

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

Date of decision: 05.04.2024

NAME OF THE BUILDER		1. M/s VATIKA LTD. 2. M/s VATIKA ONE ON ONE PVT. LTD.	
PROJECT NAME		ONE ON ONE PHASE-1	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6484/2022	Kusum Lata Narula V/s Vatika ltd. & Vatika One on One Pvt. Ltd.	Sh. Gaurav Rawat Ms. Tanya
2.	CR/6486/2022	Kamal Narula V/s Vatika ltd. & Vatika One on One Pvt. Ltd.	Sh. Gaurav Rawat Ms. Tanya
3.	CR/6488/2022	Dilapli Narula V/s Vatika ltd. & Vatika One on One Pvt. Ltd.	Sh. Gaurav Rawat Ms. Tanya
4.	CR/6489/2022	Vikas Narula & Nitika Narula V/s Vatika ltd. & Vatika One on One Pvt. Ltd.	Sh. Gaurav Rawat Ms. Tanya
5.	CR/6490/2022	Suman Narula V/s Vatika ltd. & Vatika One on One Pvt. Ltd.	Sh. Gaurav Rawat Ms. Tanya

**CORAM:**

Shri Sanjeev Kumar Arora

**Member****ORDER**

1. This order shall dispose of all the 5 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 projects, namely, 'ONE ON ONE PHASE-1' being developed by the same respondent promoters i.e., M/s Vatika Ltd. & M/s Vatika One On One Pvt. Ltd.
  3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	<b>VATIKA LTD. &amp; VATIKA ONE ON ONE PVT. LTD.</b> <b>" ONE ON ONE PHASE-1 "</b> <b>Sector-16, Gurugram.</b>			
Due date of possession	Since there is no possession clause in the allotment or application form and the complainants have made the full payment with respect to the subject unit accordingly the due date of possession is calculated 3 years from the date of undertaking. <i>[ as held in Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1 and then was reiterated in Pioneer Urban land &amp; Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725]</i>			
Occupation/Completion certificate	Not Obtained			
Comp. No.	Unit no.	Total sale consideration (TC)	Amount paid (AP)	Due date
CR/6484/2022	P-911, admeasuring 500 sq. ft. (earlier 1000 sq. ft. unit)	₹44,80,000/-	₹44,80,000/-	10.12.2022
	[pg. 37 of complaint]	[pg. 41 of complaint]	[pg. 41 of complaint]	
CR/6486/2022	P-910, admeasuring 750 sq. ft.	₹67,20,000/-	₹67,20,000/-	10.12.2022

	(earlier 1500 sq. ft. unit) [pg. 42 of complaint]	[pg. 44 of complaint]	[pg. 44 of complaint]	
<b>CR/6488/2022</b>	P-908, admeasuring 500 sq. ft. (earlier 1000 sq. ft. unit) [pg. 46 of complaint]	₹35,84,000/- [pg. 44 of complaint]	₹35,84,000/- [pg. 44 of complaint]	<b>10.12.2022</b>
<b>CR/6489/2022</b>	P-909, admeasuring 500 sq. ft. (earlier 500 sq. ft. 2 units each to complainant no.1 & 2) [pg. 53 of complaint]	₹67,20,000/- [pg. 52 of complaint]	₹67,20,000/- [pg. 52 of complaint]	<b>10.12.2022</b>
<b>CR/6490/2022</b>	P-912, admeasuring 500 sq. ft. (earlier 1000 sq. ft. unit) [pg. 44 of complaint]	₹44,80,000/- [pg. 42 of complaint]	₹44,80,000/- [pg. 42 of complaint]	<b>10.12.2022</b>

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case



**CR/6484/2022 titled as Kusum Lata Narula V/s Vatika Ltd. & Vatika One on One Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, get executed buyers' agreement and conveyance deed.

