

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

Complaint no.: 1138 of 2022  
Order reserved on: 04.01.2024  
Date of decision: 08.02.2024

1. Vinay Kumar Yadav
  2. Anoop Kumar Yadav
- R/o: House no.295, sector 10A, Gurugram, Haryana

**Complainants****Versus**

M/s Vatika Ltd.

**Regd. Office:** Vatika triangle, 4<sup>th</sup> floor, Sushant lok  
Phase-1, Block-A, Mehrauli-Gurugram road, Gurugram,  
Haryana

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Ms. Priyanka Aggarwal (Advocate)  
Shri Pankaj Chandola (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.



**A. Project and unit related details**

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

S.No.	Particulars	Details
1.	Name of the project	"Vatika India Next", Sector 85, Gurugram
2.	Type of colony	Residential plotted colony
3.	Allotment letter	27.10.2011 (page 51 of complaint)
4.	Plot no.	14,3 <sup>rd</sup> court ST. Sector 85B VIN (Page 32 of complaint)
	Re allotted new plot vide addendum dated 30.12.2013	7/R-2/85R/240 sq. yds.
5.	Date of execution of buyer's agreement	23.07.2011 (As per page 27 of complaint)
6.	Addendum to the plot	30.12.2013 (page 63 of complaint)
7.	Possession clause	<b>9. Handing over possession of the said plot to the allottee</b> The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said plot <b>within a period of three years from the date of execution of this agreement unless there is a delay or failure due to reasons mentioned in Clauses (11), (12) and (30) or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure-II or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement. ....</b> (Emphasis supplied)
8.	Subsequent allottee through endorsement	27.10.2011 (page 51 of complaint)
9.	Due date of possession	23.07.2014

		(calculated from date of execution of plot buyer's agreement)
10.	Total sale consideration	Rs. 80,55,850/- (As per SOA on page 52 of complaint)
11.	Paid up amount	Rs. 43,93,904/- (as per SOA page 52 of complaint)
12.	Amount paid back by respondent to the complainant	Rs. 10,00,000/- (submitted by the counsel of respondent during proceedings dated 08.02.2024)
13.	Notice of cancellation	26.07.2021 (page 74 of complaint)
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained

### B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That the complainants contacted the respondent to inquire about purchasing a plot in the "Vatika India Next," Sector-85, Gurugram. Upon the suggestion of the respondent, the complainants considered buying a unit that had been previously booked. Subsequently, the complainants approached the previous unit allottee, Mr. Sonu Bhatia, who was willing to sell his unit, and the same was sold to the complainants. Furthermore, the transfer was completed by the respondent through the endorsement of the builder buyer's agreement.
- ii. That the plot no. 14, 3<sup>rd</sup> court street-85B, Vatika India Next ad-measuring 240 square yards was earlier allotted to Mr. Sonu Bhatia vide plot buyer agreement dated 23.07.2011, which got endorsed in favour of complainants by endorsing the plot buyer agreement vide letter dated 20.10.2011. The complainants became legal allottee and purchaser of the said unit. Upon completion of endorsement, the respondent issued a welcome letter dated 27.10.2011 for the said unit.

- iii. That the previous allottee paid Rs.43,93,904/- to the respondent against a sale price of Rs.80,55,850/- before 19.02.2011 as per the demand raised by the respondent and same was endorsed by the respondent in the name of complainants.
- iv. That the respondent informed the complainants through letter dated 11.06.2013 regarding revision in the master layout which was necessitated due to architectural and other related considerations, leading to the reallocation of the plot. After visiting the proposed site and raising a query about land ownership, the complainants received assurance from the respondent confirming "Vatika is allotting units only on the land which is owned by Vatika and not others" which gave the complainants assurance for committed hand over of the project in due course. A new unit no. 7/R-2/85R/240 sq. yards was allotted in place of the previous allotted unit no. 14, 3<sup>rd</sup> court street and an addendum to the builder buyer agreement was executed on 30.12.2013.
- v. That the respondent was obligated to provide possession of the developed unit to the complainants before 22.07.2014, as stipulated in the plot buyer agreement. However, following the re-allotment of the plot, the complainants sent an email on 09.07.2017 inquiring about the progress of the development of the newly allotted plot, but they did not receive any response from the respondent. Subsequent emails dated 28.05.2019, 29.05.2019, and 28.06.2021 were also sent to the respondent regarding the delay in possession, but no response was received.
- vi. That the complainants took a house loan from the financial institution at an interest rate of 11.6% against the said unit, which caused additional financial burden. Despite paying more than 50% of the amount, the complainants only received false assurances of early completion of the project from the respondent.

- vii. That the complainants were shocked to receive a cancellation notice dated 26.07.2021 from the builder, citing generic reasons of the GAIL corridor passing through the project, non-acquisition of sector roads by HUDA, and unauthorized occupation of certain land by farmers. None of the reasons applied to the allotted unit, as it was not part of the GAIL corridor, neither encroached by the farmers. Furthermore, the plot was not dismissed by government authorities due to the realignment of the township. The complainants repeatedly sought clarification via email, expressing their distress caused by the cancellation and questioning the unilateral cancellation of the plot at a belated stage. However, the complainants received no satisfactory response and were met with evasive discussions and repeated mention of the reasons cited in the cancellation notice. The complainants also sought an audience with the Managing Director but were met with inconclusive communications and a stance maintained by the respondents that the plot had been cancelled due to the GAIL corridor.
- viii. That the respondent, in an attempt to appease government authorities deposited an amount of Rs.5,00,000/- into the complainants' bank account without prior intimation. Furthermore, on questioning about this deposit, the complainants had received no reply and vide email dated 15.12.2021 asked respondent not to make such deposits without resolving the matter, as the possession of the plot is to be given without further delay. The complainants' repeated attempts to seek clarification and resolution from the respondents remained inconclusive, and their concerns were left unaddressed.
- ix. That the complainants took a loan from First Blue Home Finance Limited (formerly known as DHFL) for which permission to mortgage was granted by the respondent vide letter dated 31.10.2011. Through the said



letter, the respondent stated that all the necessary approvals had been obtained from the competent authorities and the unit is free from any liability and is marketable.

- x. That the information stated by the respondent in the above-mentioned letter contradicts the claim of the respondent that the project could not be developed due to encroachment by farmers and the passing of the GAIL corridor. If the respondents' claim is to be considered, the termination of only a few specific plots cannot be justified, as the layout of the entire project was re-aligned as claimed by the respondent in the termination notice.
- xi. That the prolonged delay in delivering possession to the complainants constitutes a clear violation of the allottee's rights under the provisions of the RERA Act and the agreement executed between the complainants and respondent. The complainants seek a delay penalty in accordance with Section 18(1) read with Section 18(3) of the Act, as well as the principles of justice, equity, and good conscience.

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

4. The complainants have filed the present compliant for seeking following relief(s):
- i. Direct the respondent to handover the possession of the allotted unit or alternative unit.
  - ii. Direct the respondent to pay delay possession charges.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 has contested the present complaint on the following grounds:

- i. That in July 2011, Mr. Sonu Bhatia learned about the project launched by the respondent titled as "Vatika India Next", Sector 85 Gurugram and approached the respondent repeatedly to know the details of the said project. The erstwhile allottee further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project and after having keen interest in the project constructed by the respondent the erstwhile allottee desired to book a unit and applied for the same vide application form dated 26.08.2010 and paid an amount of Rs.79,85,280/- (*sic i.e. Rs.43,93,904/- as per the SOA dated 23.11.2023*). The erstwhile allottee was well aware of each and every term of the application and agreed to sign without any protest.
- ii. That on 20.10.2011, a plot buyer agreement was executed between the erstwhile allottee and the respondent for the said plot bearing no. 14, 3<sup>rd</sup> Court Street, Sector 85 for a total sale basic consideration of Rs.79,85,280/- in the aforesaid project.
- iii. Further, in October, 2011 the erstwhile allottee transferred the said unit in the name of Mr. Vijay Singh Yadav and Mr. Anoop Kumar Yadav. with that the complainants became the subsequent allottee and were well aware of the status of project and stepped in as an allottee upon their understanding with the erstwhile allottee. Thereafter, on the request and transfer application of erstwhile allottee transfer was made in the name of complainants and welcome letter dated 20.10.2011 was issued in their favor.



- iv. That an addendum dated 30.12.2013 was executed between the complainants and respondent for the said unit and were reallocated a new plot bearing no. 7/R-2/85R/240 sq. yds. in the same project.
- v. That the complainants were aware of every terms and conditions of the agreement and executed the same after being satisfied with each terms and conditions. As per the clause 6 of the agreement the possession of the said unit was subject to the timely payments to be made by the complainants. But the complainants failed to make the requisite payments of the instalment as and when demanded by the respondent. The complainants have only paid Rs.17,53,333/- (sic i.e. Rs.43,93,904/- as per the SOA dated 23.11.2023) against the sale consideration of the said unit.
- vi. Also, as per the clause 12 of the agreement in case of any unforeseen circumstances faced by the respondent in the mid-way of the development of the said project the extension time would be given for the completion of the project and the respondent would be not liable to pay any compensation the extensions caused due to any act, notice or notification issued by the government/competent authority or due to any force majeure. The same was agreed by the complainants while executing the agreement.
- vii. That the respondent was committed to complete the project and has invested every amount received from the complainants. The project was slightly decelerated due to the economic slowdown in the economy and was hindered due to the reasons beyond the control of respondent.

- **Laying of GAIL Pipe Line and loss of land in ROU Alignment of GAIL corridor-** That the respondent has planned the whole township prior to the GAIL notification which came during the year 2009 and after this the respondent gave detailed representation to the GAIL authorities and HUDA administration for re-routing the GAIL.

na

pipeline since the respondent has received license in the township and had sold villas to third parties based on approved lay-out plans. Meanwhile, during the pendency of granting project license, GAIL had granted permission for reducing ROU from 30 mtrs. To 20 mtrs. Vide its letter dated 04.03.2011 that passes through the project land. Although GAIL had reduced the ROU by 10 mtrs., but since they had denied the re-routing of the GAIL corridor, the respondent not only lost the number of plots & villas but had to re-design the project land that consumed the money and time. Hence, the construction of the project got delayed.

- **Acquisition of sector road land parcels in the township-** The delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy acquisition of 24 mtrs. Road has resulted in massive delay in laying of services, thus impacting development.
- **Acquisition of sector roads by government notifications and orders-** Since, the 24m road / sectoral plan roads function as sub-arterial roads of the development and also serves as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e., water supply, sewerages, drainage, electricity etc., it is important to have the same in the township. Two sector roads are falling in the project land and due to non-acquisition of the same, the respondent has totally lost the road connectivity and supply of construction materials etc. to the project land has become a big challenge.

viii. However, due to the reasons beyond the control of the respondent as stated above, it became impossible for the respondent to fulfil the contractual obligations as promised under the agreement. The agreement between the complainants and the respondent has been frustrated as it is impossible for the respondent to provide the possession of the subject villa. As per doctrine of frustration as enshrined under section 56 of the Act, where the performance of the contract has been frustrated and the performance of it has become impossible to perform due to any unavoidable reason or condition, the remedy is compensation in case of breach of contract.



- ix. That none of the plots of the same segment that were approved by DTCP are available in the project. The respondent after suffering a hindrance in the project has put forward a proposal to refund the paid-up amount along with simple interest and cancelled the allotment of the said unit vide letter dated 26.07.2021 and has transferred Rs.2,00,000/- (*sic i.e. Rs.10,00,000/- stated by the counsel of respondent during proceedings dated 08.02.2024*) into the accounts of the complainants.
- x. That the respondent cannot be forced to handover the possession of the allotted unit where the project is hindered due to the reasons beyond the control of respondent and the respondent is at liberty to refund the amount paid by the complainants, in accordance with the terms and conditions of the agreement, when possession cannot be handed over.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the authority**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II. Subject-matter jurisdiction**

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) The promoter shall-

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 as per provisions of section 11(4)(a) of the Act 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 possession of the allotted unit or alternative unit.**

**F.II Direct the respondent to pay delay possession charges.**

12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected
13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:



***"Section 18: - Return of amount and compensation***

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

*.....*  
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

14. Clause 9 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

*Clause 9 "Schedule for possession of the said Unit"*

*The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/ said Unit within a period of three from the date of execution of this Agreement unless there is delay or failure due to reasons mentioned in Clauses (11)(12) and (30) or due to failure of allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by the terms or conditions of this Agreement." (Emphasis supplied)*

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 the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.



16. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.
17. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the builder buyer agreement. In the present complaint, the builder buyer agreement was executed on 23.07.2011. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 23.07.2014.
18. On consideration of documents available on the record and submission made by both the parties regarding contravention of the provision of the Act, the authority observes that the aforesaid builder buyer agreement dated 23.07.2011 was executed between original allottee and the respondent in respect of plot no. 14, 3<sup>rd</sup> court street-85B. Thereafter, through endorsement letter dated 27.10.2011 the unit booked by former allottee was allotted in favor of the complainants and the amount of Rs. 43,93,904/- paid by the former allottee was endorsed in the favor of complainants. Further, an addendum to buyer's agreement was executed

between parties on 30.10.2013 in respect of plot 7/R-2/85R/240 sq. yds in the project. The addendum dated 30.10.2013 states that '*all other terms and conditions of the Builder Buyer's Agreement dated 23.07.2011 shall remain unaltered and effective*'. The complainants filed the present complaint on 22.03.2022 seeking possession of plot 7/R-2/85R/240 sq. yds and delay possession charges as per proviso to section 18 (1) of the Act.

19. It is pertinent to mention here that the respondent has terminated the builder buyer agreement dated 23.07.2011 vide cancellation letter dated 26.07.2021 stating various reasons which are initiation of the Gail corridor, non-acquisition of sector roads by HUDA, unauthorized occupation of certain parcels of land by farmers and etc. Moreover, it has been observed that the respondent has offered the refund of the amount to the complainants along with 8% interest p.a. vide cancellation letter dated 26.07.2021. Also, an amount of Rs.10,00,000/- was refunded in the accounts of the complainants which was objected by the complainants vide email dated 15.12.2021. The relevant portion of the cancellation letter dated 26.07.2021 is reproduced below:

*In reference to your Plot, we would like to inform you that that subsequent to your booking and execution of the Agreement, the Company ("Vatika Limited") has been facing various unforeseen eventualities which have impacted the development works in various projects in its licensed lands falling in the Township owing to the initiation of the GAIL corridor which passes through the Project. As a result, the Company was forced to re-align the entire layout of the Project, including the plotted/Group Housing colonies/Commercial/Institutional projects in the Township of the Project.*

*Not only this, subsequent unavoidable reasons like non-acquisition of sector roads by HUDA to unable access to its various projects, unauthorized occupation of certain parcels of land by farmers and other various obstructions which were beyond the control of the Company has immensely affected the development and construction of the Project. Hence, the Company is not in a position to develop your Plot as the Agreement.*

As per the Agreement, the total consideration amount of your Plot is Rs. 8055850/- (Rupees Eighty lakhs Fifty Five Thousand Eight Hundred Fifty Only) and till date you have paid Rs. 4393904/- (Rupees Fourty Three lakhs Ninty Three Thousand Nine Hundred Four Only) as partial consideration of your Plot.

At this juncture lasting value draw your attention towards Clause C of the Allotment Representation wherein, it was specifically agreed by the Allottee that layout plan of the Project is tentative and is subject to change. Accordingly, due to various unavoidable circumstances listed above, the development of the Project has been hampered.

Having faced various unforeseen hardships, the Company hereby invokes clause 14 of the Agreement which states: "That the Allottee agrees that in consequence of the Promoter abandoning the Project or being unable to give possession of the said Plot within three years from the date of execution this agreement or such extended periods as permitted under this Agreement, the Promoter shall be entitled to terminate this Agreement where upon the Promoter's liability shall be limited to the refund of the amounts paid by the Allottee (after deducting interest on delayed payments and other amounts of non-findable nature) with simple interest @8% per annum for the period such amounts were lying with the Promoter and to pay no other compensation whatsoever"

In view hereof, the Company is required to refund the amount after deduction of the interest on delayed payments and other non-refundable deposits. However, in a good gesture and being a customer centric Company, we are ready to refund your principal amount along with 8% simple interest p.a. from Date of Payment received till 26-07-21.

You are requested to visit our office at Vatika Limited/ A-002, Ground Floor, Block A, Vatika INXT city Center, Sector 83, Gurugram, Haryana after 30 days from the receipt of this letter and collect the refund cheques.

20. Upon perusal of abovementioned paragraphs, the authority observes, that the subject unit has been cancelled and builder buyer agreement has been terminated vide cancellation letter dated 26.07.2021 narrating the detailed reasons for cancellation of the unit and termination of builder buyer agreement on account of inability of the promoter to develop the subject unit due to various reason precisely initiation of GAIL corridor. The GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 mtrs. to 20

mtrs. vide letter dated 04.03.2011 as submitted by respondent in his reply. GAIL notification and permission letter was prior to the execution of buyer's agreement dated 23.07.2011. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same to the complainants. This, inconsistency casts doubt on the respondent reasoning for cancelling the unit. The respondent/promoter has failed to develop the unit and cancelled the unit on account of its own fault/omission and hence cancellation is bad in eyes of law, is hereby set aside. Accordingly, the respondent is liable to offer alternative unit to the complainants at the same rate as per the agreed terms of subject agreement dated 23.07.2011 on account of its inability to develop the subject unit. The rationale behind the same is that the allottee purchased the subject unit way back in 2011 and paid the demanded amount in hope to get possession of the allotted unit.

21. **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.

22. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of



interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

24. 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;"*

25. 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 them in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 builder buyer agreement. The builder buyer agreement dated 23.07.2011 was executed between the complainants and the respondent in respect of plot no. 14, 3<sup>rd</sup> court street-85B in the project namely "Vatika India Next". Thereafter, an addendum to buyer's agreement was executed between parties on 30.10.2013 in respect of plot 7/R-2/85R/240 sq. yds in the project. By virtue of clause 9 of the builder buyer agreement executed between the parties on 23.07.2011, the possession of the said unit was to be delivered within a period of 3 years from the date of execution of the builder buyer agreement. Therefore, the due date of handing over possession comes out to be 23.07.2014. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

27. The complainants are also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the builder buyer agreement dated 23.07.2011 executed between the parties.
28. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
29. Thus, the respondent is liable to handover the possession of the alternative unit to the complainants as per specifications of original BBA dated 23.07.2011 at the same rate at which the unit was earlier purchased and on

a similar location after obtaining occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. due date of possession i.e., 23.07.2014 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G. Directions of the authority.**

31. 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 liable to handover the possession of the allotted unit or if the same is not available, an alternative and similar situated plot/unit to the complainants as per specifications of original BBA dated 23.07.2011 at the same rate at which the unit was earlier purchased after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % p.a. w.e.f. due date of possession i.e., 23.07.2014 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. Also, the respondent shall adjust an amount of Rs.10,00,000/- along with interest at the prescribed rate i.e. 10.85 % p.a. from the amount of delay period interest
- iii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iv. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject plot/unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.
- v. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
- vi. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant-allottee 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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

32. Complaint stands disposed of.
33. File be consigned to registry.

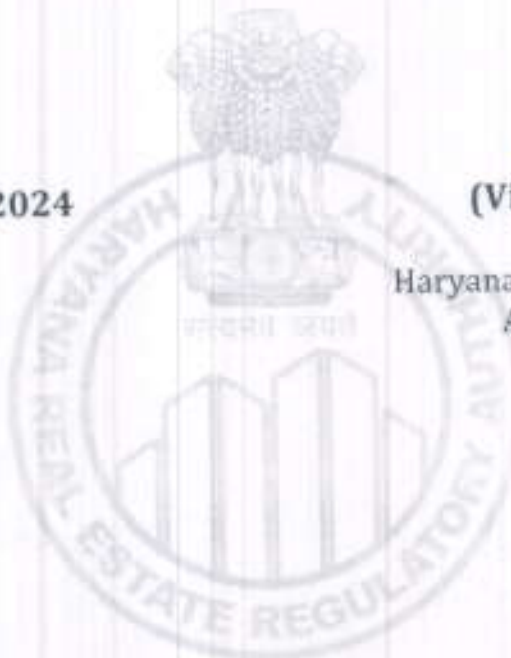
**Dated: 08.02.2024**

V.I - 3

**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory  
Authority, Gurugram



**HARERA**  
GURUGRAM