

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

Date of decision: 14.05.2024

NAME OF THE BUILDER		VATIKA LIMITED	
PROJECT NAME		CITY HOME	
S. No.	Case No.	Case title	Appearance
1	CR/4849/2022	Neeta Monga V/s Vatika Limited	Ritu Bhalla, Adv. (Complainant) Venkat Rao, Adv. (Respondent)
2	CR/5859/2022	Kavita Khanna and Naval Khanna V/s Vatika limited & Anr.	Ritu Bhalla, Adv. (Complainant) Venkat Rao, Adv. (Respondents)

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

ORDER

1. This order shall dispose of the 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, City Home situated at Sector-83, Gurugram being developed by the respondent/promoter i.e., Vatika Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession and delay possession charges and set aside of the cancellation.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit No. and area	Date of buyer agreement	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/4849/2022 Neeta Monga V/s Vatika Limited DOF: 29.07.2022 Reply filed on: 14.06.2023	801, 8 th floor, B7 admeasuring 1738.24 sq. ft. (super area) (Page 56 of complaint) Super area as per intimation of possession dated 10.10.201 5: 1740 sq. ft. (Page 32 of reply)	21.09.2011 (As per page 53 of complaint)	21.09.2014 (Calculated as three years from date of execution of apartment buyer's agreement)	TC- Rs.49,29,020/- (As per ABA dated 21.09.2011, page 57 of complaint) AP- Rs. 38,60,265/- (As per SOA dated 27.02.2023 on page 42 of reply)- Date of cancellation: 15.06.2021	<ul style="list-style-type: none"> • Direct the respondents to handover physical possession, of the flat/unit • Direct the respondents to execute conveyance deed • Direct the respondents to pay DPC, • To Setaside cancellation letter/order

2.	CR/5859/2022 Kavita Khanna and Naval Khanna V/s Vatika Limited DOF: 22.08.2022 Reply: 14.06.2023	802, 8 th floor, B7 admeasuring 1738.24 sq. ft. (super area) (Page 62 of complaint) Super area 1750 sq. ft. as per intimation of possession dated 10.10.2015 (Page 29 of reply)	21.09.2011 (As per page 59 of complaint)	21.09.2014 (Calculated as three years from date of execution of apartment buyer's agreement)	TC- Rs. 49,29,019/- (As per ABA dated 21.09.2011, page 63 of complaint) AP- Rs. 41,50,666/- (As per SOA dated 27.02.2023 on page 41 of reply) Date of cancellation: 24.06.2021	<ul style="list-style-type: none"> • Direct the respondents to handover physical possession, of the flat/unit • Direct the respondents to execute conveyance deed. • Direct the respondents to pay DPC. • To set aside cancellation letter/order
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TC	Total consideration
AP	Amount paid by the allottee(s)
OC	Occupation certificate
ABA	Apartment buyer's agreement

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyers agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking possession and delay possession charges at prescribed rate of interest and set aside of cancellation letter.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the

authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4849/2022 titled as Neeta Monga Vs. Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainants-allottees.

A. Project and unit related details

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

CR/4849/2022 titled as Neeta Monga Vs. Vatika Limited

S.No.	Particulars	Details	
1.	Name of the project	"Gurgaon-City Homes", Sector 83, Gurugram	
	Project type	Residential Housing Colony	
	Project registered or not	Un-registered	
2.	License No. (As per buyers agreement at pg.54 of complaint)	113 of 2008 dated 01.06.2008	71 of 2010 dated 15.09.2010
	Land admeasuring	182.79 acres	98.78 acres
	Licensee Name	M/s Buzz Technologi	M/s Blossom Properties

		es Pvt. Ltd.& Ors. (As per data available on DTCP data)	Pvt. Ltd. & Ors. (As per data available on DTCP data)
3.	Allotment of unit no. B7-801	08.11.2010 [Page 49 of complaint]	
4.	Unit no.	801, 8 th floor, B7 admeasuring 1738.24 sq. ft. (super area) (Page 56 of complaint) Super area as per intimation of possession dated 10.10.2015: 1740 sq. ft. (Page 32 of reply)	
5.	Date of execution of apartment buyer's agreement	21.09.2011 (As per page 53 of complaint)	
6.	Possession clause	<p>10.1 Schedule for Possession of the said Apartment</p> <p><i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said apartment 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 (39) or due to failure of Allottee(s) to pay in time the price of the said Apartment 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</i></p>	

		<i>of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i> [Page 65 of complaint]
7.	Due date of possession	21.09.2014 (Calculated as three years from date of execution of plot buyer's agreement)
8.	Total sale consideration	Rs.49,29,020/- (As per ABA dated 21.09.2011, page 57 of complaint)
9.	Amount paid by the complainant	Rs.38,60,265/- (As per SOA dated 27.02.2023 on page 42 of reply)
10.	Offer of possession	10.10.2015 (Page 32 of reply)
11.	Occupancy Certificate	Yet not obtained for the said unit (OC dated 30.08.2016, page 40 of reply)
12.	Outstanding dues on account of interest on due payments as per offer of possession dated 10.10.2015	Rs.25,02,954/- [Page 32 of reply]
13.	Notice for termination	15.05.2021 (Page 39 of reply)
14.	Cancellation letter	15.06.2021 (Page 120 of complaint)
15.	Legal notice by the complainant to	27.05.2022 [Page 147 of complaint]

	respondent to handover possession or to refund paid-up amount with interest	
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B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- i. That on the assurances given by the respondents as well as their agents, the complainant was much influenced with the assurance conveyed by the respondents through their wide publicity and the complainant booked an independent floor in the said project "Vatika India Next" being developed & constructed by the respondent. Complainant and her two friends namely Mrs. Kavita Khanna and her husband and Shirish Shorewala booked their individual floors together, before booking their flats, the complainant along with her friends met with the officials of the respondent and told that they want to purchase their independent floors on the same floor or if it's in a low-rise, then they want their floors in same tower/plot.
 - ii. That the officials of the respondent-promoter told the complainant and her friends that there are two 3 BHK flats and one 2 BHK flat are available on the same floor. On 28.07.2008, the complainant and her friends gave their consent and booked their respective flats/units/floors with the respondent-promoter. The complainant booked her flat of 3 BHK at the rate of Rs.2438/- per sq. ft. and at the time of booking /registration officials of the respondents duly assured the complainant that the respondent would deliver the physical possession of the above mentioned flat within 36 months i.e. three years and after that the complainant have paid an

amount of Rs.6,00,000/- against priority No. 3BR/209 for 2 BHK Flat/Floor vide cheque bearing no. 633845 dated 28.07.2008.

- iii. That thereafter, the complainant and her friends approached the officials of the respondent and requested to execute buyer's agreement but the officials of the respondent linger on the matter on one pretext or the other till 2010 and instead the respondent demanded the next installment of the above mentioned flat/unit/priority number, on this the complainant and her friends requested to their officials to issue the allotment letter of their flats/units, then they will pay the installment.
- iv. That in the month of July, 2010, the respondent-promoter called the complainant and her friends and offer a new unit bearing nos. B7-801, 802 (3BHK) and 803 (2 BHK) in "City Homes" situated at Sector-83, Gurugram, Haryana with increasing the area of the flats/units without any prior consent or permission of the complainant and her friends. Complainant objected the same, but the officials of the respondents forced the complainant and her friends by saying that the plan has changed and the complainant have to take the same. Having no other option, the complainant and her friends gave their consent and agreed for the same. After repeated requests of the complainant and her friends, the respondent executed apartment buyer's agreement dated 21.09.2011 in respect of the flat bearing no. B7-801 of the complainant with increasing area from 1457 sq. ft. to 1738.24 sq. ft.
- v. That the complainant paid the installment as and when demanded by the respondent-promoter till the year, 2015. The complainants paid a total sum of Rs. 38,60,265/- to the respondents in respect of the above said unit/floor. It is pertinent to mention herein that at the time of booking of

the flat, the total sale consideration of the said flat/unit is Rs.39,72,850/- and after re-allotment, the respondents increased this amount to Rs.49,29,019/- i.e. total sale consideration of the new flat/unit by increasing the area of the flat/unit.

- vi. That in the middle of October, 2015, the complainant and her friends received a letter dated 10.10.2015 from the respondent and the complainant was shocked to see that the respondent-promoter have again increased the flat area of her friend namely Shirish Shorewala from 1325 sq. ft. to 2315 sq. ft. and charged Rs.6500/- per sq. ft. instead of 2443/- per sq. ft. without prior notice, intimation or consent of the complainant and her friends. On this, the complainant along with her friends, visited the office of the respondent-promoter on dated 19.11.2015 and asked about the same, and officials of the respondents told the complainant that due to change in FSI, the particular flat no. 803 has been changed into duplex and of which they were supposed to provide them floor plan with all details and also offered the complainant for alternative flat on first Floor which the complainant denied as the complainant and her friends want to take the flat on the same floor as the complainant and her friends booked their flats/units on the same condition and the officials of the respondents agreed for the same.
- vii. That complainant and her friends denied accepting their flat/unit in different way, then the officials of the respondents assured the complainant and her friends to resolve the matter within a short span of time i.e. 24 hours. Further, Complainant and her friends continuously sent several e-mails to the respondents and enquired the officials of the

- respondent-promoter to clear the plan, but the officials of the respondents delayed the matter on one pretext or the other.
- viii. That the complainant and her friends continuously enquired the officials of the respondent in order to clear the plan but the officials of the respondent delayed the matter on one pretext or the other, complainant sent several e-mails to the respondent and thereafter, complainant and her friends visited the respondent's office to discuss their issues on which respondent sought some time to resolve the concerns of complainant and her friends followed by an email dated 12.12.2015 promising to resolve the matter. However, on 18.02.2016, the respondent sent a demand letter on which complainant and her friends visited the respondent's office with cheques to clear the due amount but the respondent sought more time to resolve the issue of allotting the unit/flat of complainant on same floor/tower, as complainant and her friends had booked their flats/units on this condition.
- ix. That after sufficient wait of respondent to resolve the matter, the complainant and her friends sent a letter to the respondent to clear the status of their flats/ units. Instead of resolving the issue, respondents again sent a demand notice to complainant and her friends, demanding the amount illegally and unlawfully. On which, complainant and her friends again visited to the office of the respondent to clear the status of the flat no. B7-803 of their friend namely Shirish Shorewala, and asked the respondent-promoter if they are ready to give the possession of the flat no. 803 on the same rate i.e. Rs.2443/- per sq. ft. as mentioned in the apartment buyer agreement, and to waive off interests thereupon, the

complainant and her friends are ready to take the possession immediately by clearing the entire dues but no fruitful came out.

- x. That on 15.05.2021, respondents sent a termination notice to the complainant and her friends through e-mails stating that if the dues of the complainant would not be cleared then the respondent would terminate the flats/ units of the complainant and her friends while they were/are still ready to take the same on the rates as agreed by the respondent at the time of booking and after waiving off the interest. The complainant and her friends visited the office of the respondents in order for the redressal of their grievance, but the requests of the complainant and her friends fell on the deaf ears and the officials of the respondents flatly refused to do so
- xi. That the respondents intentionally and wilfully wanted to usurp the hard-earned money of the complainant and her friends in an unlawful and illegal manner. Due to their above said acts and conducts the complainant has to suffer a huge economic loss, mental pain, agony. The respondents knowingly, intentionally with ulterior motives and malafide intentions did not handover the physical possession of the flat/ unit to the complainant which is categorical, default and deficiency in service on their part and attempted to cause loss to the complainant which was being caused due to wilful default on the part of the respondents.
- xii. That at the time of booking of the flat, officials of the respondents had assured the complainant and her friends that the actual physical possession of the flat/unit will be deliver within a period of three (03) years and as per terms and conditions of the buyer agreement dated 21.09.2011, in para no. 10.1. But the respondents delayed to handover the

actual physical possession of the flat/unit to the complainant and her friends and instead of handing over the physical possession within time, the respondents cancelled/ terminate the booking of the complainant and her friends just to harass and humiliate them.

- xiii. That after termination notice of the booking of the complainant and her friends, they visited the office of the respondents many times and asked about the termination of their bookings after receiving more than 90% amount from the complainant and her friends, but the officials of the respondents linger on the matter on one pretext or the other and finally in the month of July, 2021, the officials of the respondents refused to withdraw their termination notice and to restore the booking of the complainant and her friends and to listen the legal and genuine request of the complainant and her friends and demanded the interest amount which are illegally charged by the respondents upon the complainant and her friends. The terms and conditions of the buyer's agreement are one sided as the respondents have not fulfilled the terms and conditions of the agreement at any point of time.
- xiv. That after receiving a sum of Rs. 38,60,265/- from the complainant, the respondent illegally charged the amount in respect of interest on the due amount, but the respondents are not clearing the issues raised by the complainant and her friends regarding increasing of area of the flat and the amount which was raised by making delayed interest on the balanced amount of the complainant and her friends. It is further mention herein that complainant have not paid the balance amount of their units only because of the issue of the complainant's friends flat, as they booked three

- units/flats together and the same is fully in notice and knowledge of the officials of the respondents.
- xv. That the respondents have illegally charged the interest upon the dues which was not delayed by the complainant but delayed by the respondents themselves in handing over the actual physical possession of the flat which is due from 2011 to till date.
- xvi. That the complainant and her friends have already paid more than 80% amount of the total sale consideration of their flats but the respondents using the same on their personal uses and enjoying the same.
- xvii. That complainant is always willing and ready to pay the remaining cost of the flat but the respondent refused to accept the same from the complainant as they does not want to deliver the flat/unit to the complainant, intentionally and unlawfully and also forfeited the paid amount of the complainant in the interest, which was illegally charged by the respondents and also usurp the hard earned money of the complainant as well as her friends also.
- xviii. The complainant had filed the complaint bearing no. 3726 of 2021 against the respondents but the same was disposed of by the authority vide its order dated 02.02.2022 wherein the complainant was directed to file a fresh complaint regarding the delay possession charges after setting aside the cancellation of buyer's agreement.
- xix. That complainant has sent legal notice dated 27.05.2022 to the respondent-promoter to handover physical possession of the flat on agreed rates as agreed by the respondents at the time of booking, after waiving off the interest thereupon or to return the deposited amount alongwith interest, but, the respondent did not responded the same.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
- i. To set aside the cancellation of the builder buyer agreement.
 - ii. Direct the respondent to handover physical possession of the unit.
 - iii. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on amount of Rs.38,60,265/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
 - iv. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate and waiving off the interest imposed by the respondent-promoter.
10. 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 respondents:

11. The respondent vide reply dated 14.06.2023 contested the complaint on the following grounds: -
- i. It is imperative to note, that the complainant herein, learned about the project launched by the respondent titled as '**City Homes -Vatika India Next**' (herein referred to as '**Project**') situated at Sector 83, Gurgaon and approached the respondent repeatedly to know 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.

- ii. That after having keen interest in the project constructed by the respondent the complainants herein booked a unit bearing no. B7-801 situated at sector-83 and paid an amount of Rs.3,00,000/- through cheque dated 28.07.2008 for further registration and vide welcome letter dated 08.11.2010, allotted a unit bearing no. B7-801 (*herein referred to 'unit'*) admeasuring to 1738 sq. ft. to the complainant. Thereafter, on 08.11.2010, the complainants at their free will paid an amount of Rs.5,00,000/- through cheque/RTGS towards the agreed sale consideration for the said unit.
- iii. That on 21.09.2011, apartment buyer agreement (*herein referred to as 'agreement'*) was executed between the complainant and the respondents, wherein, a unit bearing no. B7-801 was allotted to the complainant in the said project for a total sale consideration of Rs.51,69,595/-. It is to note, that as per the agreement the construction of the apartment was estimated to be completed within 36 months subject to clause(s) 11.1, 11.2, 11.3 & 39 of the agreement which states about the hindrances in the midway of construction beyond the control of the respondent.
- iv. It is submitted that the complainant was aware of terms and conditions under the aforesaid agreement and post being satisfied with each and every term agreed to sign upon the same with free will and consent without any demur. Also, the complainant knew that in case the project is delayed due to any event/reason beyond the control then the respondent shall be entitled for extension of time period in handing over the possession.

- v. That the project in question was majorly dependent upon the timely payment as the same was an essence for its completion and despite after knowing the fact the complainant herein has failed to comply with the payment schedule as annexed along with the agreement. It is an admitted fact, that even at the time of offering possession an amount of Rs.25,02,954/- which was due on account of the complainant towards the agreed sale consideration for the said unit.
- vi. That on 10.10.2015, a letter for offer of possession was offered to the complainant in compliance with clause 10.2 of the agreement which evidently proves the fact that despite after obstructions in the midway of construction the respondent herein has managed to provide the said unit. But, the complainant herein failed to accept the offer within the prescribed period as mentioned period under the agreement and moreover, the same was intimated in the contours of the letter for offer of possession.
- vii. Thereafter, on 04.11.2015 respondent sent a payment reminder notice to the complainant for making the due payment followed by a final opportunity letter. That upon receiving no response from the complainant the respondent was constrained to terminate the allotment of unit and issue termination letter of builder buyer agreement cum recovery notice dated 15.05.2021.
- viii. That post cancellation of the unit, due to constant default on account of complainant, the respondent herein had already created a third party rights over the unit in question and had allotted the same to new allottee and had already offered the possession to the new allottee and even offered the possession to the new llottee on clearing the amount due against the said unit.

- ix. It is significant to mention that the present complaint is beyond the scope of jurisdiction in the light of Section 31 of the RERA since the Occupational Certificate (*hereinafter referred as "OC"*) has been received on 30.08.2016 much prior to the enforcement of the RERA Act and its Regulation.
12. That there has been a delay due to various reasons which were beyond the control of the respondent and there was change in master layout plan of the project by the concern govt. agencies because of which the entire plot cluster map changed, and due to this there was a delay in the handing over the possession. That the respondent is committed to complete the development of the project and deliver the unit of the allottees as per the terms and conditions mentioned under the agreement.
13. All the other averments made in the complaints were denied in toto.
14. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

15. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

16. 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

17. 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.

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to set aside the cancellation/termination order/letter dated 15.05.2021.

F.II Direct the respondent to handover physical possession of the unit.

19. The above mentioned relief no. F.I, F.II as sought by the complainant are being taken together as the findings in one relief, as it will definitely affect the result of the other reliefs and these reliefs are interconnected.
20. The complainant states that the complainant had booked the unit in the project "Gurgaon City Homes-Vatika India Next" and apartment buyer's agreement was executed on 21.09.2011 and due date of delivery was 21.09.2014. She further submitted that as per the original agreement the area 1457 sq. ft. was unilaterally increased to 1738 sq. ft. later on. The complainant had paid a sum of Rs.38,60,265/- against total sale consideration of Rs.49,29,020/-. Further submitted that at the time of offer of possession the area was increased to 1740 sq. ft. and further demand of Rs.25,02,954/- was raised by the respondent for the same.
21. On the contrary, the counsel for the respondent states that intimation of offer was made on 10.10.2015. However, the occupation certificate of the concerned unit is not obtained yet and further states that it was well informed in the offer of possession that the area of the property has been increased to 1740 sq. ft. The respondent submitted that the complainant along with her friends had agreed to take possession of all the three flats i.e., unit no. 801, unit no. 802 and unit no. 803 in tower B-7 in the said project together and agreed on the demand raised for unit no. 801. However, after repeated reminders the complainant did not pay the said amount and intimation of termination was made on 15.05.2021 and finally the unit was cancelled on 15.06.2021 and third party rights has also been created by the respondent on 10.10.2022.
22. Before coming to the facts of the case, it is necessary to clarify the validity of the offer of possession. After valid and lawful offer of possession, the

liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

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

23. As per clause 10.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said apartment **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 (39) or due to failure of Allottee(s) to pay in time the price of the said Apartment 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..."*

(Emphasis Supplied)

24. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling

- formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
25. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat/unit agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision regarding stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
26. It is observed that the respondent offered the possession of the subject unit on 10.10.2015 without obtaining occupation certificate. It is important to note that till date no occupation certificate has been received of the subject unit in Tower-7. Hence, at the outset the said offer of possession failed to fulfil the first and foremost criteria of the valid offer of possession. Hence, the same cannot be regarded as a valid offer of possession. It is important to note that till date respondent/builder has not yet obtained occupation certificate of the subject unit.
27. Further, the complainant has taken a plea that at the time of offer of possession the area was increased to 1740 sq. ft. and further raised

demand of Rs.25,02,954/-. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. Relevant clause no. 1.4 of the agreement is reproduced hereunder:

It is made clear by the Company and the Allottee agrees that the sale price of the said Apartment shall be calculated on the basis of its super area (as per the definition of super area given in Annexure-II and that the super area stated in this Agreement is tentative and is subject to change till the construction of the said Building is complete. The final super area of the said Apartment shall be confirmed by the Company only after the construction of the said Building is complete and occupation certificate is granted by the competent authority (ies). The total price payable for the said Apartment shall be recalculated upon confirmation by the Company of the final super area of the said Apartment and any increase or reduction in the super area of the said Apartment shall be payable or refundable, as the case may be, without any interest, at the same rate per square ft as agreed in clause (1.2) of this Agreement. If there shall be an increase in super area, the Allottee agrees and undertakes to pay for the increase in super area immediately on demand by the Company and if there shall be a reduction in the super area, then the refundable amount due to the Allottee shall be adjusted by the Company from the final installment as set forth in the Schedule of Payments in Annexure-III. The definition of super area, Apartment area, the tentative percentage of Apartment area to super area as on the date of execution of this Agreement (the percentage of apartment area to super area shall be subject to change till the construction of the said Building is complete-however such change is likely to occur only due to compliance with any building/safety norms) are clearly described by the Company in Annexure-II which forms part of this Agreement and is hereby accepted by the Allottee. The Allottee confirms that he/ she has read, understood and agrees to this definition and that he/ she has no objection to the same and the Allottee has assured the Company that after having agreed to the definition of super area given in Annexure-II as the basis for the purchase and payment of price of the said Apartment, he/ she shall not raise any dispute or make any claims etc at a later date in this regard.

28. Now, the question arises, whether the cancellation made by the respondent is valid or not. The subject unit was cancelled on 15.06.2021 on account of non-payment of installments after offer of possession dated 10.10.2015. However, the offer of possession before obtaining the occupation certificate is not valid. As per the payment plan the complainant was required to pay the next installment after valid offer of

possession after obtaining occupation certificate of the unit in question by respondent. After consideration of the facts and circumstances, the authority is of view that the cancellation made by the respondent is not valid in the eyes of law. Hence, the said cancellation is not valid in the eyes of law and is hereby set aside. However, as stated by the respondent third party rights have already been created on the unit in question. Therefore, the respondent/builder is directed to allot an alternative unit at similar price, size and which is similarly situated in favour of the complainant on same agreed terms.

F.III Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.38,60,265/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

29. In the present complaint the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

*"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give possession of
an apartment, plot, or building. —*

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

30. **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 promoters, 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.

31. 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.
32. 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., 14.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
33. 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;”*

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.

35. On consideration of the circumstances, all the documents and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The intimation offer of possession made by the complainant was not valid as it was made on 10.10.2015 however the occupancy certificate of the unit in question is not yet obtained. Therefore, till date no valid offer of possession is made by the respondent. As such the complainants are entitled to delayed possession at the prescribed rate of interest i.e., 10.85 % p.a. w.e.f. due date of possession i.e. 21.09.2014 till the offer of possession plus 2 months or handing over of possession, whichever is earlier.

F.IV Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate and waiving off the interest imposed by the respondent-promoter.

36. The respondent is directed to offer the allotted unit to the complainant in habitable condition with all amenities mentioned in apartment buyer agreement after getting occupancy certificate and The rate of interest

chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.


G. Directions of the authority

37. 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 cancellation letter dated 15.06.2021 is hereby set aside and the respondent is directed to allot an alternative unit of similar size and at the same price which is similarly situated in favour of the complainant(s) within a period of 60 days from the date of this order.
 - ii. The respondent is directed to pay interest at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 21.09.2014 till the date of valid offer of possession of the alternate unit, as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - iii. The arrears of interest accrued so far shall be paid to the complainant(s) within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
 - iv. The complainant(s) is directed to pay outstanding dues if any after adjustment of delayed possession charges and to take the possession of the alternative unit as per section 19(10) of the Act.

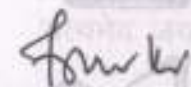
- v. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.

38. Complaint stands disposed of.

39. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.05.2024