



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

Complaint no. :	6538 of 2022
Date of filing complaint:	04.10.2022
Order Reserve On:	22.12.2023
Order Pronounce On:	01.03.2024

Sudha Kapoor R/O: GH-12/23, Paschim Vihar, New Delhi-110087	Complainant
Versus	
M/s Vatika Limited Regd. office: A-002, INXT City Centre Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Kanish Bangia (Advocate)	Complainant
Sh. Harshit Batra (Advocate)	Respondent

ORDER

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



A. Unit and project related details

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

S.n	Particulars	Details
1.	Name of the project	"Vatika India Next" at Sector 81-85, Gurugram, Haryana
2.	DTCP license no.	113 of 2008 dated 01.06.2008
	Valid Upto	31.05.2018
	Licensee Name	Browz Technologies Pvt. Ltd
3.	RERA registered/not registered	Not Registered
4.	Unit No. (Finally allotted)	17, A-1 [page no. 96 of complaint]
5.	Area admeasuring	240 sq. yds. [page no. 96 of complaint]
6.	Date of Builder Buyer Agreement	22.12.2009 (Page no. 64 of complaint)
7.	Reallotment	26.04.2013, 08.10.2013 (page no. 93 and 94 of complaint)
8.	Addendum agreement (unit was changed from C/240/301 to 9/B-3.2/204	26.02.2014 (page no. 95 of complaint)

9.	Addendum agreement (unit was changed from 9/B-3.2/204 to 17, A-1)	08.11.2016 (Page no. 96 of complaint)
10.	Possession clause	<p>10.Handing over possession of the said Plot to the Allottee</p> <p><i>That the Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said Township or the sector/part thereof where the said Plot is proposed to be located, within a period of three years from, the date of execution of this agreement unless there is delay or there is a failure of the Allottee to pay in time time the price of the said Plot along with all other charges and dues in accordance with the Schedule of payment 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.</i></p> <p><i>(page 74 of complaint)</i></p>
11.	Due date of possession	22.12.2012 (calculated 3 years from the date of agreement)
12.	Total sale consideration	Rs. 44,38,987/- (As per SOA on page no. 29 of reply)

13.	Total amount paid by the complainant	Rs. 44,59,192/- (As per SOA on page no. 29 of reply)
14.	Occupation certificate	30.08.2016 (as per TCP website)
15.	Offer of possession	08.09.2017 (page no. 131 of complaint)
16.	Possession handed over	25.09.2017 (page no. 133 of complaint)

B. Facts of the complaint:

3. That the said unit was originally allotted to the original allottee i.e., Sh. Krishan Kumar and was subsequently transferred in the name of complainant vide endorsement letter dated 12.10.2009.
4. That the respondent confirmed the booking of the unit to the complainant vide booking application form dated 12.10.2009, providing the details of the project, allotting a plot no. C-240/301 measuring 240 sq. yd. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 44,38,987/-, which includes basic price, Plus EDC and IDC, Car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
5. That a buyer's agreement was executed between the complainant and the respondent on 22.12.2009.



6. That as per clause 10 of the buyer's agreement the respondent had to deliver the possession of the unit within period of 36 months from the date of execution of the agreement. Therefore, the due date of possession comes out to be 22.12.2012.
7. That 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 Rs. 44,95,192/- towards the said unit against total sale consideration of Rs. 44,38,987/-
8. That the complainant initially received a letter dated 26.04.2013 for re-allotment of the plot no. C/240/301 and further, again received a letter dated 08.10.2013 for re-allotment of the said plot in question.
9. That, the respondent issued an addendum to the plot buyer's agreement dated 26.02.2014 to the complainant against the re-allotment of the said plot in question which changed from C/240/301 to a new plot no. 9/B-3.2/240 sqyd/Sector-82A/Gurugram.
10. That further, the respondent company, with malafide intent, re-allotted another unit from 9/B-3.2/240 sqyd/Sector-82A/Gurugram to a new plot no. 17, A-1, Vatika India Next, Gurugram-122004.
11. The complainant after many request received the offer of possession on 08.09.2017.
12. That the complainant after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the physical possession of the plot vide possession letter dated 25.09.2017. Thereafter, respondent issued possession letter on account of handing over the physical possession of the plot. Thereafter, on 25.09.2017, the respondent handed over the physical possession of the plot.

C. Relief sought by the complainant:

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

- (i) Direct the respondent to pay the delayed possession charges to the complainant on the total amount paid by the complainant at the prescribed rate of interest from the due date of possession till date of actual physical possession.
- (ii) Direct the respondent to execute the conveyance deed in favour of the complainant.
- (iii) Direct the respondent not to charge excess amount against the administrative charges amounting to Rs. 29,500/-.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

14. That Krishan Kumar, the erstwhile allottee approached the respondent and expressed interest in booking of residential plots in the proposed "Vatika India Next" situated at sector 81-85, Gurugram ("the project"). That the plot no. 301 in Block C tentatively admeasuring 240 sq. yds. ("the old unit") was allotted to the erstwhile allottee who vide request for assignment of registration of allotment of the unit letter dated 12.10.2009 requested for transfer of the unit in name of the complainant.
15. That pursuant to the transfer of the said unit, the complainant was issued an allotment letter dated 12.10.2009 confirming the allotment of the plot no. 301 in block C tentatively admeasuring 240 sq. yds. in favor of the complainant.
16. Thereafter, a buyer's agreement dated 22.12.2009 was executed between the complainant and the respondent. That pursuant thereto, due to the revision in master layout plan of the said township due to



certain changes or modifications necessitated due to architectural and other related construction in the said project, the complainant was called upon vide letter dated 26.04.2013 and 08.10.2013 for re-allotment of her unit in the said project. That the said position was explained and understood by the complainant. The said re-allotment of the said unit is within the terms and conditions of the agreement and within the permissible limits as per the Model RERA agreement and hence no contention/allegation in regard to the same can be accepted.

17. That the complainant voluntarily participated in the re-allotment process of her unit and was allotted a new unit bearing number 9/B-3.2/240 admeasuring 240 sq. yards in the said project ("the new unit"). That the said position was explained and understood by the complainant. The complainant after being fully satisfied executed an addendum to the buyer's agreement dated 06.02.2014, readily accepting the new unit. The addendum was executed wrt the change of the unit only and all the provision of the plot buyer's agreement dated 22.12.2009 remained intact.
18. That as per clause 10 of the plot buyer's agreement dated 22.12.2009, the due date of possession was subject to the complainant having complied with all the terms and conditions of the agreement.
19. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
 - Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent which constrained it to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the

project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and it was forced to re-evaluate its construction plans which caused a long delay

- Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
- Re-routing of High-Tension lines passing through the land resulting in inevitable change in the lay out plans and causing unnecessary delay in development.
- The Hon'ble National Green Tribunal (NGT)/ Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were ban imposed on construction activities for a total period of 70 days between November, 2016 to December, 2019.
- Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labour regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain labour for longer and stable periods of time and complete construction in a smooth flow.
- Disruptions caused in the supply of stone and sand aggregated, due to orders passed by the Hon'ble Supreme Court and the

Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.

- Disruptions caused by unusually heavy rains in Gurgaon every year.
- Due to the slump in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- Declaration of Gurgaon as a Notified Area for the purpose of groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- Additionally, imposition of several partial restrictions from time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
 - Construction activities could not be carried out between 6 p.m. to 6 am. for 174 days,
 - The usage of Diesel Generator Sets was prohibited for 128 days.
 - The entries of trucks into Delhi were restricted.
 - Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.

- Stringently enforced rules for dust control in construction activities and close non-compliant sites.

20. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

21. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

23. 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

24. 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 objections raised by respondent

F.I Objection regarding force majeure conditions:

25. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court and various govt. schemes but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.12.2012. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainant:

- G.I Direct the respondent to pay the delayed possession charges to the complainant on the total amount paid by the complainant at**

the prescribed rate of interest from the due date of possession till date of actual physical possession.

26. In the present complaint, the complainant intends 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."

27. Clause 10 of the plot buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"10.Handing over possession of the said Plot to the Allottee
That the Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said Township or the sector/part thereof where the said Plot is proposed to be located, within a period of three years from, the date of execution of this agreement unless there is delay or there is a 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 payment 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.."*

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, she 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.

29. 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.
30. 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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
31. 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;"*



32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
33. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of three years from the date execution of agreement. The agreement was executed on 22.12.2009 as such the due date of handing over of possession comes out to be 22.12.2012.
34. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 30.08.2016. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 22.12.2012



till valid offer of possession plus two months or handing over of possession whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.

35. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.12.2012 till valid offer of possession plus two months or handing over of possession whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to execute the conveyance deed in favour of the complainant.

36. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."



37. As OC of the unit has been obtained by the competent authority on 30.08.2016, therefore, conveyance deed can be executed with respect to the unit. Accordingly, the authority directs the respondent to execute the conveyance deed in favour of the complainant after settling the dues, if any within 90 days from the date of this order.

G.III. Direct the respondent not to charge excess amount against the administrative charges amounting to Rs. 29,500/-.

38. The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

H. Directions of the Authority:

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of



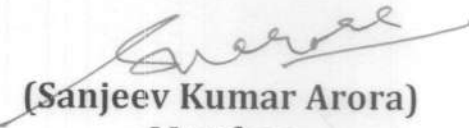
possession i.e., 22.12.2012 till valid offer of possession plus two months or handing over of possession whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii) The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- iv) The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v) The respondent is also directed not to charge anything which is not part of buyer's agreement.

40. Complaint stands disposed of.

41. File be consigned to the registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024