**A. Unit and project related details**

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

**CR/6484/2022 titled as Kusum Lata Narula V/s Vatika Ltd. & Vatika One on One Pvt. Ltd.**

S. No.	Heads	Information
1.	Name and location of the project	"Vatika one on one" at Sector 16, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	Area of the project	12.13125 acres
4.	DTCP License	05 of 2015 dated 06.08.2015
	Licensee name	Sh. Keshav DLtt & others in collaboration with Calder Developers Pvt' Ltd'
5.	RERA registered/ not registered	237 of 207 dated 20.09.2017
6.	Unit no.	P-771, (Page no. 41 of complaint)
7.	Unit shifted to	P-911, (page no. 37 of complaint)



8.	Unit area	1000 sq. ft to 500 sq ft. (Page no. 35 of complaint)
9.	Application form for unit no. P 722	14.09.2018 (Page no. 27 of complaint)
10.	Undertaking for change of unit and area i.e., 500 sq. ft.	10.12.2019 (Page no 41 of complaint)
11.	Application form for unit area	11.12.2019 (Page no 35 of complaint)
12.	Due of possession	14.09.2021 (Calculated 3 years from date of booking)
13.	Builder buyer agreement	Not Executed
14.	Total consideration	Rs. 44,80,000/- (page no. 29 of complaint)
15.	Total amount paid by the complainant	Rs. 44,80,000/- (as per statement of account page no. 34 of complaint)
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

**B. Facts of the complaint**

7. The complainant has submitted as under:

- a. This is with reference to the commercial complex "ONE ON ONE" at Sector - 16, Gurugram was launched by M/s. Vatika Limited and



M/S. Vatika One On One Private Limited, under the license no. 05 of 2015 dated 06.08.2015, issued by DTCP, Haryana, Chandigarh, situated at Sector - 16, Gurugram, Haryana. The complainant, is the law abiding citizen. Complainant are currently residing at H-5/9, DLF Phase-I, Gurugram, Haryana-122001.

- b. That the complainant is the allottee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016. The respondents company, M/s Vatika Ltd. and M/S. Vatika One On One Private Limited are limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- c. In 2018, the respondents company issued an advertisement announcing a commercial complex "Vatika India Next" at Sector - 82, Gurugram was launched by M/s. Vatika Limited and M/S. Vatika One On One Private Limited, under the license, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondents confirmed that the projects had got building plan approval from the authority.
- d. The complainant while searching for a commercial unit was lured by such advertisements and calls from the brokers of the respondents for buying a commercial space in their project namely Vatika India Next. The respondents company told the complainant about the moonshine reputation of the company and the representative of the respondents company made huge presentations about the project mentioned above and also assured



that they have delivered several such projects in the NCR. The respondents handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.

- e. Relying on various representations and assurances given by the respondents company and on belief of such assurances, complainant booked a unit in the project by paying an booking amount and total sale consideration amount of ₹ 44,80,000/- vide cheque no. 000002 dated 14.09.2018 drawn on HDFC Bank towards the booking of the said unit bearing no. P-771, in Sector 82, having super area measuring 1000 sq. ft. to the respondents dated 14.09.2018 and the same was acknowledged by the respondents.
- f. That based on the payment plan and as per the demand raised by the respondent company, complainant made full and final payment of ₹44,80,000/- vide cheque no. 000002 drawn on HDFC bank as full and final payment to buy the captioned unit. That the respondents confirm to the complainant booking of the said unit and providing the details of the project, confirming the booking of the unit dated 14.09.2018, allotting a unit no. P-771 (hereinafter referred to as 'unit') measuring 1000 sq. ft. (super built up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. ₹44,80,000/-, which includes basic price, EDC and IDC, Car parking charges and other specifications of the allotted unit.
- g. As per assurance and on the bases of the above said allotment letter respondents assured of getting the builder buyers agreement/



agreement to sell within 30 days from the date of the above said booking i.e. 14.10.2018.

- h. At the time of purchasing the unit, the complainant was assured that the possession of the unit would be delivered within the promised period of 2 years from the date of booking i.e. by 14.09.2020. That respondent on 11.12.2019 approach the complainant and provided various representations and assurances about their commercial complex project "ONE ON ONE" at Sector - 16, Gurugram was launched by M/s. Vatika Limited and M/S. Vatika One On One Private Limited, under the license no. 05 of 2015 dated 06.08.2015, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondents confirmed that the projects had got building plan approval from the authority. Furthermore, provide the assurance that the total amount paid by the complainant will be adjusted in the One on One project and no extra amount is required to be paid and the terms and conditions will remain the same as agreed on 14.09.2018.
- i. Relying on various representations and assurances given by the respondents company and on belief of such assurances, complainant agreed to transfer a unit in the project at total sale consideration amount of ₹44,80,000/- towards the booking of the said unit bearing no. P-911, in Sector 16, having super area measuring 750 sq. ft. to the respondents dated 11.12.2019 and the same was acknowledged by the respondents.



- j. That it is pertinent to mention here that respondent acting arbitrary reduce the area of the unit from 1000 sq. ft. to 500 sq. ft. without prior consent of the complainant and till date even fail to get the buyer's agreement executed and even fail to issue allotment letter and pay monthly assured return as agreed upon. That respondents in order to cheat and harass the complainant fraudulently obtain the undertaking from the complainant in order to cheat the innocent allottee.
- k. That as per the terms of booking of the said unit, the respondents undertake to make the payment of commitment amount/assured return of ₹75.83/- per sq. ft. per month on super area of 500 sq. ft. from the date of booking i.e. 14.09.2018 till the completion of the unit for fit outs. Further, as per the agreed terms of booking respondents promised that post the completion of the construction of the said building, complainant will be paid committed return of ₹65/- per sq. ft. per Month on super area for up to 3 years from the date of completion of construction of said building or the said unit is put on lease, whichever is earlier.
- l. Furthermore, respondents as per the agreed terms of booking also undertake to enter into buyer's agreement/ agreement to sell with the complainant. It is pertinent to mention here that till date respondents has failed to execute the buyer's agreement/ agreement to sell and also failed to offer/handover the possession the said unit even after delay of more than 2 year. Even till date respondents has also failed to pay assured return/ commitment charges as promised at the time of booking.



- m. That as per agreed terms of booking the respondents agreed to put the said unit on lease and to effectuate the same. But till date respondents has failed to abide and honor the agreed terms of booking by not leasing out the above said unit till date. As per the agreed terms of booking, the respondents was liable to handover the possession of the said unit on or before 14.09.2020, therefore, the respondents was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery.
- n. As per booking application form and agreed terms of booking, respondents further agreed that there will be no maintenance charges/ electricity charges/ water charges etc. shall be charges from the complainant for the period unit is on lease and the said charges will be paid by the prospective tenant.
- o. As per the said assurance at the time of booking, the respondents was liable to handover the possession of the said unit on or before 11.12.2020, therefore, the respondents was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery and the complainant as per agreed terms of booking and booking application form is also entitled to get the monthly assured amount till the completion of the unit for fit outs and also post the completion of the construction of the said building, complainant will be paid committed return per month on super area for up to 3 years from the date of completion of construction of said building or the said unit is put on lease, whichever is earlier.



- p. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of ₹44,80,000/- towards the said unit against total sale consideration of ₹44,80,000/-. That it is pertinent to mention here that respondents is in breach and the spirit of the provisions/section RERA Act, 2016 and HRERA Rules, 2017. As after coming into force of the RERA act, 2016 and HRERA Rules, 2017, the respondents was under liability to sell the unit at carpet area not on the super area of the unit but in present case the respondents has sold the unit on super area i.e.500 sq. ft.
- q. That it is pertinent to mention here that allotment of the unit was made on 14.09.2018, after coming into force of the RERA Act, 2016 and as per the Act, after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charge the complainant on the super area i.e. 500 sq. ft. which is against the provisions of the RERA Act, 2016 and the rules, 2017 made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent and direction may kindly be passed to the respondent to charge on the carpet area instead of the super area of the unit. Furthermore, as per 13 of the RERA Act, respondents cannot accept the sum more than 10% of the total coats the unit but in present case Respondents has collected 100% amount.
- r. In the present case respondent has collected full and final payment of ₹44,80,000/- till date without executing the builder buyer



agreement. Further, such acts of the respondents is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017. That respondents by falsely mis-representing to the complainant and thereby making them to act in accordance to its misrepresentations. The respondents not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondents is unable to handover a possession even after a delay of 2 year.

- s. By falsely ensuring wrong delivery lines and falsely assuring the timely delivery of possession, the complainant has been subjected to unethical/unfair trade practice as well as subjected to harassment in the guise of a biased allotment letter. The above said acts of the opposite parties clearly reveal that the "opposite parties" with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such Act and omissions on the part of the opposite party has caused an immeasurable mental stress and agony to the complainant. That by having intentionally and knowingly induced and having falsely mis-represented to the complainant and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the " opposite parties", the opposite parties" are liable to make as being requisitioned/claimed by the complainant
- t. Further, the complainant having dream of its own unit in NCR signed the agreement in the hope that the unit will be delivered

within 2 years from the date of booking. The complainant was also handed over one detailed payment plan. It is unfortunate that the dream of owning a unit of the complainant were shattered due to dishonest, unethical attitude of the respondents.

- ii. During the period the complainant went to the office of respondents several times and requested them to allow them to visit the site and when the respondents will get buyers agreement executed and also the assured return the complainant is entitled to but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- v. The complainant contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession.
- w. The complainant kept pursuing the matter with the representatives of the respondents by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labor etc.

- x. It is abundantly clear that the respondents have played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period and paying the monthly assured amount. The respondents had further malafidely failed to implement the allotment letter with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.
- y. The complainant have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the booking application form.

**C. Relief sought by the complainants:**

8. The complainant has sought following relief(s):
- Direct the respondent to handover symbolic and constructive possession of the said unit with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same to lease out the unit in question of the complainant.
  - Direct the respondent to execute BBA in favour of complainant with respect to the unit in question.

- c. Direct the respondent to pay interest on the total amount paid by the complainant at prescribed rate of interest as per RERA from due date till handing over of possession.
  - d. Direct the respondent to pay assured return till the said unit is leased out.
  - e. Restrain the respondent from raising fresh demands for payment under any head as the complainant has already made payment as per the payment plan.
  - f. Direct the respondent to lease out the said unit as per the terms and conditions of the allotment letter till the said unit is handed over to the complainant.
  - g. Direct the respondent not to force the complainants to sign any indemnity cum undertaking as a pre-condition for signing conveyance deed.
  - h. Direct the respondent to set aside undertaking dated 10.12.2019.
  - i. Direct the respondent to provide exact lay out of the said unit.
  - j. It is prayed to this authority to take penal action against the respondent for violation of various provisions of the Act, 2016.
  - k. Direct the respondent not to charge anything irrelevant like labour cess, electrification charges, maintenance charges etc.
9. On the date of hearing, the authority explained to the respondents/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 respondents.**

10. The respondent has contested the complaint on the following grounds:



- a. That the complainant is not an “allottee” but an investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainant as a speculative investment and not for the purpose of self-use. Therefore, no equity lies in favour of the complainant.
- b. That the complainant being interested in the real estate development of the respondents, approached the respondents and expressed interest in booking of a commercial space in the commercial complex developed by respondents known as “Vatika One India Next” situated in Sector 82A, Gurgaon, Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that she took an independent and informed decision, uninfluenced in any manner by the respondents, to book the unit in question.
- c. That thereafter, the complainant vide an application form dated 18.09.2018 allotted a unit bearing no P-770 admeasuring 1750 sq. ft. (tentative area). The complainant consciously and wilfully opted for the down payment plan for remittance of sale consideration for the unit in question and further represented to the respondents that she shall remit every instalment on time as per the payment schedule. The respondents had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in her favor.

- d. It is pertinent to mention that the complainant in terms of the application form executed by her had consciously and voluntarily declared and affirmed that she would be bound by all the terms and conditions of the provisional allotment. It was further declared by the complainant that she would not be entitled to any interest for any delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondents.
- e. That the complainant had defaulted in timely remittance of the instalments pertaining to the unit and therefore, have disentitled herself for any compensation/interest. The respondents had conveyed to complainant that on account of the defaults, she would not be entitled to any compensation for delay, if any.
- f. That it is submitted that the complainant approached the respondents and showed interest in the project namely "Vatika One On One" situated in Sector-16, Gurgaon, Haryana (hereinafter referred to as the said project). It is submitted that several options were given to the complainant in the said project and after taking into consideration all aspects of the project, the complainant decided to transfer her booking from "Vatika One India Next" to "Vatika One On One" as per the terms and conditions mutually agreed between the parties.
- g. That thereafter the complainant was issued with an application form dated 11.12.2019 for provisional allotment of the unit. Pursuant thereto, unit bearing no P-910, admeasuring 750 sq. ft. (tentative area) was allotted to the complainant. Accordingly, the

complainant undertook to be bound by the terms and conditions of the application form/allotment letter.

- h. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the complainant have not approached the Hon'ble Authority with clean hands as have nowhere divulged the Hon'ble Authority with the fact that she has been in constant defaults in making good on her part of the obligations. That the complainant, through the present complaint, have concocted lies and attempted to deceive the Hon'ble Authority.
- i. That as per the application form executed by the complainant, the complainant was under an obligation to execute the buyer's agreement within fifteen days from the date of execution of the application form.
- j. That the representatives of the respondents approached the complainant in order to get the buyer's agreement executed but the same was delayed on one pretext or the other.
- k. That the relationship between the parties is contractual in nature and is governed by the agreements and mutual understanding between the parties. The rights and obligations of the parties flow directly from such agreements/application form. At the outset, it must be noted that the complainant willingly consciously and voluntarily booked the said unit after reading and understanding the contents of the application form to her full satisfaction. That the complainant agreed to be bound by the terms and conditions in the application form.



1. It is submitted that the complainant executed an undertaking dated 18.12.2019 whereby the allotment made by the complainant was transferred to the said project. It is further submitted that the complainant vide the said undertaking indemnified the respondents from any future claims. That as per the said undertaking, the complainant is not entitled for any interest whatsoever.

11. 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 on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

12. 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**

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

14. 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) 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.*

15. 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 complainants at a later stage.

**F. Findings on the objections raised by the respondent.**

**F.I. Objections regarding the complainant being investor**

16. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states

main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of ₹ 44,80,000/- the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"*

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts.*

**And anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

**G.I. Direct the respondent to handover symbolic and constructive possession of the said unit with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same to lease out the unit in question of the complainant.**

18. Since, in the present matter OC have not been received from the competent authority and it is a pre requisite for handing over of possession and no valid offer of possession has been issued by the respondent after obtaining OC accordingly the respondent is directed to issue a valid offer of possession under section 17(2) of the Act, 2016 within 60 days after obtaining occupation certificate from the competent authority.

**G.II. Direct the respondent to execute BBA in favour of complainant with respect to the unit in question.**

19. The authority considers that according to section 13(1) of the Act, 2016 the respondent shall not accept a sum more than ten percent of the cost of the apartment, plot or building, as an advance payment or an application fee, from a person without first entering into a written agreement for sale. Whereas, in the instant matter the respondent has taken 100% of the consideration without executing the BBA. The relevant section of the Act is as follows: -

***“Section 13. No deposit or advance to be taken by promoter without first entering into agreement for sale.***

***A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may***

*be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."*

20. The promoter has violated the section 13(1) of the Act, for which liability flows from section 61 which read as follows: -

***"Section 61. Penalty for contravention of other provisions of this Act.***

*If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority."*

21. Accordingly, the authority vide order dated 23.02.2024 issued a show cause notice for violation of section 13 to explain within 1 week as to why penalty under section 61 should not be imposed up on them. Till date no such explanation has been submitted by the respondent in this regard accordingly, the authority establishes the violation on part of the respondent and hereby imposes a token penalty under section 61 of ₹1,00,000/- in each complaint and further directs the respondent to execute the registered buyer's agreement as per the model agreement provided in Real Estate Regulation and Development Rules, 2017 within 30 days from this order failing which the authority shall be bound to invoke penal action u/sec 63 of the Act, 2016.

**G.III. Direct the respondent to pay interest on the total amount paid by the complainant at prescribed rate of interest as per RERA from due date till handing over of possession.**

22. 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  
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.*

23. However, in the present matter there is no possession clause in the BBA therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725:**

*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."*

24. In the present matter the complainant was initially allotted a unit admeasuring 1000 sq. ft. for a total sale consideration of ₹44,80,000/- vide application form dated 18.09.2018. The complainant paid the full consideration amount at the time of booking itself but thereafter the complainant vide undertaking dated 10.12.2019 relinquished its rights



over initial unit and got its amount transferred for another unit admeasuring 500 sq. ft. in project "one on one" for same consideration. After due consideration of the document placed on record it is clear that since there is no clause in the undertaking which states that the terms and conditions of earlier allotment letter shall prevail, also the complainant is seeking delay possession charges w.r.t. the subsequent unit accordingly, the authority opines that the due date of possession shall be calculated from the date of undertaking i.e., 10.12.2019. Accordingly, the due date of possession is calculated as 3 years from the date of undertaking i.e., 10.12.2019. Therefore, the due date of possession comes out to be 10.12.2022.

25. **Admissibility of grace period:** The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). The due date is calculated from the date of undertaking i.e., 10.12.2019. Therefore, the due date of possession comes out to be 10.12.2022. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 10.12.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020

dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to be 10.06.2023.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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."*

27. 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.
28. 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., 22.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

29. 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;"*

30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

31. 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. Due date of possession is calculated from the date of undertaking i.e., 10.12.2019. Therefore, the due date of possession comes out to be 10.12.2022. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore,



the due date of handing over possession comes out to be 10.06.2023. The respondent has not offered the possession of the subject apartment. 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., 10.06.2023 till valid offer of possession plus two months or 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.

**F.IV. Direct the respondent to pay assured return till the said unit is leased out.**

32. After considering the documents placed on record it is clear that although the respondent was obligated to pay assured return as per application w.r.t. the initially allotted unit but thereafter the complainant himself relinquished his rights over the said unit and got the unit transferred to another project on 10.12.2019 wherein there exist no agreement between the parties w.r.t. the assured return of the new allotted unit therefore, after applying the principle of novation of contract which clearly states that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed the authority is of the view that the respondent is not liable to pay any assured return to the complainant.

**F.V. Restrain the respondent from raising fresh demands for payment under any head as the complainant has already made payment as per the payment plan.**

33. As per the records available in the file the authority observes that since the total sale consideration has already been paid by the complainant to the respondent accordingly, the respondent is directed not to issue any further demands w.r.t. the unit from the complainant.

**F.VI. Direct the respondent to lease out the said unit as per the terms and conditions of the allotment letter till the said unit is handed over to the complainant.**

34. The authority while going by the clauses of allotment letter observes that there is no such clause which specifically talks about the leasing arrangement accordingly, in absence of clause w.r.t. lease the authority cannot deliberate up on the said issue.

**F.VII. Direct the respondent not to force the complainants to sign any indemnity cum undertaking as a pre-condition for signing conveyance deed.**

35. As per Section 17 (1) of Act of 2016, the respondent is under obligation to get the conveyance deed executed. In the present case the possession of the allotted unit has yet not been handed over to the allottee. Therefore, the respondent is directed to handover the possession of the subject apartment complete in all aspects within 60 days after receiving occupation certificate by the competent authority and thereafter, execute a conveyance deed in their favour within 90 days from the date of handover. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity/undertaking of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**

**F.VIII. Direct the respondent to set aside undertaking dated 10.12.2019.**

36. Since the complainant has himself signed the said undertaking dated 10.12.2019 and the amount paid was also adjusted towards the new unit so allotted in the new project accordingly, now the complainant cannot step back from the said undertaking. On 05.01.2024 & subsequently on 23.02.2024 the respondent was directed to file GST R1 certificate as the amount paid by the complainant is ₹44,80,000/- against the unit allotted but subsequently only ₹40,00,000/- were adjusted against the new allotted unit which is reflected in the statement of account dated 04.02.2020. Till date no such certificate has been submitted by the respondent despite numerous directions given by the authority vide order dated 05.01.2024 & 23.02.2024 accordingly, the authority hereby imposes a token penalty of ₹25,000/- in each compliant under section 63 of the Act, 2016 for non-complying by the directions of the authority to be paid within 30 days from the date of this order.

**F.IX. Direct the respondent to provide exact lay out of the said unit.**

37. As per section 19(1) of the Act, 2016 the complainant allottee is entitled to obtain information relating to sanctioned plans, layout plans approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder. Accordingly, the respondent is liable to produce such documents as and when asked by the complainant.

**F.X. It is prayed to this authority to take penal action against the respondent for violation of various provisions of the Act, 2016.**

38. No specific violations of provisions are mentioned in the pleadings except for section 13 of the Act, 2016. Accordingly no findings w.r.t. the said issue can be deliberated by the authority.



**F.XI. Direct the respondent not to charge anything irrelevant like labour cess, electrification charges, maintenance charges etc.**

39. The respondent shall not charge anything which is not the part of the binding agreement and various clauses as per model BBA, also authority has decided the said issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

**H. Directions of the authority:**

40. 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):
- The respondent is directed to pay interest for every month of delay from due date of possession i.e., 10.06.2023 till valid offer of possession plus two months or 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.
  - The authority establishes the violation of section 13 of the Act, 2016 on part of the respondent and hereby imposes a token penalty under section 61 of ₹1,00,000/- in each complaint and further directs the respondent to execute the registered buyer's agreement as per the model agreement provided in Real Estate Regulation and Development Rules, 2017 within 30 days from this order failing

which the authority shall be bound to invoke penal action u/sec 63 of the Act, 2016.

- c. The authority imposes a token penalty of ₹25,000/- in each compliant under section 63 of the Act, 2016 for non-complying by the directions of the authority to be paid within 30 days from the date of this order
  - d. The respondent is directed to handover the possession of the subject apartment complete in all aspects within 60 days after receiving occupation certificate by the competent authority and thereafter, execute a conveyance deed in their favour within 90 days from the date of handover.
  - e. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
  42. True certified copies of this order be placed on the case file of each matter.
  43. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 05.04.2024**