

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

**Complaint no.:** 1292 of 2023  
**Date of filing:** 06.04.2023  
**Date of decision:** 30.05.2024

Virender Chaudhary  
Through SPA holder Mr. Mohinder Singh  
**R/o:** – H. no. 2532-P, Sector-9-11, Hisar-125001.

**Complainant**

Versus

1. M/s Vatika Ltd.  
**Regd. Office:** Unit no. A-002, INXT City Centre, Ground  
Floor, Block-A, Sector-83, Vatika India Next, Gurugram-  
122012.

**Respondent No.1**

2. Virender Dhar  
**Regd. Office:** Flat no.M-113SF, Blossom-2, Artemis  
Hospital, Sector-51, Gurgaon Samaspur, Gurgaon.

**Respondent No.2**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Pushkar Rai Garg (Advocate)  
Shri Venket Rao (Advocate)  
None

Complainant  
Respondent no.1  
Respondent no.2

**ORDER**

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

**A. Project and unit related details**

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

S.No.	Particulars	Details
1.	Name and location of the project	"Vatika India Next", Sector 81 -85, Gurugram
2.	Nature of project	Residential
3.	DTCP license no.	113 of 2008 dated 01.06.2009
4.	RERA registered/ not registered and validity status	<b>Registered</b> Registered vide no. 36 of 2022 dated 16.05.2012
5.	Unit no.	34, Emilia, GF, S.T. 83E-2, Sector 83E, VIN (old unit) (as per BBA dated 26.04.2011) Plot no. 34, Emilia, GF, S.T. 83E-2, Sector 83E, VIN (revised unit no.) (As per addendum dated 28.10.2013) Plot no. 11 / Street no. K-17 / Level-1/ Sector-83K / <b>(New unit)</b> (As per re-allotment letter dated 09.09.2016 & Addendum dated 07.12.2016)
6.	Unit area admeasuring	781.25 sq ft. (super area) (old unit) (as per BBA page 29 of complaint) 929 sq. ft. (revised area) (as per letter dated 10.07.2013 page 31 of reply) 985 sq. ft. <b>(New unit)</b> (As per re-allotment letter dated 09.09.2016 & Addendum dated 07.12.2016)
7.	Application form	23.09.2009 (page 71 of complaint)
8.	Builder buyer agreement	26.04.2011 (page 25 of complaint)
9.	Possession Clause	<b>10.1 Schedule for possession of the said independent dwelling unit.</b> <b>That the Company based on its present</b>



		<p><i>plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III 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. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same.</i></p> <p><b>(Emphasis supplied)</b></p>
10.	Due date of possession	26.04.2014 (calculated from the date of execution of buyer's agreement)
11.	Addendum to buyer's agreement	28.10.2013 & 07.12.2016 (page 32 & 33 of reply)
12.	Sale Consideration	Rs.24,78,759/- (as per BBA dated 26.04.2011 at page 29 of complaint)
13.	Revised Sale consideration (for Plot no. 11/Street no. K-17/ Level-1/Sector-83K admeasuring area 985 sq. ft.)	Rs.35,76,222/- (as per revised sheet at page 75 of complaint)
14.	Amount paid by complainant	Rs.8,78,564/- (page 19 of complaint & page 05 of reply)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

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

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- i. That the petitioner herein is a peace-loving citizen of USA and was previously a citizen of India and presently resident of 2308, Crab Apple Terrace Buffalo Grove, Chicago, IL 60089 USA with his family. That the petitioner is the sole owner of the apartment in question. That the petitioner had the ownership of the apartment vide builder buyer agreement dated 26.04.2011 in favor of the petitioner. As, the petitioner is residing at outside the India and he is unable to proceed the proceeding of this petition in person capacity, as such, the petitioner/petitioner has been appointed Sh. Mohinder Singh as his Attorney by executing a Special Power of attorney dated 13-02-2023 and the present complaint/petition has been filed by the authorized representative Sh. Mohinder Singh. The Sh. Mohinder Singh is well conversant with the facts and circumstance of the present case and fully authorized to file the present petition as well as do all needful act on behalf of petitioner Virender Choudhary as per SPA dated 13-02-2023.
- ii. That the respondent company is in the business of real estate developments and is having its registered office unit no. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012. The respondents expressed itself as a well-known, trusted and one of the oldest business conglomerates with strong presence in Real Estate Development.
- iii. That the petitioner learnt about the said project of the respondent company in 2009. Since the petitioner was looking for a unit which had all licenses and compliances cleared with the authorities, the petitioner had applied for the allotment of an apartment in the said project vide his application dated 23-09-2009, and his request has been accepted by the respondent and the petitioner have booked a residential floor in Vatika India Next.
- iv. That the petitioner have paid a sum of Rs. 2,43,970/- vide demand draft No. 469147 dated 23.09.2009 to the respondent and a apartment having 2



