

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

Complaint no. : 1243 of 2023
Date of filing: 29.03.2023
Order pronounced on: 30.11.2023

Sukhbir Singh

R/o: J 112 FF Cedar crest Nirvana country south city 2,
Gurugram, Haryana

Complainant

Versus

Vatika Ltd.

Regd. office: Vatika triangle, 4th floor, Sushant lok, Ph-1, block-
A, Mehrauli-Gurugram road, Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Ajay Kumar Singh (Advocate)

Shri Venkat Rao (Advocate)

Complainant
Respondent

ORDER

1. The present complaint 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 to the allottee as per the agreement for sale executed inter-se them.

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A. Unit and Project related details:

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

S. No.	Particulars	Details
1.	Name and location of the project	Xpression by Vatika, Sector-88B Gurugram
2.	Project area	38640.48 Sq. mtrs.
3.	Nature of the project	Residential
4.	DTCP license no.	94 of 2013 dated 31.10.2013
5.	RERA registered/ not registered and validity status	Registered Registered vide no. 271 of 2017 dated 09.10.2017 Valid upto 08.10.2022
6.	Plot no.	14, H-23
7.	Unit area admeasuring	1350 sq. ft. (super area)
8.	Allotment letter	19.02.2016 (page 28 of complaint)
9.	Builder buyer agreement	01.04.2016 (page 27 of reply)
10.	Possession Clause	13. <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Agreement</i>

		<i>unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure - 1 or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i>
11.	Due date of possession	01.10.2020 (calculated from the date of execution of BBA including grace period in lieu of Covid-19)
12.	Total Sale Consideration	Rs. 80,35,565/- (as per SOA page 47 of reply)
13.	Amount paid by complainant	Rs.45,39,282/- (as per SOA page 48 of reply)
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in 2015, the respondent approached the complainant for booking a unit in the group housing project "Xpressions by Vatika" at Sec-88B, Gurugram. The complainant visited the project site and, after repeated requests and offers made by the respondent, agreed to book a unit in the project.
- II. That the complainant paid a booking amount of Rs.2,00,000/- and submitted the booking form to the respondent. Thereafter, the

respondent provisionally allotted a unit in the project by a welcome letter dated 06.08.2015.

- III. That after receiving more than 25% of the basic sale price, the respondent issued an allotment letter dated 19.02.2016 and allotted a unit no. 14 on the top floor, street number H-23 admeasuring 1350 sq. ft. super area. Further, the builder buyer agreement was executed on 14.03.2016 (*sick 01.04.2016*) between both the parties for a sale consideration of Rs.74,14,162/- excluding taxes.
- IV. That the complainant made all the payments as demanded by the respondent in a timely manner, and the respondent issued payment receipts to the complainant for all the payments. The complainant made a total payment of Rs.45,57,064/- till July 2019 and further no demands were raised by the respondent.
- V. That as per the builder buyer agreement possession of the subject unit was to be handed over within 48 months from the date of agreement which lapsed on 04.03.2020 (*sick 01.04.2020*)
- VI. That the complainant, after making more than 60% of the total unit cost, had been seeking possession since 8 years. Despite, visiting the respondent's office multiple times, respondent could not provide information about the possession date or project completion. The current status of project shows no sign of completion of project in near future.

C. Relief sought by the complainant

4. The complainant has sought following relief:

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- i. Direct the respondent to handover the possession of the unit along with the delay possession charges.
 - ii. Direct the respondent to pay an amount of Rs.60,000/- as litigation expenses.
5. On the date of hearing, the authority explained to the respondent/promoter 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 contested the complaint on the following grounds: -
- I. That in 2015, the complainant learned about the residential project launched by the respondent in name of "Xpression by vatika" Sector 88B, Gurugram and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the project and was satisfied with every proposal demanded necessary for the development.
 - II. That the complainant booked a unit vide application form dated 06.08.2015 and paid an amount of Rs.2,00,000/- as booking amount for further registration in the project. Subsequently, through an invitation for allotment letter dated 20.01.2016, the respondent invited the complainant to visit their office on 19.02.2016 for the unit's allotment.
 - III. That the complainant was allotted a unit bearing no. 14, top floor, street no. H-23 admeasuring a super area of 1350 sq. ft., in the project vide allotment letter dated 19.02.2016.

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- IV. That the builder buyer agreement was executed on 01.04.2016 between both the parties for the subject unit for a total sale consideration of Rs.80,35,565/-.
- V. That as per the clause 13 of the agreement, the possession of the unit was proposed to be handed over subject to force majeure conditions within a period of 48 months from the date of execution of the agreement, unless there was a delay or failure due to reasons beyond the control of the developer, government rules, orders, or failure of allottee(s) to pay in time the price of the residential unit along with all other charges and dues in accordance with the schedule of the payment. The date of offering possession was to be calculated from the date of execution of the agreement, and the respondent therein would have been entitled to an extension for such period of delay caused due to force majeure circumstances, which were beyond the control of the developer.
- VI. That the complainant was aware of the terms and conditions under the agreement and, after being satisfied with every clause of the agreement, as well as with the payment plan and total sale consideration, agreed to sign upon the same at his own judgment and investigation. Furthermore, the complainant had defaulted in making payments and was charged with interest on due amounts on 22.11.2017 amounting to Rs.1,31,934.19/-. The complainant approached the respondent to waive off his interest, and the respondent, believing the assurances of the complainant, waived off the interest of the complainant.
- VII. That for smooth completion of the project, timely payment of the instalments by various allottees, including the complainant, was

necessary. However, the project in question was hampered due to delays in instalments by the complainant as well as other various allottees.

