

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

Complaint no. :	6261 of 2022
Date of decision :	22.12.2023

Rakesh Bhatla

R/o # 1517-A, HIG flat housing board colony, Sector-31, Gurugram, Haryana

Complainant

Versus

M/s Vatika Ltd.

Office address: Vatika Ltd. inxt city centre, ground floor, tower-A, sector-83, vatika त्वमेव India next, Gurugram, Haryana-122012

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Sanjeev Sharma

Complainant

Shri Dhruv Dutt Sharma

Respondent

ORDER

1. The present complaint dated 21.09.2022 has been filed by the complainant/allottee 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount 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.N.	Particulars	Details
1.	Name of the project	"Vatika India Next", Sector 82A, Gurugram.
2.	Registration no.	Not registered
3.	Plot no.	27, SF, block E admeasuring 980 sq.ft. (Page 25 of complaint)
4.	Date of execution of plot buyer's agreement	08.10.2014 [Page 22 of complaint]
5.	Possession clause	10.1 Schedule for possession of the said independent dwelling unit <i>That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit within a period of four years from the date of execution of this Agreement.....</i>
6.	Due date of possession	08.10.2018

7.	Total sale consideration	Rs. 70,84,920/- (Page 32 of reply)
8.	Basic sale price	₹70,10,920/- (Page 32 of reply)
9.	Paid up amount	Rs. 18,40,000/- (Page 32 of reply)
10.	Intimation of possession	12.08.2016 (Page 21 of reply)
		06.09.2016 (pg. 24 of reply)
		07.10.2016 (pg. 26 of reply)
11.	Notice for termination	04.12.2016 (pg. 28 of reply)
12.	Letter for cancellation	04.02.2020 (pg. 29 of reply)
13.	Occupation certificate	16.09.2019 (pg. 35 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- That it is humbly submitted that upon the representation by the respondent and advertisement done in said behalf, the respondent was to construct a residential colony in the name and style of "VATIKA INDIA NEXT", located at sector-82, 82A, 83, 84 and 85, Gurgaon, Haryana on parcel of land measuring 182 acres for which

the respondent was granted licence no. 113 of 2008 dated 01.06.2009.

- b. That the respondent claimed that the respondent has obtained proper approvals of the building plans and other requisite approvals which are required prior to commencing construction of the project for developing independent floors in the residential colony launched in the name of Vatika India Next.
- c. That the complainant and the respondent executed buyers agreement dated 08.10.2014 whereby complainant was allotted unit no. 27, 2nd floor, 83 E-9 street, block-E, at Sector-83, admeasuring 980 sq. ft. as the built up area with car parking no. TBA for a total consideration of ₹ 70,59,920/- along with other charges as specified in clause 1.2 of the buyers agreement in primrose complex.
- d. That the complainant had paid a total amount of ₹ 18,40,000/- from August 2014 till January 2016 as per the statement of account dated 20.01.2016. It is submitted that the possession was to be handed over within 4 years from the date of execution of the buyers agreement, i.e., by 08.10.2018 but the same has not happened till today.
- e. That the complainant had already paid 25% amount of the cost of the unit in question and the balance amount was to be paid through availing financial aid for which the respondent suggested LIC Housing being the approved bank. It is pertinent to note that while initiating the process for loan, the complainant requested the



respondent to provide for certain documents which had to be submitted to the bank but the respondent neither provided those documents nor refused to provide the same. The said documents were mandatory documents required for sanctioning of the loan by the bank but the respondent miserably failed to provide those documents due to which the complainant could not get the financial aid.

- f. That instead of providing the requisite documents, the respondent started issuing demand letters on the pretext of handing over the possession of the unit vide letters dated 12.08.2016, 06.09.2016, 07.10.2016 and so on. Since the complainant was aware that the project is nowhere near completion, several RTIs were written by the complainant before the Department of District Town & Country Planning, Gurugram.
- g. That the complainant could sense which has been played by the respondent upon the complainant and therefore, when no replies was received from the RTIs, the complainant filed a complaint before the office of the Appellate Authority-cum Chief Town Planner, Haryana, Town & Country Planning Department, Haryana, Chandigarh wherein the hearings were getting adjourned with a direction providing requisite information to the complainant but till date there has been no reply.
- h. That since the respondent had failed to offer possession of the unit in question and the complainant has been harassed miserably without obtaining relevant information from the Appellate



Authority-cum Chief Town Planner, Haryana, Town & Country Planning Department, Haryana, Chandigarh, the complainant while exercising their rights has approached the Hon'ble Authority seeking refund of their monies along with interest as all the requests made by the complainant have gone to the deaf ears of the respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the amount paid along with interest from the date of each payment till its realization.
5. On the date of hearing, the authority explained to the respondent/promoters about the contraventions 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 by way of written reply made the following submissions:
 - a. That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
 - b. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised



cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

- c. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the floor buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the floor buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.
- d. It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 4 years from the date of execution of the agreement, unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said unit.
- e. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the sale



consideration of ₹70,84,920/-, the amount actually paid by the complainant is only ₹18,40,000/-. It is further submitted that the last payment was made by the complainant much before the proposed date of delivery of possession. It is further submitted that the complainant has till date not made the payment of demand raised on 'casting of ground floor roof slab, casting of top floor, completion of internal plaster and completion of flooring'.

- f. Thereafter, the respondent offered possession to the complainant vide letter dated 12.08.2016 and reminder letter dated 06.09.2016 and 07.10.2016. However, it was the complainant who deliberately avoided taking the possession of the unit for the reasons best known to him. It is further submitted that despite the number of opportunities the complainant failed to make the payments. That on 04.12.2019 the respondent again called upon the complainant vide letter dated 04.12.2019 with an opportunity to make the payment within 07 days failing which the respondent shall stand cancelled. However, the complainant did not bother to make the payment and therefore the respondent was constrained to cancel the floor buyer agreement vide letter dated 04.02.2020 and the complainant is now left with no right, title, interest etc. in the present unit. The complainant after defaulting in complying with the terms and conditions of the buyer's agreement, now wants to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainant.



- g. That it is pertinent to mention here that the occupation certificate in respect to the said unit has been received on 16.09.2019. That the complainant has not come to this Hon'ble Authority with clean hands. The complainant has deliberately concealed the fact that he has earlier filed a complaint for refund before Permanent Lok Adalat (Public Utility Services), Gurugram and the same has been dismissed as withdrawn vide order dated 07.09.2022. It is pertinent to mention here that neither the complainant sought any permission to file the present complaint nor any permission was granted to the complainant to file another complaint and therefore the present complaint is liable to be dismissed.
7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.
- E. Jurisdiction of the authority**
8. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed 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)(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 promoter, 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. 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. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs*



Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 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."

13. 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 complainant.

F.I. Direct the respondent to refund paid up amount along with interest at the prescribed rate.

14. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

"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. - in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."
(Emphasis supplied)

15. Clause 10.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below.

*"10.1 Schedule for possession of the said independent dwelling unit. That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit **within a period of three years from the date of execution of this Agreement....."***

16. On consideration of the documents available on record and submissions made by both the parties, the authority is of the view that there has been a huge delay on the part of respondent in completing construction of the project in question. Further, the complainant filed the complaint dated 21.09.2022 for refund of the amount paid along with interest on account of non-completion of the project in due time as agreed between the parties vide buyer's agreement dated 08.10.2014. The respondent offered the possession of the unit on 07.10.2016 without obtaining OC from the competent authority and lastly, respondent on 04.02.2020 terminated the subject unit of the complainant. During the course of



hearing dated 29.09.2023 the complainant contended that he never received the termination letter dated 04.02.2020. The respondent vide written submissions dated 06.11.2023 submitted the postal receipt dated 11.03.2020 of termination letter.

17. The counsel for the respondent submitted in the hearing dated 14.07.2023 that the complainant filed a compliant for refund of the amount paid against the respondent before the Permanent Lok Adalat, Gurugram in 2017 which was withdrawn on 07.09.2022. Thereafter, on 21.09.2022 the complainant filed the complaint before the authority for refund of paid amount along with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed within the reasonable time. The matter is covered under section 18(1) of the Act of 2016. Therefore, the authority is of the view that since the request for the refund have been made by the complainant after the lapse of due date of possession and before the issuance of cancellation accordingly, the cancellation cannot be said to be a valid cancellation.
18. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021. The relevant para is reproduced as under:



".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
20. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 and 72 read with section 31(1) of the Act of 2016.
21. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest. 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]
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."

22. 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.
23. 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., 22.12.2023 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. The authority hereby directs the promoter to return the amount received by him i.e., ₹ 18,40,000/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

G. Directions of the authority

25. 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):
- a. The authority hereby directs the promoter to return the amount

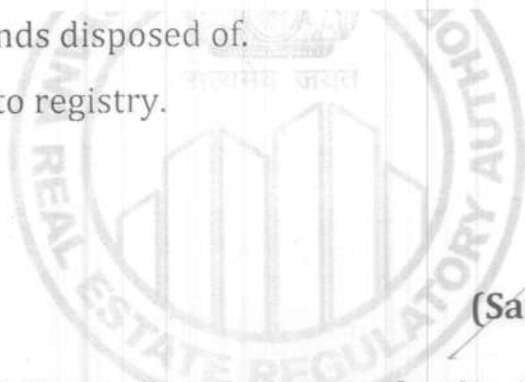


received by him i.e., ₹ 18,40,000/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules ibid.

- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any.

26. The complaint stands disposed of.

27. File be consigned to registry.



Sanjeev Kumar Arora
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.12.2023

HARERA
GURUGRAM