- Bedroom in ground floor was allotted to the petitioner, and the built area was 781.25 sq. ft. & total sale consideration was Rs. 24,76,849/-.
- v. That the petitioner was allotted plot no. 34 EMILIA GF 2<sup>nd</sup> Street Sector 83 E VIN vide the letter dated 15-11-2010 issued by the respondent. Thereafter, a Builder Buyer agreement (BBA) was also executed between the petitioner and respondent on 26-04-2011. As per clause No. 10.1 of the agreement the unit was to be constructed and the possession of the allotted apartment to be handed over to the petitioner within a period of 3 years from the date of execution of the agreement i.e. by April, 2014.
- vi. That after the lapse of three years from the date of execution of BBA dated 26.04.2011 the respondent has been failed to construct the building as well as to deliver the possession of the apartment in question to the petitioner, as such, the petitioner had approached the respondent number of times but no positive response was received by the petitioner from the respondent.
- vii. That vide letter bearing ref. NO. VL/CRM/2016-17/11-07-0057365/2 dated 23-08-2016 issued by the respondent to the petitioner, whereby the respondent has requested to the petitioner for reallocation of independent floor in phase 11 for petitioner unit 34/2<sup>nd</sup> ST./83E/180/GF having 985 Sq. ft. and the petitioner was invited to choose another floor unit. The petitioner was called by the respondent in their office for complete the re-allotment formalities, as such, the petitioner had visited the office of respondent at Gurugram and he was allotted another unit as stated above. That an Addendum agreement was also executed between the petitioner and respondent regarding the re-allotment of unit on the same terms and conditions of the BBA dated 26-04-2011. Meaning thereby the possession of the apartment in question was to be delivered by the respondent to the petitioner at the time of execution of Addendum but the respondent has been failed to offer the possession to the petitioner so far.



- viii. That the petitioner with all good faith and intentions has been complying with the requests and directions made by the respondent with the hope that he will get a home to live in. But now, more than 13 years have been elapsed and he had heard nothing from the office of respondent.
- ix. That the respondent with malafide intention illegally/fraudulently utilizing the money of the petitioner without discharging their obligations as per the conditions of the Builder Buyer Agreement as per the clauses.
- x. That the petitioner trusted the respondents and deposited the above said amount but the respondent had been working illegally with malafide intention. The respondent no. 1 was under contractual obligation to perform his part in time and by not handing over the possession to the petitioner in time, the respondent no.1 committed grave deficiency of services.
- xi. That the respondent cheated the petitioner by misrepresenting the facts which caused wrongful loss to the petitioner and wrongful gain to the respondent by adopting the ill methods of business tactic which amount to unfair trade practice.
- xii. That the petitioner being the bonafide purchaser was always in touch with the officer of the respondent, but the company always misled the petitioner.
- xiii. That the respondent is also liable under Section 13 of the HREERA act, being responsible for making the allottee pay the installments of the flat without executing the builder buyer agreement which they were required to perform as per the regulations imposed in the act.
- xiv. That when the petitioner realized that the respondent is trying to wrongfully gain from the petitioner, he felt cheated and that despite paying the right amount of money, the possession of the said flat had not been handed over to its rightful owner, and the respondent is still demanding illegal amount of money.

- xv. That respondent has caused great pain and trauma to the petitioner and his hard-earned money is held by the respondent in utter disregard of its obligation and propriety. Despite repeated requests of the petitioner, the respondent has failed to issue a correct and legal demand letter to the petitioner nor have handed over the possession of the flat in the appropriate amount of time.
- xvi. That since the project of the respondent has failed to discharge its obligation as per builder buyer agreement and discharge their obligation towards petitioner, despite the fact that the respondent collected the money from the petitioner for the said project by unfair trade practices and thereby, the respondent had made wrongful loss to petitioner and wrongful gain to respondents and thereby cheated the petitioner, subject to not handover of the possession of the said apartment to the petitioner and charging illegal amount of interest from the petitioner and the petitioner was forced to stay away from his rightful residence.
- xvii. That the malafide act and misconduct of the respondents in gross violation of applicable laws including HRERA, resulted in gross mental agony, inconvenience and harassment of the petitioner and his family depriving them not only from enjoying the quality life but also celebrating the life events at their own house, thus the respondents are liable to pay appropriate delay possession charges to the petitioner.

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

4. The complainant has filed the present compliant for seeking following relief(s):
- i. The respondent be directed to deliver the possession of the apartment in question with immediate effect and the respondent be also directed to pay delay possession charges to the petitioner from the date of booking of apartment till the date of realization of actual payments.

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

**D. Reply by the respondent no.1: -**

6. The respondent no.1 has contested the present complaint on the following grounds:

- i. That the present complaint under reply is bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. That the complainant had not approached the Ld. Authority with clean hands and has suppressed the relevant material facts. That the complaint under reply is devoid of merits and the same should be dismissed with cost.
- ii. That in September 2009, the complainant, learned about the residential colony project launched by the respondent, wherein the respondent was planning to create independent dwelling units on each floor titled as Independent Floors in the 'Vatika India Next', 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" (hereinafter referred to as 'Project'), vide Application Form dated 23.09.2009, 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 on 31.10.2009, the respondent vide welcome letter, intimated the complainant that the project acknowledged the application for booking made by the complainants and the receipt of the booking amount of Rs.2,43,970/- paid against the unit in question. The respondent again sent the letter dated 16.12.2009, intimating the complainant about the teams allocated to complainant for further dealings with respect to the CRM department.
- v. Further, the respondent vide letter dated 28.05.2010, intimated the complainant that the designing of master layout plan for floors shall commence now as from past months it was held up, due to some government process of earmarking the main roads and the sector roads and also informed that the allotment process will commence soon. It is pertinent to note the due to the earmarking of roads by government authorities, the designing the layout was initially delayed which purely happens to be beyond the control of the respondent.
- vi. That after the designing was complete the respondent vide allotment letter dated 15.11.2010, allotted the unit no. 34, Emilia, 2nd St, Sector 83E to the complainant.
- vii. Subsequently, on 06.04.2011, a dwelling unit buyer agreement (hereinafter referred to Agreement') was executed between the complainant and the respondent No. 1 for the unit no. 34, Emilia, 2nd St, Sector 83E, admeasuring 781.25 sq. ft. (hereinafter referred to as 'Allotted Unit'), for total sale consideration of Rs.24,78,759/-, excluding other charges.
- 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. 34, Emilia, GF, ST.83E-2, Sec-83E, VIN, and area had been also revised to 929.02 sq. ft. and as per the terms and conditions of the agreement, the complainant had to remit an amount of Rs.4,61,457/-, 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 28.10.2013, for the allocation of new Unit no. being Plot no. 34, Emilia, GF, ST.83E- 2, Sec.83E, VIN. 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 23.08.2016, the respondent again invited the complaint for re-allotment of the unit, which was duly accepted and the complainant was allotted unit Sector 83K/Plot no. 11/ST.K-17/Level-1 admeasuring 985 sq. ft. (hereinafter referred to as Unit'), by allotment letter dated 09.09.2016. The complainant and respondent no.1 then entered into an addendum dated 07.12.2016, for the said unit.
- xiii. 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.

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- The total sale consideration of the unit after revising the area was Rs.35,76,222/- excluding other charges.
- xiv. 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.
- xv. 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 no.1 in mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- xvi. 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.
- xvii. That as per the agreement executed for the said unit, the complainant was well aware that the respondent no.1 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.
- xviii. That since starting the respondent no.1 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 no.1.
- xix. 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.
- xx. 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.
- xxi. That there was no deficiency in service or unfair/restrictive trade practices, nor any lack of accountability or transparency. The respondent had not duped the customers or committed a breach of contract. The present complaint had been filed with malafide motives and was liable to be dismissed with heavy costs payable to the respondent. The present complaint is based on an erroneous interpretation of the provisions of the Act, 2016 and an incorrect understanding of the terms and conditions of the Buyer's Agreement. The respondent was not liable to pay interest as per the provisions of Act, 2016, and the provisions laid down in the said Act could not be applied retrospectively, and the complainants are not entitled to



- assert any claim beyond the scope of the buyer's agreement executed between the parties. and hence denied the complainants are not entitled to any such reliefs.
- xxii. 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 submits that the project development is in full progress and the unit of the respondent shall be ready for possession.
- xxiii. That as per the clause 11.5 of the agreement, it has been agreed and undertaken by the parties that in case the respondent is not in a position to deliver or handover the possession of the unit, then in that case the liability of the respondent shall be limited and restricted to the refund of the amount paid by the complainant along with simple interest of 6%.
- xxiv. That in the interest of justice the respondent herein cannot be forced to handover the possession of the unit allotted to the complainant in case the construction of the said project is hindered due to many reasons pertaining to force majeure. And, the respondent herein has already offered to initiate refund of the amount paid by the complainant along with prescribed rate of interest.
- xxv. That the respondent was committed to complete the project and has invested each and every amount towards the construction of the same. However, due to the reasons beyond the control which are explained hereinabove and not repeated herein for the sake of brevity, it has become impossible for the respondent to fulfill the contractual obligations as promised under the agreement and the said agreement has become void in nature.
- xxvi. That the agreement between the complainant and the respondent has been frustrated as it is impossible for the respondent to provide the possession of the unit in question which is valid and approved by the DTCP. It is

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submitted that the Doctrine of Frustration as enshrined in Section 56 of the Indian Contract Act 1872, which deals with cases where the performance of it has become impossible to perform due to any unavoidable reason or condition. However, the respondent herein has already offered to provide refund of the amount paid along with the rate of interest.

xxvii. That the Ld. Authority that owing to such inadvertent delay beyond the control the respondent no.1 has already intimated the complainant vide email dated 17.01.2022, the actual reason for the delay i.e., unforeseen and unprecedented circumstances which are acquisition/alignment of sector roads and internal circulation roads by the authorities i.e. HUDA and major alteration in sector road plans due to which the respondent was unable to apply for demarcation of roads.

xxviii. That vide same email dated 17.01.2022, the respondent no.1 also intimated the complainant that the project in question has further also got delayed due to the Covid-19, pandemic and requested the complainant for some more time and even at the same time offered for refund as per the builder buyer agreement. Hence, the present complaint under reply, is an utter abuse of the process of law and deserve to be dismissed.

7. The authority observes that the complainant has impleaded Virender Dhar (being authorised representative of respondent no.1) as respondent no.2 in the present complaint. However, In the present complaint, the complainant intends to continue with project and is seeking possession of the subject unit along with delay possession interest from the respondent. Also, as per the records of Ministry of Corporate Affairs, respondent no.2 (Virender Dhar) is neither the managing director nor the director of the respondent company. Moreover, the complainant entered into the buyer's agreement with respondent no.1 and all the payments were made in favour of respondent

no.1 only. Therefore, in view of the above-mentioned facts, respondent no.2 cannot be held liable under section 18 of the Act, 2016.

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Written submission made by the respondent:**

9. The counsel for the respondent no.1 has filed written submission on 23.05.2024 and no additional facts apart from the complaint or reply have been stated in the written submissions.

**F. Jurisdiction of the authority**

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

**F.I Territorial jurisdiction**

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

**F.II Subject-matter jurisdiction**

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

**Section 11**

.....

(4) The promoter shall-



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

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

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

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Objections raised by the respondent:**

**G.I Objection regarding the complainants being investors.**

14. The respondent took a stand that the complainants are investor and not consumers and therefore, he is 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 complainant is buyers, and he has paid a total price of Rs.31,20,000/- to the promoter towards purchase of a 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 al-*



*lotment 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;"*

15. 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 complainant, it is crystal clear that the complainant 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.

#### **H. Findings on the relief sought by the complainants.**

- H.I The respondent be directed to deliver the possession of the apartment in question with immediate effect and the respondent be also directed to pay delay possession charges to the complainant from the date of booking of apartment till the date of realization of actual payments. the respondent to handover the possession of the allotted unit.**
16. 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."*

17. Clause 10.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"10.1 Schedule for possession of the said independent dwelling unit.**

*That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete*

*construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III 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. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same.*

**(Emphasis Supplied)**

18. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.
19. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language

which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.

20. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the buyer agreement. In the present complaint, the buyer agreement was executed on 26.04.2011. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 26.04.2014.
21. The authority observes that the complainant was allotted an independent dwelling unit bearing no. Plot no. 34, Ground Floor, 2<sup>nd</sup> Street, Block-E, Sector-83 to be constructed on plot measuring built up area 781.25 sq. ft. in the project namely "Emilia by Vatika India Next" vide allotment letter dated 15.11.2010 and a buyer's agreement dated 26.04.2011 was executed between complainant and respondent no.1 for the same for the total sale consideration of Rs.24,39,696/- plus IFMS of Rs.39,063/- (*including of EDC, IDC and other government charges as applicable on the date of application have been included in the price of dwelling unit*) out of which the complainant has paid Rs.8,78,564/-. Thereafter, on 10.07.2013, the unit no. of the complainant was changed to Plot no.34-2<sup>nd</sup> Street, Sector-83E, "Vatika India Next" and area has been also revised from 781.25 sq. ft. to 929.02 sq. ft. and an Addendum to buyer's agreement was executed between the complainant and respondent no.1 on 28.10.2013 in respect of Plot no.34-2<sup>nd</sup> Street, Sector-83E, "Vatika India Next". Thereafter, the complainant was re-allotted an independent floor vide re-allotment letter dated 23.08.2016 and another allotment letter was issued to the complainant by respondent no.1 on 09.09.2016 and allotted a Fresh Independent Floor bearing no. Plot no. 11/Street no. K-17/Level-1/Sector-83K and area was again revised from



929.09 sq. ft. to 985 sq. ft. and sale consideration of unit was also revised to Rs.35,76,222/- plus PLC for corner/green facing Rs.300/- per sq. ft. and the same was acknowledged by the complainant (as per page 75 of complaint) and another addendum to buyer's agreement was executed between the complainant and respondent no.1 on 07.12.2016 in respect of Independent Floor bearing no. Plot no. 11/Street no. K-17/Level-1/Sector-83K admeasuring area 985 sq. ft. (i.e., the unit in question). That both the addendum agreement dated 10.06.2013 and 07.12.2016 states that '*all other terms and conditions of the builder buyer's agreement dated 26.04.2011 shall remain unaltered and effective*'. The complainant has filed the present complaint on 06.04.2023 seeking possession of Independent Floor bearing no. Plotno.11/Streetno.K-17/Level-1/Sector-83K admeasuring area 985 sq. ft. and delay possession charges as per proviso to section 18 (1) of the Act.

22. The case of the respondent is that due to change in the alignment of the GAIL pipeline, the plot/unit in question is not available. However, the GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide letter dated 04.03.2011 as submitted by respondent in his reply. GAIL notification and permission letter was prior to the execution of buyer's agreement dated 26.04.2011 and addendum to the agreement dated 28.10.2013 and 07.12.2016. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same to the complainant. This, inconsistency casts doubt on the respondent reasoning for cancelling the unit. The respondent/promoter has failed to develop the unit and cancelled the unit on account of its own fault/omission. Accordingly, the respondent is liable to offer alternative unit to the complainants at the same rate as per the agreed terms of subject agreement dated 26.04.2011 and addendum to the agreement dated 28.10.2013 and



07.12.2016 on account of its inability to develop the subject unit. The rationale behind the same is that the allottee purchased the subject unit way back in 2011 and paid the demanded amount in hope to get possession of the allotted unit.

23. Subsequently, during proceedings dated 18.04.2024 the respondent offered to refund the paid-up amount in case of non-availability of unit but the complainant refused to accept the same.
24. It is noteworthy that the respondent despite expressing readiness to offer an alternative unit to the complainant in his reply as well as proceedings dated 04.01.2024 has failed to offer the same. In light of these observations, the respondent is directed to offer an alternative unit to the complainant at the same rate as per the agreed terms of the subject agreement and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.
25. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of section 2(za) of the Act. The complainant cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.
26. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

27. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
28. 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., 30.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
29. 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;"*

30. 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.
31. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the buyer's agreement. bearing no. Plot no. 34, Ground Floor, 2<sup>nd</sup> Street, Block-E, Sector-83 to be constructed on plot measuring built up area 781.25 sq. ft. in the project namely "Emilia by Vatika India Next" vide allotment letter dated 15.11.2010 and a buyer's agreement dated 26.04.2011 was executed between complainant and respondent no.1 for the same for the total sale consideration of Rs.24,39,696/- plus IFMS of Rs.39,063/- (including of EDC, IDC and other government charges as applicable on the date of application have been included in the price of dwelling unit) out of which the complainant has paid Rs.8,78,564/-. Thereafter, on 10.07.2013, the unit no. of the complainant was changed to Plot no.34-2<sup>nd</sup> Street, Sector-83E, "Vatika India Next" and area has been also revised from 781.25 sq. ft. to 929.02 sq. ft. and an Addendum to buyer's agreement was executed between the complainant and respondent no.1 on 28.10.2013 in respect of Plot no.34-2<sup>nd</sup> Street, Sector-83E, "Vatika India Next". Thereafter, the complainant was re-allotted an independent floor vide re-allotment letter dated 23.08.2016 and another allotment letter was issued to the complainant by respondent no.1 on 09.09.2016 and allotted a Fresh Independent Floor bearing no. Plot no. 11/Street no. K-17/Level-1/Sector-83K and area was again revised from 929.09 sq. ft. to 985 sq. ft. and sale consideration of unit was also revised to Rs.35,76,222/- plus PLC for corner/green facing Rs.300/- per sq. ft. and the

same was acknowledged by the complainant (as pe page 75 of complaint) and another addendum to buyer's agreement was executed between the complainant and respondent no.1 on 07.12.2016 in respect of Independent Floor bearing no. Plot no. 11/Street no. K-17/Level-1/Sector-83K admeasuring area 985 sq. ft. (i.e., the unit in question). That both the addendum agreement dated 10.06.2013 and 07.12.2016 states that '**all other terms and conditions of the builder buyer's agreement dated 26.04.2011 shall remain unaltered and effective**' By virtue of clause 10.1 of the buyer's agreement executed between the parties on 26.04.2011 the possession of the said unit was to be delivered within a period of 3 years from the date of execution of the builder buyer agreement. Therefore, the due date of handing over possession comes out to be 26.04.2014. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

32. The complainant is also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession after receipt of the occupation certificate from the competent authority of the allotted unit to the complainant as per the terms and conditions of the builder buyer agreement dated 26.04.2011 executed between the parties.
33. Thus, the respondent no.1 is liable to offer alternative similar situated unit to the complainant as per specifications of original BBA dated 26.04.2011 at the same rate at which the unit was earlier purchased and on a similar location. The rationale behind the same that the allottee booked the unit/villa in the project way back in 2011 and paid the demanded amount in a hope to get the possession.



34. 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. due date of possession i.e., 26.04.2014 till valid offer of possession after obtaining of OC from the competent authority plus two months 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.

**I. Directions of the authority**

35. 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 no.1 is directed to handover the possession of allotted unit or if the same is not available, an alternative and similar unit to the complainant, at the same rate and specifications at which the unit was earlier purchased within three months from the date of this order and handover the possession of the alternative unit to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- ii. The respondent no.1 is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e. 10.85 % p.a. w.e.f. due date of possession i.e., 26.04.2014 till valid offer of possession after obtaining of OC from the competent authority plus two months 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.

- iii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent no.1 shall not charge anything from the complainant which is not the part of the builder buyer agreement.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e.,10.85% by the respondent-promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

36. Complaint stands disposed of.

37. File be consigned to registry.

Dated: 30.05.2024

  
(Vijay Kumar Goyal)

Member  
Haryana Real Estate Regulatory  
Authority, Gurugram