

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

Complaint no.	:	3800 of 2023
Date of filing:		12.09.2023
Date of decision :		29.03.2024

Saurabh Gupta

**R/o # B-4-107, Mayur Apartment, Sector 9, Rohini,
Delhi-110085**

Complainant

Versus

M/s Vatika Ltd.

Office address: Vatika triangle, 4th floor, Sushant Lok,
phase- 1, block- A, Mehrauli-Gurugram road, Gurugram,
Haryana-122002

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Rishabh Jain (Advocate)

Complainant

Shri Pankaj Chandola (Advocate)

Respondent

ORDER

1. The present complaint 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.no.	Particulars	Details
1.	Name of the project	Vatika Express City at Sector 88-B, Gurugram, Haryana
2.	DTCP license no.	94 of 2013 dated 31.10.2013 11 of 2015 dated 01.10.2015
3.	RERA Registered/ not registered	271 of 2017 dated 09.10.2017 valid up to 08.10.2022
4.	Date of builder buyer agreement	29.03.2016 [pg. 31 of complaint]
5.	Unit no.	Plot 18, HSG-028-Pocket-H-2-Level-1, 1350 sq. ft. [page 33 of complaint]
6.	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 unless there shall be delay or there shall be failure due to</i>



		<i>reasons mentioned in other clauses herein or due to on 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.</i>
7.	Due date of possession	29.09.2020 [note: grace period of 6 months on account of covid-19]
8.	Total Sale Consideration as per SOA dated 14.12.2023	₹ 88,33,415.50/- [pg. 39 of reply]
9.	Paid up amount as per SOA dated 14.12.2023	₹ 97,51,315.59/- [pg. 39 of reply]
10.	Occupation certificate	10.05.2023 [pg. 33 of reply]
11.	Offer of possession	12.07.2022 [pg. 61 of complaint]
12.	Possession letter	31.07.2023 [pg. 65 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- a. The grievance of the Complainant relates to Breach of Contract, False Promises, Gross Unfair Trade Practices and Deficiencies in the Services committed by the Respondent in regard to the **Floor No.**

HSG-028, Pocket H-2, Level 1, Plot No. 18, (hereinafter referred to as '**Floor**') measuring 1350 square feet of super area in the project '**Xpressions**' (hereinafter referred to as '**Project**') situated at Sector 88A & 88B, Gurugram, Haryana, bought by the Complainant paying his hard-earned money.

- b. In the Builder Buyer Agreement dated 29th March, 2016 (hereinafter referred to as "**Agreement**"), it is stated that the Respondent, Vatika Limited in association and collaboration with its associates is developing a residential plotted colony by the name of Vatika Express City at Sector 88A & 88B, Gurugram, Haryana and the Director, Town & Country Planning, Haryana has granted license no. 94 of 2013 dated 31st October, 2013, licence no. 11 of 2015 dated 1st October, 2015.
- c. As per the Builder Buyer Agreement, the Respondent promised to deliver the possession by 29th March, 2020 as mentioned in clause 13, page 11 of the Agreement. The Promoter failed to timely deliver the possession of the Floor and issued an illegal and unlawful offer of possession on 12th July, 2022, after a delay of more than two years as the Occupation Certificate was not received by the Respondent at that time. The Respondent obtained the Occupation Certificate (OC) from the competent authorities on 10th May, 2023 and delivered the possession of the Floor on 31st July, 2023, after a delay of more than three years. The Respondent has failed to fulfil obligations as per the Agreement and deliver legitimate and lawful possession of his Floor in timely manner. Thus, the Respondent is

liable to pay interest on the amount deposited by the Complainant due to delay in delivery of possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- a. Direct the respondent to complete the development of the project and deliver the floor along with all facilities and amenities like water, electricity, roads, green belt, etc. immediately and obtain completion certificate.
- b. Direct the respondent to pay delay possession charges on paid amount till date of handing over of possession.
- c. Litigation cost-₹1,00,000/-.

5. On the date of hearing the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4)-(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent by way of written reply made the following submissions:

- a. It is submitted that the respondent herein was committed to complete the construction of the project and the respondent herein in compliance with the terms of the agreement has completed the construction and obtained occupation certificate on 10.05.2023. The complainant herein voluntarily with free will and consent has taken over the possession of the unit on 31.07.2023 after satisfying with all the measurements, specification and fittings/fixtures of the subject unit.

- b. The respondent humbly submits that the complainant executed the possession letter dated 31.07.2023, whereby the complainant took over peaceful and vacant physical possession of the unit in question after fully satisfying themselves with regard to its measurements, specifications, fittings and fixtures etc. It was further explicitly stated by the complainant in the aforesaid letter agreed that upon acceptance of possession they would not be entitled to raise any claim of any nature whatsoever regarding delay in possession of the unit in question.
- c. That in around the year, 2015, the complainant learned about the residential project launched by the respondent titled as "XPRESSIONS BY VATIKA" (hereinafter referred to as 'Project'), situated at Sector BBB, Gurugram, and visited the office of the respondent to know the details of the said project. The complainants further inquired about the specifications and veracity of the project and was satisfied with every proposal demanded necessary for the development.
- d. That on 28.07.2015, after having keen interest in the project being developed by the respondent and post being satisfied with the specifications of the project, the complainant decided to book a unit vide application form dated 28.07.2015, and paid an amount of ₹2,00,000/-, as booking amount for further registration in the project.
- e. The respondent vide invitation for allotment letter dated 16.01.2016, called upon the invited the complainant for taking the

- allotment and requested to come to the office of the respondent on 05.02.2016, for taking the allotment of the unit.
- f. Thereafter, the respondent vide allotment letter dated 05.02.2016, allotted a unit bearing no. HSG-028, Sector 88B, Plot no. 18, Level 1, Street No. H-32, (hereinafter referred to as 'Unit') admeasuring super area of 1350sq. ft., in the aforesaid project. That the respondent vide letter dated 08.03.2016, served two copies of the builder buyer agreement (hereinafter referred to as 'agreement'), for execution and requested the complainant to return the signed copy of the same for further execution within 30 days.
- g. That on 29.03.2016, builder buyer agreement, was executed between the both the parties, for the unit in question having Basic Sale consideration of ₹82,12,012.50/-.
- h. That as per 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 shall be delay or there shall be failure due to reasons beyond the control of developer or due to government rules, orders etc. or due to 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.
- i. It is submitted that subsequent to the booking and signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the unexpected introduction of a new National Highway being NH 352

W (herein "NH 352 W") proposed to run through the project of the respondent. Initially HUDA has to develop the major sector roads for the connectivity of the project on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana Government had transferred the land to new highway 352 W. Therefore, in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs. It is pertinent note that the respondent has already laid down its facilities before such upliftment. As a result, respondent was constrained to uplift the project land and re-align the facilities. Thereafter, GMDA handed over the possession of the land properties/land filling in NH 352 to NHAI for construction and development of NH 352 W. All this process has caused considerable amount of delay and thus hampered the project in question which are beyond the control and ambit of developer, which also contributed to the inevitable change in the layout plans.

- j. The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45(1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act, 2017), transferred the properties falling within the ambit of NH 352W acquired by HUDA to GMDA for development and construction of NH 352 W.

- k. That the GMDA vide its letter dated 08.09.2020 had handed over the possession of the said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- l. Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. That the respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.
- m. It is pertinent to note that the respondent gave possession to the complainant vide possession letter dated 31.07.2023, wherein the complainant has taken a peaceful and vacant possession of the unit.
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 complainant.

F.I. Direct the respondent to complete the development of the project and deliver the floor along with all facilities and amenities like water, electricity, roads, green belt, etc. immediately and obtain completion certificate.

12. In the present matter the complainant has already taken the possession of the said unit on 31.07.2023 accordingly, the above said relief stands redundant.

F.II. Direct the respondent to pay delay possession charges on paid amount till date of handing over of possession.

13. In the present complaint, the complainant intends to continue with the project and is 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. Clause 13 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

"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 on 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.**"*

15. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the

agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said flat within a period of 48 months from the date of execution of this agreement i.e., 29.03.2016. The period of 48 months expires on 29.03.2020. The respondent has sought further extension of a period of 6 months on account of Covid-19 (after the expiry of the said time period of 48 months). Since the period of 48 months expires on 29.03.2020 the authority after considering the facts and circumstances of the case and acting under its notification no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 hereby allows the 6 months grace period over and above the 48 months. Therefore, the due date of handing over possession is 29.09.2020.
17. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

18. 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.
19. 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., 29.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
20. 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;"
21. 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.

22. 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 13 of the agreement executed between the parties on 29.03.2016, the possession of the subject apartment was to be delivered within 48 months from the date of execution of buyer's agreement. The period of 48 months expired on 29.03.2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 29.09.2020. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 29.09.2020 till the date of valid offer of possession of the unit i.e., 12.07.2022 plus two months i.e., 12.09.2022, 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.III. Litigation cost-₹1,00,000/-

23. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

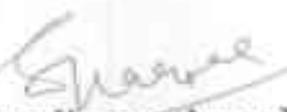
G. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of 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., 29.09.2020 till the date of valid offer of possession of the unit i.e., 12.07.2022 plus two months i.e., 12.09.2022 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.
- b. 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.

25. The complaint stands disposed of.

26. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.03.2024