

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

Complaint no. : 1294 of 2023
Date of filing 22.03.2023
First date of hearing: 29.08.2023
Order pronounced on: 23.05.2024

1. Pramod Kumar Agarwal
2. Santosh Agarwal
(Through their general power of attorney holder
Mr. Chitranjan Gupta.)

Both R/o:- Flat no. I-601, Bestech Park View Spa,
Sector-47, Gurgaon.

Complainants

Versus

M/s Vatika Limited
Registered Office at: Vatika Triangle, 4th Floor, Sushant
lok, Ph-1, block-A, Mehrauli-Gurugram Road, Gurugram-
122002.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Ramit K Lalit (Advocate)

Complainants

Shri Harshit Batra (Advocate)

Respondent

ORDER

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

A. Unit and Project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Express City Plots" in Sector-88A & 88B, Gurugram.
2.	Project area	100.875 acres
3.	Nature of Project	Plotted Colony
4.	DTCP license no. and validity status	94 of 2013 dated 31.10.2013 Valid upto 30.10.2019 [original licensed area 100.875 acres part migrated to Lic. No. 9 of 2022] To be ascertained
5.	Name of Licensee	M/s Vatika Limited
6.	Rera registered/ not registered and validity status	Registered Vide no. 271 of 2017 dated 09.10.2017 Valid upto 08.10.2022
7.	Unit No.	Plot no. 16, Street no. G-17, Block-G (page 42 of complaint)
8.	Unit area admeasuring	301.09 sq. yd. (page 42 of complaint)
9.	Expression for interest for booking of residential plot	03.11.2014 (page 12 of reply)
10.	Invitation for Allotment of unit	28.01.2015 (for unit priority no. VEC/300/093) (page 19 of reply)
11.	Allotment letter	23.03.2015 (page 42 of complaint)
12.	Date of buyer's agreement	30.12.2015 (page 45 of complaint)
13.	Possession clause	9. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL PLOT. <i>"The Company based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete</i>

		<p><i>development of the said Residential Plot within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential 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 Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."</i></p> <p>(Emphasis supplied)</p>
14.	Due date of possession	30.12.2019 (calculated from the date of execution of buyer's agreement)
15.	Sale Consideration	Rs.2,10,97,300/- (page 48 of complaint)
16.	Amount paid by complainant	Rs.1,93,93,572/- (SOA dated 09.05.2023 at page 21 of reply)
17.	Occupation certificate/ completion certificate	Not obtained
18.	Intimation of possession	13.09.2022 (page 24 of complaint)
19.	Reminder for intimation of possession	18.11.2022 (page 28 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

1. The complainants are aggrieved allottees who had, in November 2014, booked residential plot no. 16, street no. G-17, block no. G, Sector 88B, Gurgaon, measuring 301.39 sq. yards being developed by the respondent, the possession whereof was undertaken to be delivered to the complainants within 48 months from the date of booking. However, the respondent offered the possession on 13.09.2022, which is a delay of almost four years from the promised date of possession, in contravention of the terms and conditions of the buyer agreement as well as understanding between the parties.

- II. The present complaint is being filed under Section 31 read with Section 18(1)(a) and Section 19(4) of the Real Estate (Regulation and Development) Act, 2016 (**Act**) as well as Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (**Rules**) seeking payment of interest for the delay in handing over possession by the respondent.
- III. The complainants, now retired, have rendered their services to the Government/Society for several years. The complainants, desirous of owning their own home, were enticed into purchasing the plot of land in the project owing to the misrepresentations of the respondent.
- IV. The respondent is a real estate company incorporated under the provisions of the Companies Act, 1956 and, as per the details mentioned on their official website www.vatikagroup.com, is involved in construction of residential and commercial projects.
- V. The complainants initially booked an apartment in the 'Sovereign Park' project of the respondent on 01.02.2013 and made a total payment of Rs.38,58,711/-, as demanded, till 13.09.2013 towards its sale price to the respondent. The account statement generated by the respondent in respect of the said apartment.
- VI. Thereafter, the complainants booked another apartment/unit in the 'Seven Element' project of the respondent on 04.07.2013 and made a total payment of Rs.31,23,743/-, as demanded, till 12.12.2013 towards its sale price to the respondent. The account statement generated by the respondent in respect of the said Apartment.
- VII. That due to some unexpected financial constraint and cash flow problems, the complainant requested respondent for cancellation of the above two bookings and refund of the payments made towards these two projects,



totalling Rs.69,82,455/-. After several rounds of discussions, the respondent refused to refund the said payments but advised the respondent that the funds from the above two projects can be adjusted as initial 40% deposit towards the cost of a plot at another project launched by the respondent named as "Vatika Express City" and the remaining at a later date when the plots are offered for possession. As the complainants had no other option, they agreed with the suggestion, and booked a residential plot no. 16, street No. G-17, block no. G, "Vatika Express City", Sector 88B, Gurgaon measuring 301.39 sq. yards later renamed as "Vatika India Next 2", and paid a booking amount of Rs.5,00,000/- on 13.11.2014 and another Rs.5,00,000/- on 06.12.2014, while the cancellation of the units at the Sovereign Park and Seven Elements was being processed by the respondent. The respondent had promised that the plot will be ready for possession within 48 months from the date of booking.

- VIII. That despite several follow-up calls and communications to expedite cancellation process, the respondent continued to drag its feet. In the meantime, the respondent continued to make request for payments for the plot and imposed interest on delayed payment ignoring the fact that the delay in payment was being caused by themselves. The interest was later waived off for this reason.
- IX. That following multiple requests to expedite cancellation of booking and transfer of funds towards "Vatika Express City Plot", the respondents on 29.05.2015 transferred a total sum of Rs.59,25,216/- from the two projects towards the cost of the said Plot at "Vatika Express City", deducting Rs.10,53,799/- from the total paid amount of Rs.69,82,454/-, deductions were purportedly made for: i) administrative charges @ Rs. 125 per sq. ft. plus service tax amounting to Rs.5,92,699/- and ii)



brokerage Rs.4,61,100/-. The statement of account dated 18.06.2015 of the respondent reflecting the transfer of Rs.59,25,216/- from the two projects towards the cost of the said plot at "Vatika Express City" (now Vatika India Next 2).

- x. The complainants protested and filed complaint to respondent through e-mail dated 20.06.2015, and telephone calls for waiving off the unfair deductions made for administrative and brokerage for the two projects but to no avail. However, till to-date the respondent has not made any refund of the deducted amount of Rs.10,53,799/-. The aforesaid deduction of Rs.10,53,799/- on account of administrative charges and brokerage is totally illegal and the said amount was liable to be waived off and accounted for, in the statement of account, towards the amount paid towards the cost of the said plot at "Vatika Express City".
- XI. While the requests of the complainants to the respondent, with regard to the waiving off the charges continued, the complainants made the payments for the new demands to avoid any further interest. Thereafter, the respondent issued an allotment letter dated 23.03.2015 in respect of the said plot to the complainants. Pursuant thereto, a builder buyer agreement dated 30.12.2015 was executed between the respondent and the complainants, which formalised the contract between the parties. Though the actual date of delivery of possession promised at the time of booking by the respondent was 48 months from the date of booking i.e. 13.11.2018, the respondent conveniently and illegally changed the date of delivery of possession in the builder buyer agreement to 48 months from the date of execution of agreement i.e. 30.12.2019, unilaterally and illegally extending the time of delivery by more than one year, without taking any consent of the same from the complainant.



- XII. That till 22.06.2015, the complainants had paid the required 40% of the cost of the plot equivalent to Rs. 84,00,000/-. Between 08.02.2016 and 26.10.2016, the complainants made additional payments totalling Rs.9,93,573/- for plot allocation and 50% of the EDC/IDC charges. Thus, the complainants paid a cumulative amount of Rs.93,93,572/- (excluding the aforesaid illegally deducted sum of Rs.10,53,799/- on account of administrative charges and brokerage), within 24 months of booking. The aforesaid payments have been duly acknowledged by the respondent by way of receipts issued from time to time in the name of complainants.
- XIII. From the aforesaid, it is evident that the complainants have made payment of all amounts payable by them to the respondent under the agreement, and are thus, in compliance with all of their obligations thereunder.
- XIV. Though the complainants made timely payments, the respondent failed to deliver possession of the Plot as per the promised timeline i.e., within a period of 48 months from the date of the booking i.e. by 13.11.2018. The complainants repeatedly followed up with the respondent officials regarding the status of their plot. In response, the complainants were merely given new timelines/delivery dates and the respondent failed to offer possession of the plot to the complainants. The complainants addressed repeated emails and made several calls to the respondent's officials, which did not yield any results.
- XV. On 13.09.2022 i.e., after almost 4 years after the promised date of delivery, the respondent addressed an email to the complainants, intimating them that the plot is ready for possession and requested, inter-alia, to remit an amount of Rs.1,36,58,241/- by 30.09.2022, towards final payment of the said plot, prior to taking over the possession of the said plot. The



complainants made a further payment of Rs.70,00,000/- (inclusive of TDS) to the respondent to comply with their obligations. So cumulatively, the respondents have paid a sum of Rs.1,63,93,572/- (excluding the aforesaid illegally deducted sum of Rs.10,53,799/- on account of administrative charges and brokerage), till date. The complainants, addressed a response dated 24.12.2022, highlighting that the offer for possession was delayed and called upon the respondents to pay the compensation on account of the delay in handing over of possession. The respondents responded vide email dated 04.01.2023, trying to put off the issue citing baseless reasons for delay, virtually refusing to look into the issue.

- XVI. In view of the above, it is evident that the respondent has severely delayed the delivery of possession of the plot to the complainants, contrary to the terms and conditions of the agreement.
- XVII. The conduct of the respondent, as highlighted above, seems to indicate an intention to appropriate the funds deposited by the allottees towards purposes other than the construction and timely delivery of the project, without payment of any interest. The delay caused by the respondent in handing over the possession of the plot has caused considerable financial hardship, harassment and mental distress to the complainants, who have invested their life savings in the project. Accordingly, the complainants are entitled to penal interest for delay in handing over possession of the Plot.
- XVIII. It is further submitted that Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either: (i) in terms of the agreement for sale or to complete the project by the date specified therein; or (ii) on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the



Act or for any other reason. In the aforesaid circumstances, if the allottee/home 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 possessions, as such rate as may be prescribed buyer holds an unqualified right to seek refund of the amount with interest for every month's delay in handing over possession at such rate as may be prescribed in this behalf.

- XIX. It is an unconditional absolute right granted to the allottee to seek payment of interest, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which delay is not attributable to the allottee/home buyer.
- XX. Accordingly, the complainants are filing the present application seeking interest for the delay in handing over possession.
- XXI. The cause of action for the present complaint first arose on 13.11.2018, when the possession was not granted by the respondent. The cause of action continued for almost four years thereafter, when the respondent yet again failed to offer possession to the complainants. The cause of action has continued till the date of filing of this complaint as the complainants have not been paid interest for delay in handing over possession of the plot. The cause of action is a continuous one and continues to subsist, and will subsist till the time relief as sought is granted.

C. Relief sought by the complainant

4. The complainant has sought following relief:



- i. Direction to the respondent to hand over possession of the plot to the complainants on just and reasonable terms and within such time as may be prescribed by the Hon'ble Authority in this regard.
 - ii. Direction to the respondent to make payment of an amount of INR 43,23,617/- as interest for delay in handing over possession of the plot, calculated at 12% per annum on the amount of INR 93,93,572/- paid by the complainants to the respondent under the agreement, from the original promised date of delivery viz. 13.11.2018 to the date on which the possession was offered i.e. 13.09.2022.
 - iii. Direction to the respondent to make payment of interest pendent lite on the amount of INR 93,93,572/- paid by the complainants to the respondent under the agreement before the offer of possession at such rate as may be deemed fit in the facts and circumstances.
 - iv. Refund of INR 10,53,799/- unlawfully deducted by the respondent for reallocation of funds from two projects to the "Vatika Next 2 Plot".
 - v. Any other relief as may be deemed fit in the facts and circumstances.
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) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- I. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
 - II. That the complainants are estopped by his acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
 - III. That the present complaints are based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the expression of interest dated 13.11.2013 as shall be evident from the submissions made in the following paragraphs of the present reply.

- IV. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
- V. That the complainants have not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.
- VI. That the complainants are not "Allottees" but an Investor who has booked the said unit in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as his residence. Therefore, no equity lies in favor of the complainants.
- VII. That the complainants approached the respondent and expressed interest in booking of an apartment in the residential project "Soverign Park" on 01.02.2013 and made a payment of Rs.31,82,001/- towards the said booking. The complainants also booked another unit in the residential project of the respondent namely "Seven Elements" on 04.07.2013 and paid a sum of Rs.2743214/- towards the said booking.
- VIII. That the complainants realizing that their investment would not lead to the expected profits that they desired, the complainants requested the respondent to transfer the two bookings of the complainant to a new



booking in the group plotted colony developed by respondent known as "Vatika Express City" situated in Sector 88A & 88B, Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- IX. That thereafter the complainants, vide expression of interest dated 13.11.2014 applied to the respondent for provisional allotment of the unit. Pursuant thereto, a priority number VEC/300/093 was allotted to the complainants. The complainants consciously and willfully opted for a Time linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in his favor.
- X. That being a contractual relationship, reciprocal promises are bound to be maintained. That the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the expression of interest which continues to be binding upon the parties thereto with full force and effect. That the remittance of all amounts due and payable by the complainant as per the schedule of payment was of the essence.
- XI. That the complainants have defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants on multiple occasions. That the bonafide of the respondent is also essential to be highlighted at this instance, who had served a number of

request letters and demand notes to the complainant to ensure that the payments are made in a timely fashion. That it is pertinent to mention that the complainant was irregular in payment of instalments. The respondent had to move from pillar to post requesting the complainant to timely discharge his outstanding financial liability but to no avail.

- XII. The Hon'ble Supreme Court noted in the case *Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18* held that the payments are to be paid by the purchaser in a time-bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.
- XIII. That the respondent vide its letter dated 28.01.2015 called upon the complainants in lieu of offering the allotment of the said unit on the basis of the priority number. That the complainant through the said letter was duly apprised about the modus operandi for allotment of the respective units to the allottees. That the complainant was given a fair chance to participate in the allotment process. That the complainant in order to procrastinate from his liability refrained himself to participate in the allotment process. That no heed was given to the legitimate requests of the respondent and the complainant didn't show up for the allotment of his unit.
- XIV. That several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading



effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favor of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- XV. That as per clause b of the expression of interest dated 13.11.2014, the complainant was under an obligation to execute the buyer's agreement and further to pay the sale consideration as and when required by the respondent but on the contrary, the complainant has failed to adhere to the terms and conditions of the expression of interest.
- XVI. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That furthermore, it is imperative to note that the complainant failed to abide by the terms and conditions of the builder buyer agreement dated 30.12.2015.
- XVII. That the complainants are a defaulting party who has failed to oblige the commitment to pay the instalments within the stipulated time. That the total sale consideration of the unit was Rs.2,40,35,984/-. Moreover, the complainants have only paid an amount of Rs.1,93,93,573/- till date. That the complainants were in default of an amount of Rs.37,38,242/- which is still outstanding. That multiple requests were made to the



complainant to clear his outstanding dues but all requests of the respondent fell on deaf ears of the complainant. The total amount paid by the complainant is evident from the payment receipt issued by the respondent which is already annexed with the complaint.

- XVIII. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this Hon'ble Authority. That the relief sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- XIX. That the complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. That no cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favor of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent.
- XX. That in light of the bona fide conduct of the respondent, lawful offer of possession of the unit has already been offered to the complainants vide offer of possession dated 13.09.2022 and reminder dated 18.11.2022.

XXI. Further the non-existence of cause of action, and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with costs in favor of the respondent.

7. 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 based on these undisputed documents made by both 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.

E. I Territorial jurisdiction

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

34(f) 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.

9. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the 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 Objection regarding maintainability of complaint on account of complainant being investor

10. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

11. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and

complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings regarding relief sought by the complainants.

- G.I Direction to the respondent to hand over possession of the plot to the complainants.**
- G.II Direction to the respondent to make payment for delay in handing over possession of the plot, on amount paid by the complainants to the respondent, from the due date of delivery i.e., 13.11.2018 to the date on which the possession was offered i.e. 13.09.2022.**
- G.III Direction to the respondent to make payment of interest pendent lite on the amount of INR 93,93,572/- paid by the complainants to the respondent under the agreement before the offer of possession at such rate as may be deemed fit in the facts and circumstances.**
- G.IV Refund of INR 10,53,799/- unlawfully deducted by the respondent for reallocation of funds from two projects to the "Vatika Next 2 Plot".**
- G.V Any other relief as may be deemed fit in the facts and circumstances.**

12. The above-mentioned relief 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. The complainants initially booked an apartment in the 'Sovereign Park' project of the respondent and made a total payment of Rs.38,58,711/-. Thereafter, the complainants booked another apartment/unit in the 'Seven Element' project of the respondent and made a total payment of Rs.31,23,743/-. Further, on 13.11.2014, through expression of interest for a residential plot the complainants applied for a plot against which vide allotment letter dated 23.03.2015, they were allotted a plot bearing no.16, in Street G-17, Block -G ad measuring 301.09 sq. yds. in project "Vatika Express City Plots" of the

respondent thereafter, a builder buyer's agreement was executed on 30.12.2015 between the parties, for the sale consideration of Rs.2,10,97,300/- against which the complainants have already paid an amount of Rs.1,93,93,573/- (inclusive of amount of Rs.59,25,216/- being transferred from the earlier bookings of the complainants-allottees).

14. 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."

15. Clause 9 of buyer's agreement provides for handing over of possession and is reproduced below:

9: SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL PLOT.

*9.1 "The Company based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to **complete development of the said Residential Plot within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential 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 Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."*

16. **Due date of handing over possession and admissibility of grace period:**

The promoter has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of this agreement. The authority calculated due date of possession from the date of execution of

buyer's agreement i.e., 30.12.2015. The period of 48 months expired on 30.12.2019. Therefore, the due date of possession comes out to be 30.12.2019.

17. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is 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. Rule 15 has been reproduced as under:

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

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

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

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. The definition of term 'interest' as defined under section 2(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:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainant 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.
22. On consideration of the documents available on record and submissions made by both the parties 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. The authority has observed that the apartment buyer agreement was executed on 30.12.2015 and the possession of the subject unit was to be offered with in a period of 48 months from the date of execution of the buyer's agreement. Therefore, the due date of handing over possession is 30.12.2019. The respondent has sent intimation of possession of the plot to the complainants on 13.09.2022 and reminder to intimation of possession on 18.11.2022.
23. The authority would like to clarify regarding the concept of "valid offer of possession". It is necessary to explain this concept because after valid and lawful offer of possession, the liability of promoter for offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over valid

possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining completion certificate.
- ii. The subject unit must be in habitable condition.
- iii. Possession should not be accompanied by unreasonable additional demands.

However, in the present case, there is no record available on the paper book to show why the completion certificate has not been granted by the competent authority. Neither the respondent has given any valid or specific reason to justify this delay. Accordingly, the authority keeping in view the above-mentioned facts considers that the respondent might not have applied a complete application for grant of completion certificate and has not rectified the defects, if any pointed out by the concerned authority. Further during the proceedings dated 04.04.2024, the counsel for the respondent states that the completion certificate/part completion certificate of the project in which the unit in question is located is not yet received. So, without getting completion certificate, the builder/respondent is not entitled to issue any offer of possession to the complainants. It is well settled that for a valid offer of possession, there are two prerequisites as mentioned above. Hence, the intimation regarding the offer of possession offered by respondent/promoter on 13.09.2022 and reminder for intimation of possession on 18.11.2022 to the complainants are not a valid or lawful offer of possession.

24. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to

the complainant as per the terms and conditions of the agreement to sell dated 30.12.2015 executed between the parties. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for completion certificate/part completion certificate or what is the status of the project. Also, during the proceedings dated 04.04.2024, the counsel for the respondent states that the completion certificate or part completion certificate of the project is not yet received. 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.

25. 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 rate of the prescribed interest @ 10.85% p.a. w.e.f. 30.12.2019 till valid offer of possession plus two months after obtaining of completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
26. The complainants are also claiming refund of Rs.10,53,799/- being deducted by the respondent at the time of transferring the amount from earlier unit to the unit in question on 29.05.2015 as per SOA dated 18.06.2015. Further, during proceedings dated 23.05.2024, the counsel for the respondent clarified that an amount of Rs.10,53,799/- was deducted on account of administration charges, service tax on administration charges and brokerage charges and after deducting the said amount, the balance amount was transferred to the subject unit in question. Further, the complainant has failed to provide any valid document and specify the clause in terms of which the respondent is not entitled to such deduction. Furthermore, the deductions were made in May, 2015, which is pre-RERA and after cancellation of earlier allotted units and

deductions, a new buyer's agreement stands executed between both the parties on 30.12.2015 and relief of delayed possession interest and possession s being sought as per terms of said buyer's agreement and hence its terms and condition including amount transferred cannot be agitated at this belated stage.

H. Directions of the authority:

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 30.12.2019 till valid offer of possession plus two months after obtaining completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- II. The arrears of such interest accrued from due date of possession i.e., 30.12.2019 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- IV. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate from the competent



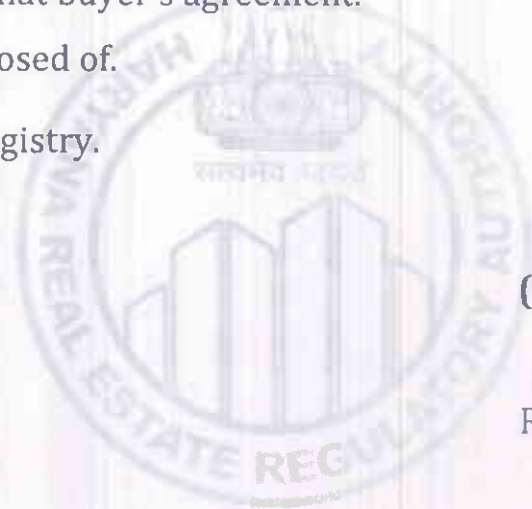
authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the completion certificate.

- V. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- VI. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 23.05.2024



V.1 - [Signature]
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM