



HARERA
GURUGRAM

Complaint No. 6205 of 2022

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

Complaint no. :	6205 of 2022
Date of decision :	19.01.2024

1. Subhash Chander
2. Babli

**R/o # 639 Bhingarh Kheri, Part II near apna
enclave railway road, Gurugram, Haryana**

Complainants

Versus

1. M/s Vatika Ltd.

Office address: Tower A, Vatika city centre, 5th floor,
near Kherki Daula toll plaza, Sector 83, Gurugram,
Haryana-122012

2. Gautam Bhalla

Address: Tower A, Vatika city centre, 5th floor, near
Kherki Daula toll plaza, Sector 83, Gurugram,
Haryana-122012

Respondents

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Ms. Ritu Bhalla (Advocate)

Complainants

Shri Dhruv Dutt Sharma (Advocate)

Respondents

ORDER

1. The present complaint dated 27.09.2022 has been filed by the complainants/allottees 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 allottees 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 complainants, 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.	Allotment letter	16.11.2010 [pg. 39 of complaint]
3.	Floor no.	33, block E, ground floor, street 4 admeasuring 781.25 sq. ft. [pg. 52 of complaint]
	New unit	30, ST. K-15, ground floor, admeasuring 985 sq. ft. (page 61 of reply)
4.	Date of execution of buyer's agreement	13.04.2011 [Page 49 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 three years from the date of execution of this Agreement.</i>
6.	Due date of possession	13.04.2014
7.	Date of addendum to agreement for allotting new unit	29.12.2016 [pg. 104 of complaint]
8.	Letter intimating area change	10.07.2013, revised area 929.02 sq. ft. [pg. 102 of complaint]
9.	Total sale consideration as per SOA dated 29.12.2022	₹ 36,50,472/- [pg. 71 of reply]
10.	Paid up amount as per SOA dated 29.12.2022	₹ 11,59,912/- [pg. 71 of reply]
11.	Notice for termination	05.12.2020 [pg. 124 of complaint]
12.	Letter for cancellation	02.02.2021 [pg. 70 of complaint]
13.	Legal notice for handover of possession	04.05.2022 [pg. 128 of complaint]



14.	Occupation certificate	Not obtained
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B. Facts of the complaint

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

- a. That the complainants had booked an Independent Floor in the said project "Vatika India Next" of the respondent no. 1. The respondents issued the booking letter dated 29.09.2009 in favour of the complainants. After a gap of one year, the respondents issued an allotment letter in favour of the complainants on dated 16.11.2010.
- b. That the complainants paid a total amount of Rs.11,53,812/- to the respondents till date. The respondents issued payment receipts against such payments. The apartment buyer agreement was executed between the complainants and the respondents in respect of the plot no. 33, ground floor, 4th Street, E-Block, Sector-83, Gurugram, and ad-measuring 781.25 sq. ft. in Vatika India Next, Gurugram for a total sale consideration of Rs.24,39,696/-.
- c. A tripartite agreement was also executed between the parties for taking a home loan by the complainants as the complainants applied for a bank loan of Rs.15,00,000/- which was sanctioned by the HDFC Ltd. which was suggested by the respondents themselves and also with approval of mortgage to the bank.
- d. That the respondents sent a letter to the complainants intimating the change of the area and numbering system of the independent floor in Vatika India Next and the ad-measuring was revised from



781.25 sq. ft. to 929.02 sq. ft. in an arbitrary and illegal manner without obtaining the consent of the complainants.

- e. That a sum of Rs.3,65,954/- was paid by the banker of the complainants to the respondents as per their demands which clearly reflects from the bank statement of the complainant. No work was done at the site by the respondents and it was a fake site which was mentioned by the respondents to the complainants by representing the false and frivolous facts knowingly and intentionally.
- f. That the respondent again made a phone call to the complainants and informed regarding the issuance of a new unit bearing plot no. 30, Street K-15, Level-I, ad-measuring area 985 sq. ft. in an illegal and arbitrary manner without obtaining any consent and permission of the complainant. The complainant booked the ground floor unit and paid a much amount for the backyard area of their unit to the respondents but due the above said change in the arbitrary and illegal manner, plot/flat no such area was provided to them and a huge amount of the complainant had struck with the respondents, so the complainants have no other option but to accept the same.
- g. That an addendum to the floor builder buyer agreement again issued by the respondents regarding the new unit which was given by the respondent to the complainant. Further, the complainant paid a sum of Rs.2,84,214/- through cheque to the respondents on their demands as they said that they will submit the new

documents of their unit in the bank and the further instalment will be paid by the bank. The respondents themselves sent an intimation to the banker of the complainants in order to sanction the new loan as the ad-measuring area of the unit has been increased and further stated whenever registration formalities are completed they will send a registered conveyance deed in respect of said unit to HDFC directly. An amendatory tripartite agreement was executed between the parties on dated 12.10.2018 in this regard.

- h. That the banker of the complainant raised a demand to the complainants for a sum of Rs.2,950/- in connection with request for switch over from existing negative spread over RPLR to higher negative spread loan which was paid by the complainants through cheque bearing no. 000057.
- i. That the respondents issued a termination letter of the aforesaid unit of complainants due to nonpayment of the dues amounting to Rs.10,61,775.34/- which was received by complainants on 16.12.2020 in which a time period of seven days was given to them for depositing the same. The complainants received this notice of termination on 16.12.2020 and visited on the next day of receiving to the respondents where they met Mr. Sohail and Ms. Neha and asked to clear the dues on or before 22-12-2020. When the complainants asked to supply the required documents to the bank as they paid the EMIs of the loan amount to the bank but the



representatives of the respondents did not pay any heed to their requests.

- j. After sending the notice, complainants visited the respondents to solve the issues but nothing fruitful came out & the complainants filed a complaint bearing no. HRR-GGM-CRL/1020/2021 in HRERA against the respondents.
- k. That the unit of the complainants is neither ready till date nor any work of the said unit is in progress. As per the buyer agreement Clause 10.1, the respondents have to deliver the possession of the said unit within a time period of 36 months i.e. three years from the date of the agreement but the respondents have miserably failed to perform their part of agreement as agreed by them. The legal notice was sent to the respondents by the counsel of the complainants and advised them to handover the physical possession of the flat booked by the complainants on the agreed rates as agreed by the respondents at the time of booking by waiving off interest which cause fraudulently charged by the respondents but the respondents did not respond the same.
- l. That due to the malafide intentions of the respondents and non-delivery of the flat unit the complainants in time have accrued huge losses on account of the career plans of their family members and themselves and the future of the complainants and their family are rendered dark as the planning with which the complainants invested their hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits. That

complainants are eagerly waiting for their Flat even today & want to take physical possession the flat to the complainants as early as possible without any more delay.

- m. That it is submitted that cause of action to file the instant complaints has occurred within the jurisdiction of this Authority as the apartment which is the subject matter of complaint is situated in Sector-83, Gurugram which is within jurisdiction of this Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay delay possession charges on paid amount from 28.09.2009 till date.
 - Direct the respondent to handover the physical possession of the unit to the complainants after receipt of OC.
 - Direct the respondent to set aside the cancellation letter.
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:
- 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 complainants have 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 complainants have also misdirected in claiming possession and delayed possession charges on account of alleged delayed offer for possession particularly when the booking of the complainants have been cancelled.
- d. It has been categorically agreed between the parties that subject to the complainants 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 3 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 ₹36,50,472/-, the amount actually paid by the complainant is only ₹11,59,912/-. 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, completion of super structure and completion of brickwork with plaster'.
- f. It is further submitted that despite the number of opportunities the complainants failed to make the payments. That on 05.12.2020 with an opportunity to make the payment within 07 days failing which the allotment shall stand cancelled. However, the complainants did not bother to make the payment and therefore the respondent was constrained to cancel the buyers agreement vide letter dated 02.02.2021 and the complainants are now left with no right, title, interest etc. in the present unit. The complainants after defaulting in complying with the terms and conditions of the buyers agreement now wants to shift the burden on part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainants.



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.

F. Findings on the relief sought by the complainants.

F.I. Direct the respondent to handover the physical possession of the unit to the complainants after receipt of OC.

12. The respondent promoter has not obtained the OC for the subject unit till date. The issuance of occupational certificate by the competent authority in itself is a proven fact that the promoter has sought all necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. as these clearances are preconditions for grant of OC. Therefore, respondent promoter is directed to offer the possession of the subject unit complete in all respect as per specifications as mentioned in the brochure once the OC for the same has been obtained from the competent authority.

F.II. Direct the respondent to pay delay possession charges on paid amount from 28.09.2009 till date.

F.III. Direct the respondent to set aside the cancellation letter.



13. The above-mentioned reliefs are being taken up together for adjudication. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges on the amount paid by him in respect of subject unit. 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)

14. In the present matter the promoter has proposed to hand over the possession of the plot according to clause 10.1 of the BBA within a period of 3 years from date of buyers' agreement. The due date of possession is calculated from the date of BBA i.e., 13.04.2011. Therefore, the due date of possession comes out to be 13.04.2014. However, the possession has not been offered to the allottees till date. Since in the present matter the complainant has paid an amount of ₹ 11,59,912/- towards the total consideration of the unit i.e., ₹ 36,50,472/- and are



seeking possession of the said unit. The respondent has issued a letter for termination on 02.02.2021.

15. Now, the question that arises before the authority is as to whether the cancellation of the said unit is valid or not. The authority while going by the facts and the documents placed on record observes that the complainant has chosen time linked payment plan wherein the complainant has agreed to make payment against the unit in 8 installments till offer of possession. The complainant paid 1st instalment i.e., 10% of BSP which was to be paid on booking. As per SOA dated 20.05.2019, 4 instalments became due till 28.10.2018 and the complainants have paid only till the 3rd instalment i.e., by 01.10.2018 which became due by 22.09.2018. The authority while taking the relevance from the documents placed on the record that complainants got their loan sanction for an amount of ₹ 15 lakhs from HDFC but later on the respondent changed the unit of the complainants for which the bank refused to sanction loan as the said site was not in their approval list which is very evident from the mail written by the complainants on 17.09.2018 to the respondents requesting them to produce the approved plans w.r.t. the new site. Thereafter the complainants have mailed repeatedly to the respondents to provide the documents for loan approval. Although the respondent is nowhere duty bound to arrange the funds for the unit but is duty bound under the provisions of the Act to provide the sanction plans of the unit/project. As of now the complainants have got their loan sanctioned from the HDFC bank on 12.10.2018 but did not disbursed the amount due to respondents



- careless behaviour of not providing the approved plans and documents necessary for loan disbursement, therefore the authority is of the view that the said cancellation is not valid and an arbitrary act of promoter accordingly the cancellation letter dated 02.02.2021 is hereby set aside.
16. Accordingly, the respondent has delayed in handing over the physical possession of the said apartment on or before the due date of possession to the complainant and accordingly the authority in the above relief has also granted delay possession charges @10.85% p.a. from due date of possession.
17. On consideration of the documents available on record and submissions made regarding contravention of 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 agreement. By virtue of clause 10.1 of the agreement executed between the parties on 13.04.2011, the possession of the subject apartment was to be delivered within 3 years from the date of execution of agreement. Therefore, the due date of handing over possession is 13.04.2014. The respondent has neither offered the possession of the subject unit till date. 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, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 13.04.2014 till



the offer of possession of unit plus two months after receiving OC from the competent authority or actual handing over of possession whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

18. 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 complainant is entitled to delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.85%p.a. for every month of delay on the amount paid by him to the respondent from due date of possession i.e., 13.04.2014 till the offer of possession of unit plus two months after receiving OC from the competent authority or actual handing over of possession whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules after deducting the amount paid or adjusted by the respondent on account of delay possession charges, if any.
- b. The respondent promoter is directed to offer the possession of the subject unit complete in all respect as per specifications as mentioned in the brochure within 30 days once the OC for the same has been obtained from the competent authority.
- c. The promoter shall not charge anything which is not part of the



buyer's agreement.

- d. The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
- e. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter 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(za) of the Act.
19. The complaint stands disposed of.
20. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 19.01.2024

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