- VIII. That the complainant herein has merely paid an amount of Rs.45,39,282/- towards the total sale consideration and still a substantial amount of money is due and payable on account of the complainant.
- IX. That as per the clause 16 of the agreement, if there were unforeseen circumstances faced by the respondent in the mid-way of the development of the subject project, then an extension of time would have been granted for the completion of the project. The complainant further agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to reasons beyond the control of the developer.
- X. Subsequent to the booking and signing of the agreement, the company faced numerous roadblocks in construction and development works in projects on its licensed lands due to the unexpected introduction of a new national highway, NH 352 W, proposed to run through the project. The Haryana Government, in alliance with the Town and Country Planning Department, transferred the properties falling within the ambit of NH 352W acquired by HUDA to GMDA for development and construction of NH 352 W. GMDA handed over the possession of the properties for construction and development of NH 352 W to the national highway Authority of India (NHAI) on 08.09.2020. The construction was also affected due to re-routing of high-tension lines passing through the lands, resulting in an inevitable change in the layout

plans. Furthermore, the respondent, by virtue of clause 16 in the agreement, are entitled to the extension of the time period correspondingly to the delay caused due to the change in development plans of the Haryana Government and are also exempted from paying interest for such extended time.

- XI. That the respondent was committed to completing the project within the proposed timelines, but unforeseen circumstances, including the impact of GST and demonetization, led to delays. Additionally, the Covid-19 restrictions and workforce shortages further slowed down the project. The respondent continued construction despite challenges and also had to carry out repairs due to the construction being left abandoned during the lockdown. These factors, considered force majeure, should be taken into account for the construction period. The respondent fulfilled its obligations diligently, and the project is progressing as per the agreement.
- XII. That the present case is filled with false and frivolous allegations against the Respondent, indicating a lack of good faith. The Complainant has not approached the Authority with clean hands, and the complaint should be dismissed with heavy costs. The Complainant has suppressed facts and misled the Authority with baseless and vague grounds, making the complaint unsustainable. This complaint represents an abuse of the legal process and should be dismissed in the interest of justice.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents made by both 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.

E. I Territorial jurisdiction

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

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.

So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the



compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.1 Objections regarding force majeure.

9. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by Hon'ble Supreme Court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI and re-routing of high-tension lines passing through the land of the project. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. It is observed that the respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 22.05.2020 and is claiming benefit of lockdown amid covid -19. In view of notification no.9/3-2020 dated 26.05.2020, the authority has allowed six months relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 01.04.2020 + 6 months, possession is to be handed over by 01.10.2020 but the respondent has failed to handover possession even within this extended period. Moreover, the occupation certificate/part OC is not yet obtained by the respondent from the competent authority.



10. Further, the judgement of the Hon'ble Supreme Court of India in the case of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.(Civil Appeal no.6745-6749 of 2021)**, it was observed

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

G. Findings regarding relief sought by the complainants.

G.1 Direct the respondent to handover the physical possession of the unit along with delay period interest.

11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of



delay, till the handing over of the possession, at such rate as may be prescribed."

12. The builder buyer's agreement was executed between the parties. As per clause 13 of the agreement, the possession was to be handed over within a period of 48 months from the date of execution of agreement. The clause 13 of the agreement is reproduced below:

"Clause 13

13.

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure - I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.

13. **Admissibility of grace period:** As per clause 13 of builder buyer's agreement, the respondent-promoter proposed to handover the possession of the said unit within a period of 48 months from the date of execution of the builder buyer's agreement. The Authority in of view of notification no.9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic allows the grace period of 6 months to the promoter at this stage.

14. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant is seeking delay possession charges. However, 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.

15. 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.
16. 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., 30.11.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
17. 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.

- (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;"*

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

19. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 01.04.2016, the possession of the booked unit was to be delivered within 48 months from the date of execution of buyer's agreement (01.04.2016) which comes out to be 01.04.2020. The grace period of 6 months is allowed in the present complaint for the reasons mentioned above. Therefore, the due date of handing over possession comes out to be 01.10.2020. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 01.04.2016 to hand over the possession within the stipulated period. Further, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the

status of construction of 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 allottees.

20. Accordingly, the non-compliance of the mandate contained in Section 11 (4) (a) read with section 18(1) of the Act on the part of the respondent is established. As, such the complainant is entitled to delay possession charges at the rate of the prescribed interest @ 10.75% p.a. w.e.f. 01.10.2020 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.
21. The complainant is also seeking relief of possession. It is observed that the occupation certificate/part occupation 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 after obtaining occupation certificate from the competent Authority. Further, the complainant is also directed to take possession of the allotted unit in compliance of obligation conferred upon him under Section 19(10) of the Act within two months of the occupation certificate after payment of outstanding dues against the said unit.
22. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement as entered into between the parties.

G. II. Direct the respondent to pay an amount of Rs.60,000/- as litigation expense.

23. The complainant is also seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

Directions of the Authority:

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- I. The respondent is directed to pay interest to the complainant at the prescribed rate i.e., 10.75% per annum w.e.f. due date of possession i.e. 01.10.2020 till handing over of possession or offer of possession after obtaining occupation certificate 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 complainant is directed to pay the outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- III. The arrears of such interest accrued from the due date of possession till date of this order shall be paid by the promoter to the complainant

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within a period of 90 days from the date of this order and interest of every month of delay shall be paid by the respondent to allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- IV. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent Authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of the Act of 2016, shall take physical possession of the subject unit, within a period of two months of the occupation certificate from the competent Authority.
- V. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant by the respondent, in case of default shall be charged at the prescribed rate i.e. 10.75% by the respondent which is same rate of interest which the respondent shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(z) of the Act.

25. Complaint stands disposed of.

26. File be consigned to registry.

Dated: 30.11.2023


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram