

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

**Complaint no.:** 2413 of 2023  
**Date of filing:** 21.06.2023  
**Order reserved on:** 29.05.2024

1. M. Ramanathan  
2. M. Kannupriya  
**Both R/o :-** F-502, Gurgaon One Apartment, Sector 84,  
Gurugram- 122004

**Complainants**

Versus

M/s Vatika Limited  
**Regd. Office at:-** Flat no. 621A, 6<sup>th</sup> floor, Devika Towers, 6,  
Nehru Place, New Delhi  
**Corporate Office at:-** 7<sup>th</sup> floor, Vatika Triangle, Mehrauli-  
Gurgaon Road, Sushant Lok Phase-I, Gurugram- 122002

**Respondent**

**CORAM:**  
Shri Ashok Sangwan

**Member**

**APPEARANCE:**  
Shri M. Ramanathan (in-person)  
Shri Venket Rao (Advocate)

Complainants  
Respondent

**ORDER**

1. This complaint has been filed by the complainants/allottee(s) 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.



**A. Unit and project related details.**

2. The particulars of unit details, 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:

Sr. No.	Particulars	Details
1.	Name of the project	“Vatika India Next”, Sector-83, Gurugram
2.	Type of colony	Residential Plotted Colony
3.	Registered/ not registered	Registered 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
4.	License no. and validity	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Finally reallocated plot no.	Plot no. 47, Sector 83, ST, K-8.1, on Level 4 admeasuring 940 sq. ft. (Page 70 of complaint)
	Old Plot no.'s	1. Plot no. 12, The Court Street, 2 <sup>nd</sup> floor, Block F, Sector-82 having super build up area of 781.25 sq. ft. (Page 22 of complaint) 2. Plot no. 11, 2nd floor, Emilia, ST, 82F-12, Sector 82-F (Page 67 of complaint) 3. Plot no. 47, Sector 83, ST, K-8.1, Top Level (Page 69 of complaint)
6.	Date of execution of buyer's agreement (Old Plot)	24.09.2009 (Page 19 of complaint)
	Addendum to BBA	06.08.2013 Allotment of New Plot (unilaterally as contended by complainant in para 3 of his pleadings) (Page 67 of complaint)
	Second Addendum to BBA	06.07.2017 Allotment of New Plot (Revision in BSP) *Right to claim DPC waived off by complainant. (Page 69 of complaint)



	Third Addendum to BBA	11.10.2017 Change in area of the plot from 975 sq. ft. to 940 sq. ft. (Revision in BSP) *Right to claim DPC waived off by complainant. (Page 71 of complaint)
7.	Possession clause	<b>Clause 10.2 - Procedure for taking possession</b> "The Company, upon obtaining certificate for occupation & use from the competent authority shall offer in writing to the Intending Allottee to take over, occupy and use the said Unit in terms of this Agreement within thirty (30) days from the date of issue of such notice and the Company shall hand over the said Unit to the Intending Allottee for its occupation and use subject to the Intending Allottee having complied with all the terms and conditions of this Agreement and is not in default under any of the provisions of this Agreement and has complied with all provisions, formalities, documentation etc., as may be prescribed by the Company in this regard." (Emphasis supplied) (BBA at page 31 of complaint)
8.	Due date of possession	24.09.2012 (Deemed to be three years from the date of execution of builder buyer agreement dated 24.09.2009 in view of in view of "Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors." (12.03.2018-SC); MANU/SC/0253/2018)
9.	Total sale consideration	Rs. 30,28,485.84/- (As pleaded by complainant at page 1 of complaint and agreed to by respondent at page 6 of reply)
10.	Paid up amount	Rs. 32,85,032/- (As pleaded by complainant at page 1 of complaint and agreed to by respondent at page 6 of reply)



11.	Occupation certificate/completion certificate	Not obtained
12.	Offer of possession	<p>11.04.2023- Copy of same not placed on record by either of the parties. (Vide e-mail through Mr. Shubham Sheoran from CRM team of respondent informing the complainant that 26.04.2023 will be the last date for getting the possession of flat - at page 72 of complaint)</p> <p>*Complainant went to take possession on 21.04.2023- Respondent asked to sign possession letter wherein it was mentioned, "that due to force majeure reasons, I condone the penalty w.r.t. delay in construction."- Complainant refused to sign and accept the same.</p>

**B. Facts of the complaint**

3. The complainants have made the following submissions vide their complaint dated 21.06.2023 and written submissions dated 15.04.2024: -
  - I. That the complainants booked a residential apartment bearing plot no. 12 on second floor, block F, having built up area of 781.25 sq. ft. in the project developed by the respondent at 7<sup>th</sup> Court Street, Sector 82, Gurugram.
  - II. That subsequently, on 24.09.2009 the complainant entered into the pre-printed terms and conditions of buyer's agreement along with IFMSD charges @Rs.50/- per sq. ft. amounting to Rs.39,063/- thereby totalling Rs.21,46,696/-.
  - III. That on 06.08.2013, the respondent unilaterally changed the original allotted plot no. 12 to plot no. 11, 2<sup>nd</sup> floor, Emilia, ST, 82F-12, Vatika India Next, admeasuring super area of 903.24 sq. ft. and forced the complainant to sign the addendum.



- IV. That thereafter, the respondent again on 06.07.2017 through second addendum re-allotted plot no. 47, Sector 83, ST, K-8.1, Top Level, having an area admeasuring 975 sq. ft. of super area and also thereby escalated the sale consideration by Rs.7,80,792/- which in turn revised the basic sale price to Rs.32,62,985.84/-.
- V. That the respondent further as per its own convenience, inspite of two addendums again on 11.10.2017 got third addendum signed from the complainant and thereby changed the area of the plot to 940 sq. ft., further revising the basic sale price to Rs.30,28,485/-.
- VI. That it is also noteworthy that in all the addendums, it is clearly stated that the addendums are an integral part and parcel of the buyer's agreement dated 24.09.2009 and all the other terms and conditions of the said buyer's agreement shall remain unaltered and effective.
- VII. That on 11.04.2023, the respondent sent an e-mail to the complainant through one Mr. Shubham Sheoran from the CRM team of the respondent company, whereby for the first time offered the possession of the plot. However, the respondent offered the possession of the said plot after a lapse of almost 13.5 years.
- VIII. That in the said offer of possession, the respondent informed the complainant that 26.04.2023 would be the last date for getting the possession of the plot. Accordingly, the complainant approached the respondent on 20.04.2023 for taking possession of the unit on 21.04.2023 and the same was confirmed by Mr. Shubham of the respondent company.
- IX. That as per the agreed schedule, the complainant visited this allotted unit at around 1:45 pm and checked all the inventories with the help of designated person Mr. Sunil and himself. Upon request, the complainant had also given good ratings to the project and finally decided to proceed



- further with taking physical possession of the plot on the same day itself.
- X. That despite offering the possession of unit by the respondent, one Mr. Nikhil from the CRM team of the respondent company asked the complainant to sign and get the possession letter issued in his favour before taking the keys of the unit, after completing the necessary formalities. However, on perusal of the possession letter, it was revealed that the same is a conditional letter wherein it was mentioned "that due to force majeure reasons, I condone the penalty w.r.t. delay in construction", which was never acceptable to the complainant.
- XI. That the respondent despite taking the entire sale consideration of the unit from the complainant are not handing over the possession of plot and are illegally holding the plot themselves and further delaying the possession. The complainant had also written a mail to Mr. Shubham mentioning the events that took place on 21.04.2023, but to no avail. So, the complainant again sent a reminder e-mail on 28.04.2023.
- XII. That as per clause 15 of the duly executed buyer's agreement, the complainant being an allottee of the second floor(now corresponding 4<sup>th</sup> floor-top floor below terrace) have allotted the exclusive use of terrace of his dwelling unit. However, now the respondent is demanding Rs.7,00,000/- for half terrace and Rs.14,00,000/- for full terrace usage, which is not only illegal but also contrary to agreed terms of the duly executed buyer's agreement dated 24.09.2009. The same fact is also evident from the Welcome and allotment letters both dated 19.10.2009 issued to the complainant.
- XIII. That as per Section 18 of the RERA Act, 2016, the respondent is supposed to compensate the complainant herein, for the delay in case the allottee wishes to retain the possession of the plot. Also, the conduct



of the respondent clearly falls within the definition of unfair practices as defined under the RERA Act, 2016.

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

4. The complainants have sought following relief(s):

- i. Direct the respondent to pay delay interest @18% per annum on the amount paid by the complainant from the promised date of delivery till the actual delivery.
- ii. Direct the respondent to deliver immediate possession of the flat along with all the promised amenities and facilities and to the full satisfaction of the complainants including the terrace.
- iii. Direct the respondent to fulfil all its obligations as mentioned in the buyer's agreement dated 24.09.2009 especially the rights to use terrace of dwelling unit without any further cost/demand.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) of the Act to plead guilty or not to plead guilty.

**D. Reply by respondent:**

6. The respondent contested the complaint on the following grounds vide its reply dated 04.12.2023:

- I. That the complaint under reply is filed by merely one of the applicant and not the other applicant and the other applicant being a necessary and proper party to the instant complaint has not been made a party to the preset complaint. Thus, the complaint under reply be dismissed for being in violation of doctrine of necessary and proper parties.
- II. That in the year 2009, the complainants learned about the residential colony project launched by the respondent, titled as Emilia Floors', situated at Setor - 82, Gurgaon and approached the respondent repeatedly to further know about the details of the said project. The complainant further inquired about the specification and veracity of the



- project and was satisfied with every proposal deemed necessary for the development of the project.
- III. That after having keen interest in the project constructed by the respondent the complainant, decided to book the independent floor titled as "Emilia Floors" vide application form dated 04.06.2009, upon his own judgement and investigation under the construction linked payment plan. The complainant was well aware of terms and conditions of the application form and had agreed to sign without any protest and demur.
- IV. That thereafter, the respondent vide allotment letter dated 24.07.2009, allotted plot no. 12, Court Street, 2<sup>nd</sup> floor, F block to the complainant.
- V. Subsequently, on 24.09.2009, a buyer's agreement was executed between the complainant and the respondent for plot no. 12, Court Street, 2<sup>nd</sup> floor, F block, Sector 82, admeasuring 781 sq. ft. for total sale consideration of Rs.21,46,955/- in the said project.
- VI. That upon not receiving the instalment, the respondent issued installment reminder dated 19.04.2010, calling upon the complainants to pay the installment of Rs.1,50,000/- due on the date of allotment and was payable within 7 days i.e., by 26.04.2010.
- VII. That on 30.12.2010, the complainant failed to pay the installment against the unit in question and upon not receiving the installment the respondent was constrained to issue payment installment due letter dated 30.12.2010, calling upon the complainant to pay the instalment of basic sale price of Rs. 3,22,043.33 upon commencement of earth work at the project site.
- VIII. That as per the provision of clause 9.2 of the agreement, the respondent was under obligation to duly intimate the complainant for any substantial change in the unit allotted to the complainant and in case the



complainant was having any objection the complainant was also obligated to raise objections/dispute if any pertaining to the said change within 30 days from the date of written intimation indicating his rejection.

- IX. That the respondent vide letter dated 10.07.2013, informed the complainant that the numbering of the plot is changed to plot no. 11, SF, Emilia, GF, ST.82F-12.Sec.82F, and area had been also revised to 903.24 sq. ft. and as per the terms and conditions of the agreement, the complainant had to remit an amount of Rs.3,35,241/-, for the revised area.
- X. That the respondent herein at times has duly intimated the complainant regarding the change in the unit number and the complainant had accepted the revised area and number of the floor with increased charges without any protest and demur, as there were no objections sent from the complainant behalf to the respondent.
- XI. Further, the complainant signed the addendum dated 06.08.2013, for the allocation of new unit no. being plot no. 11SF, Emilia, ST.82F-12.Sec.82. However, at the time of execution of said addendum the complainant has also not objected/disputed to any of these changes in the present complaint also.
- XII. That due to acquisition of roads and subsequent change in master layout plan, on 04.10.2016, the respondent again invited the complaint for re- allotment of the unit, which was duly accepted and the complainant was allotted plot no. 47, ST.K-8.1, Level 4. Thereafter, the complainant and respondent entered into an addendum dated 06.07.2017, for the said unit.
- XIII. That due to the reasons beyond the control the respondent was constrained to re-allot the unit of the complainant and again vide



Addendum dated 11.10.2017, wherein, the complainant upon own judgement and investigation accepted the allotment of new unit Sector-83, Plot No. 47, ST.K-8.1, Level 4 admeasuring 940 sq. ft. of super area in the said project.

- XIV. That the complainant herein at any stage of the said re-allotment of unit, protested or made any objections to the same. Also, the complainant has not made any facts or averments against the said re-allotment in the present complaint preferred by the complainant before the Ld. Authority. The total sale consideration of the unit after revising the area was Rs.30,28,485.84/- excluding other charges.
- XV. That it is pertinent to bring into the attention of the Ld. Authority that as of date only partial payment of Rs.8,78,564/-, had been received from the complainant towards the total sale consideration of the unit and still a substantial amount of money is due and to be payable by the complainant.
- XVI. That it is pertinent to bring into the attention of the Ld. Authority that as of date complainant made a payment of Rs.32,85,032/-, towards the total sale consideration of the unit.
- XVII. That the present complaint is filed by complainant on baseless and absurd grounds. It is clearly mentioned under clause 11.1 of the agreement, that in case of any unforeseen circumstances faced by the respondent in mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- XVIII. That the complainant in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the Government or Public or Competent Authority.



- XIX. That as per the agreement executed for the said unit, the complainant was well aware that the respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under the category of Force Majeure.
- XX. That since starting the respondent was committed to complete the project and has invested each and every amount so received from the complainant towards the agreed total sale consideration. That the project was hindered due to the reasons beyond the control of the respondent.
- XXI. That in the Agreement, the respondent no.1 had inter alia represented that the performance by the respondent no.1 of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/ modifications in the unit plans as may be made from time to time by the respondent no.1 approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- XXII. Subsequent to the booking and the signing of the agreement, the respondent no.1 was facing umpteen roadblocks in construction and development works in projects in its licensed land comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. That due to various cogent/unforeseen circumstances the subject plot cannot be delivered to the complainants. However, the respondent is ready and willing to offer alternate residential unit to the complainants and/or alternatively is ready to refund the amount deposited by the complainant as per agreement. The subject plot could not be delivered due to following reasons such as laying of a gas pipeline, delays in land acquisition for sector roads,



labour shortages due to government MNREGA schemes, disruptions in material supplies due to court orders, restrictions on groundwater extraction, unexpected introduction of new national highway (NH 352W), delayed re-routing of an electricity line, and additional restrictions on construction activities. The Covid-19 lockdown also impacted construction activities.

- XXIII. That the respondent due to the above-mentioned reasons was unable to provide the possession of the unit on time and as per the schedule. The respondent offered the possession to complainant vide e-mail dated 11.04.2023 and intimated the complainant that hardcopy of offer of possession shall be provided through courier meanwhile the complainant was requested to visit the office of the respondent to the earliest.
- XXIV. That the respondent has already offered the possession of the complainant but the complainant herein did not come ahead to take the same and has decided to file this instant complaint under reply to make unlawful gains.

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 based on these undisputed documents and submission made by the parties.

**E. Jurisdiction of the Authority:**

8. The authority has complete territorial and 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, 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)(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 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 objections raised by the respondent:**

**F.I Objections regarding force majeure.**

12. The respondents-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 passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and



thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. 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.

**F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.**

13. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

14. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 24.09.2012. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

**F.III Objection regarding non-joinder of necessary party.**

15. It is contended on behalf of the respondent that a builder buyer agreement dated 24.09.2009 was executed between the respondent and the two co-allottees, the 1st allottee being complainant herself i.e., M. Ramanathan and



the 2nd allottee is M. Kannupriya regarding allotment of a plot bearing no. 12, 2<sup>nd</sup> floor, Block F, in the project of respondent named "Vatika India Next" at Sector- 82, Gurugram. However, the present complaint is filed only by the 1st allottee i.e., M. Ramanathan and the 2nd allottee is M. Kannupriya has not been added while filing the present complaint. Therefore, the co-allottee namely M. Kannupriya being necessary party was required to be added for complete, proper and effectual adjudication of the present matter, hence the present complaint is liable to be dismissed solely on the ground of non-joinder of necessary party as laid down by the Hon'ble Supreme Court in Vidur Impex and Traders Private Limited v. Tosh Apartments Private Limited and Others (2012 (8) SCC 384). Hence, the present complaint is not maintainable in the present form and liable to be dismissed as proved under Order I, Rule 9 of the Code of Civil Procedure, 1908. However, to rectify this defect, the complainant filed an amended memo of parties dated 09.02.2024, thereby impleading M. Ramanathan as necessary party. Therefore, the plea of the respondent stands redundant and therefore, not maintainable.

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

**G.I Direct the respondent to pay delay interest @18% per annum on the amount paid by the complainant from the promised date of delivery till the actual delivery.**

**G.II Direct the respondent to deliver immediate possession of the flat along with all the promised amenities and facilities and to the full satisfaction of the complainants including the terrace.**

**G.III Direct the respondent to fulfil all its obligations as mentioned in the buyer's agreement dated 24.09.2009 especially the rights to use terrace of dwelling unit without any further cost/demand.**

16. 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.



17. In the present complaint, the complainant intend 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***

*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."*

18. Clause 10.2 of buyer's agreement provides for handing over of possession and is reproduced below:

*"The Company, upon obtaining certificate for occupation & use from the competent authority shall offer in writing to the Intending Allottee to take over, occupy and use the said Unit in terms of this Agreement within thirty (30) days from the date of issue of such notice and the Company shall hand over the said Unit to the Intending Allottee for its occupation and use subject to the Intending Allottee having complied with all the terms and conditions of this Agreement and is not in default under any of the provisions of this Agreement and has complied with all provisions, formalities, documentation etc., as may be prescribed by the Company in this regard."*

***(Emphasis supplied)***

19. The authority has gone through the possession clause of the agreement. 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 complainant 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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.



20. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, 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/allottee in case of delay in possession of the unit.
21. **Due date of possession:** It is observed by the Authority that no specific time period with respect to handing over the possession of the allotted unit to the complainants had been prescribed in the builder buyer agreement executed between the parties. The due date is calculated to be 3 years from the date of buyer's agreement (24.09.2009) in terms of the "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*". Accordingly, the due date of possession comes out to be 24.09.2012.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges 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, *ibid*. 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.”*

23. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, 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.

24. 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., 29.05.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

25. The definition of term ‘interest’ as defined under Section 2(z) 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:

***“(z) “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;”*



26. 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.
27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. Further, the possession of the said unit was to be delivered by 24.09.2012. In the present complaint the complainants were offered possession by the respondent on 11.04.2023 without obtaining occupation certificate from the competent authority. Therefore, the offer of possession dated 11.04.2023 is invalid and hereby liable to be quashed.
28. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. 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. 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 complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. the due date of possession, i.e., 24.09.2012 till the expiry of 2 months from the date of valid offer of possession, or actual handover of possession, whichever is earlier, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. Further, the respondent is directed to obtain occupation certificate from the concerned authority and offer possession of the unit within a period of two months after receiving the occupation certificate.



29. As far as right to use terrace of dwelling unit without any further cost/demand is concerned, the complainant submitted that as per clause 15 of the buyer's agreement, the complainant being an allottee of the second floor was also granted exclusive use of terrace of his previously allotted dwelling unit. However, now after reallocation of unit by the respondent, the respondent is demanding Rs.7,00,000/- for half terrace and Rs.14,00,000/- for full terrace usage, which is not only illegal but also contrary to agreed terms of the duly executed buyer's agreement dated 24.09.2009. The same fact is also evident from the Welcome and allotment letters both dated 19.10.2009 issued to the complainant.
30. The Authority observes that clause 15 of the buyer's agreement stipulated that the complainant was entitled to use terrace of the previously allotted unit without any further cost. The respondent reallocated the unit of the complainants twice vide addendums dated 06.08.2013 and 06.07.2017. Both these addendums contained an essential declaration by the respondent that these addendums shall be considered as an integral part and parcel of the buyer's agreement dated 24.09.2009 and are meant to modify only the terms specifically mentioned in the said addendum. Clause 15 of the buyer's agreement and declaration of respondent is reproduced as under:

**"15. Exclusive use of certain spaces/areas**

*That each of the buildings being constructed on individual plots shall have three independent dwelling units one each on the Ground, First and Second floors. The owner of the ground floor dwelling unit shall have exclusive use of front and the rear lawn whereas **the owner of the second-floor unit shall have the exclusive use of the terrace of his/her dwelling unit.** However, the right to use the entrance as well as the passage, stairs, corridors, overhead water tank and other common facilities catering to the dwelling units shall be used and maintained jointly by all the unit holders. **Further, no construction shall be permitted on the second floor terrace, front or rear lawns, whether temporary or permanent, which shall be under the exclusive use of the second floor and ground floor units, respectively."***



**"Addendum to the Floor(Vatika India Next) Builder Buyer Agreement**

.....  
*This addendum and the revised payment plan shall be considered as an integral part and parcel of the floor buyer agreement dated 24.09.2009 modifying only those terms and conditions as have been specifically mentioned hereinabove, **all other terms and conditions of the Floor Buyer Agreement dated 24.09.2009 shall remain unaltered and effective.**"*

31. The clause reiterated above make it ipso facto clear that the complainant is entitled to use the terrace rights of the dwelling unit by virtue of clause 15 of the buyer's agreement and even after various addendums were executed between the parties, the right to use terrace rights cannot be taken away. Thus, the respondent is directed to give possession of the unit along with the terrace rights and that too without any further cost/demand.

**H. Directions of the authority**

32. 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):

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession, i.e., 24.09.2012 till the expiry of 2 months from the date of valid offer of possession, or actual handover of possession, whichever is earlier, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- ii. The rate of interest chargeable from the 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



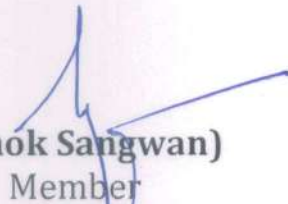
case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

- iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days thereafter.

The respondent is directed to obtain occupation certificate from the concerned authority and offer possession of the unit within a period of two months after receiving the occupation certificate along with the terrace rights and that too without any further cost/demand.

- iv. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.

**Dated: 29.05.2024**

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram