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

22. 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 the complainant in case of delayed possession charges.

23. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent-builder is in contravention of the section 11(4)(a) of the act by not handing over possession by the due date as per the agreement. By

virtue of clause 11.1 of the agreement executed between the parties on 15.01.2010, the possession of the subject unit was to be delivered within 3 years from the date of agreement to sell. Therefore, the due date of handing over possession was 15.01.2013. The respondent failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement dated 15.01.2013 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 15.01.2013 till the actual handing over of possession or offer of possession + 2 months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

25. **F.II Possession.**

26. The complainant booked a villa in the project of the respondent and in consonance of same, a buyer's agreement dated 15.01.2010 was executed inter-se parties. It is an undisputed fact that the complainant has already paid an amount of Rs. 16,65,680/-towards total consideration of Rs. 76,42,760/-. The respondent sent a letter namely "notice for termination" dated 08.12.2021. However, there is nothing on record to substantiate the fact that the said notice was proceeded by cancellation by the respondent-builder. The complainants approached the Authority seeking possession of the allotted villa as one of their reliefs, Whereas the respondent, submitted that the said unit not available due to passing of GAIL pipeline over the allotted area.
27. The Authority observes that it is high headedness on part of the respondent that despite booking of the subject unit way back in 2009, the respondent is now denying to provide the possession of the unit to the complainants.
28. In view of the submissions of the parties, the respondent is directed to provide alternative plot/units to the complainants at the same rate at which the unit was earlier purchased. The rationale behind same is simple, that the allottees booked the plot in the project way back in 2009 and paid the amount then only, in a hope to get the possession.
29. Moreover, the interest (DPC) component is levied to balance the time-value component of the money. However, the same is made applicable on the amount then paid by the allottee for the delay in handing over of the possession by the respondent and the same is balanced vide provision of section 2(za) of the Act. The

complainants cannot be made suffer due to fault of the respondent and supposed to pay for the unit as per today's rate.

F.III Conveyance deed

30. With respect to the conveyance deed, the provision has been made under clause 14 of the buyer's agreement and the same is reproduced for ready reference.

14. Conveyance

"The Company, its Associates Companies, its subsidiary companies as stated earlier shall prepare and execute along with the applicant a conveyance deed to convey the title of the said unit in favour of applicant but only after receiving full payment of the total price thereof and payment of all securities including maintenance security deposits and charges for bulk supply of electrical energy interest, penal interest etc. on delayed instalments stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this agreement or as demanded by the company from time to time prior to the execution of the conveyance deed ,....."

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

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this

section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

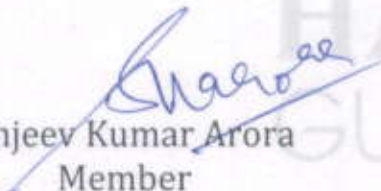
32. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. Accordingly, the respondent is directed to execute the conveyance deed in favour of the complainant after receiving all pre-requisite from the competent authorities, if any.

H. Directions of the Authority:

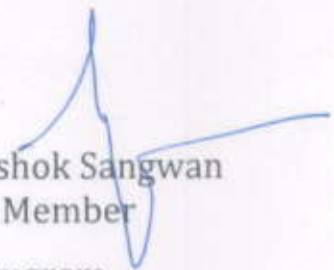
33. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to provide possession of the alternative plot/unit as agreed between the parties, at the same rate at which the unit was earlier purchased within two months from the date of this order.
- ii. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a., for every month of delay from the due date of possession i.e., 15.01.2013 till the actual handing over of possession or offer of possession + 2 months whichever is earlier.
- iii. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. Accordingly, the respondent is directed to execute the conveyance deed within 90 days of possession in favour of the complainants after obtaining valid OC..

- iv. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
 - v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and to take the possession of the subject unit within two months from date of this order.
 - vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
 - vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
34. Complaint stands disposed of.
35. File be consigned to the registry.



Sanjeev Kumar Arora
Member



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2023