

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

Complaint no. :	6497 of 2022
Date of filing complaint:	03.10.2022
First date of hearing:	13.01.2023
Date of decision :	22.03.2024

1. Pradeep Kumar 2. Subhash Chander Both R/o: 275, Sector-39, Kanahi, Farruknagar, Gurugram	Complainants
Versus	
M/s Vatika Limited address: A002, Inxt City Centre, GF, Block A, Sector 83, Vatika India Next, Gurgaon-Haryana 122012.	Respondent

CORAM:	
Sh. Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Gaurav Rawat (Counsel)	For Complainants
Ms. Tanya (Counsel)	For Respondent

ORDER

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

provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. No.	Heads	Information
1.	Name and location of the project	"Vatika India Next" at Sector 81-85, Gurugram, Haryana
2.	Nature of the project	Residential Plotted Colony
3.	Area of the project	393.358 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2022 71 of 2010 dated 15.09.2010 valid upto 14.09.2021 62 of 2011 dated 02.07.2011 valid upto 01.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2024
5.	RERA registered/ not registered	36 of 2022 dated 16.05.2022 valid upto 31.03.2029
6.	Allotment letter to original allottee	16.09.2013 (page no. 58 of complaint)
7.	Date of plot buyers agreement with original allottee	21.10.2013 (page no. 33 of complaint)
8.	Plot no. allotted to original allottee	6, Street no. M 2-4, Block M Plot area : 240 sq. yds. (page no. 36 of complaint)

9.	Addendum to change in plot (4/J-15/83J/240)	18.06.2014 (page no. 56 of complaint)
10.	Assignment and endorsement in favour of second allottee by original allottee	08.07.2014 (page no. 55 of complaint)
11.	Agreement to sell between second allottee and complainants	16.05.2018 (page no. 61 of complaint)
12.	Assignment and endorsement in favour of complainants	24.05.2018 (page no. 55 of complaint)
13.	Addendum to change in plot (2a, I-1)	08.04.2021 (page no. 57 of complaint)
14.	New plot allotted to complainants as per addendum	2a, I-1 178.53 sq. yds. (area of the unit was reduced)
15.	Possession clause	Schedule 10. The developer based on its present plans and estimates and subject to all just exceptions, contemltaes to complete development of the said residential plot within a period of 3 years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses.
16.	Due date of possession	21.10.2016 (calculated from the date of execution of BBA)
17.	Total consideration	Rs. 60,36,000/- (page no. 36 of complaint)

18.	Total amount paid by the complainants	Rs. 74,97,815/- (as per SOA on page no. 64 of complaint)
19.	Possession handover for unit 04/J-15	04.07.2015 (page no. 63 of complaint)
20.	Occupation certificate	Not obtained

B. Facts of the complaint

3. That relying on various representations and assurances given by the respondent and on belief of such assurances, original allottee namely Rohit Yadav and Latika Rao, booked a unit in the project by paying an amount of Rs. 56,99,333/- dated 16.09.2013 towards the booking of the said unit bearing no. plot- 6, street no. M-2-4, Block-M, in Sector 83, having super area measuring 240 sq. Yds. to the respondent dated 16.09.2013.
4. That the respondent confirm the booking of the unit to the original allottee vide allotment letter dated 16.09.2013 and providing the details of the project for total sale consideration of Rs. 60,00,000/- plus Rs.36,000/- (IFMS) totalling to Rs. 60,36,000/- and other specifications of the allotted unit and providing the time frame.
5. That a plot buyer's agreement was executed between the original allottee and respondent on 21.10.2013. As per the buyer's agreement the sale price of the said apartment shall be Rs. 60,36,000/-.
6. That as per clause 10 of the buyer's agreement the respondent had to deliver the possession of the unit within period of 3 years from the date of the agreement. Therefore, due date possession comes out to be 21.10.2016.
7. That the original allottees subsequently transferred/endorsed the property in favour of the second allottee i.e. Asad Mueed and Abdul Majeed vide

"agreement to sell dated 08.07.2014 in favour of the second allottee for an appropriate consideration. The second allottee subsequently transferred/endorsed the property in favour of the complainants vide "agreement to sell dated 16.05.2018 in favour of the complainants for an appropriate consideration.

8. That respondent in the month of June,2014 approach the original allottee and provided various representations and assurances regarding change of the unit from unit/ plot- 6, street no. M-2.4, block-M to plot no.4/J-15/83J. Respondents confirmed that the unit/plot had got building plan approval from the authority. Furthermore, provide the assurance that the total amount paid by the allottees will be adjusted and no extra amount is required to be paid and the terms and conditions will remain the same as agreed on 21.10.2013. Thereafter, an addendum to plot buyer agreement was executed with the original allottee dated 18.06.2014.
9. That respondent without obtaining the CC/OC of the said unit issued possession letter dated 04.07.2015 in favour of the second allottee. Hence the said letter is against the law of land and the spirit of the RERA Act,2016 and Rules framed thereafter.
10. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 74,97,815.21/-, towards the said unit against total sale consideration of Rs. 60,36,000/-.
11. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of project and also raised objections towards non-completion of the project.

12. That in terms of clause 10 of the said buyer's agreement respondent was under dutiful obligation to complete the construction and to offer the possession on or before 26.10.2016.
13. That respondent approached the complainant on 08.04.2021, regarding re-allotment of the plot from old plot i.e. 4-J-14 to 2A, I-1, on account certain deficiencies and failure on the part of the respondent builder in obtaining various approvals from the concerned authorities and reducing the size of plot from 240 sq. yards to 178.53 sq. yards. Furthermore, assurance was provided to the complainants excess amount collected will be refunded along with interest on account of reducing in the size of the plot as per the terms of the plot buyer agreement. Replying on various assurance and representation complainants agreed for the same but despite repeated reminders and emails by the complainants till date respondent failed to refund the excess amount nor issued fresh allotment letter in respect of the new allotted plot.
14. That respondent sent an email dated 08.04.2021 to the complainants acknowledging the transfer of the plot and further providing undertaking to refund the area change amount.

C. Relief sought by the complainants:

15. The complainant has sought following relief(s):
- i. Direct the respondent to pay the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
 - ii. Direct the respondent to refund the excess amount collected from the complainants on account of decreased in area of the allotted unit/plot as per the terms and condition of the buyers agreement alongwith interest till the actual realisation of the said amount.

- iii. Direct the respondent to quash the illegal maintenance charges demanded from the complainants.
- iv. Direct the respondent to execute a conveyance deed for the unit in favour of the complainant.

16. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

17. The respondent has contested the complaint on the following grounds.
18. That the original allottees (Mr. Rohit Yadav and Ms. Latika Rao) approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Vatika India Next" situated in Sector 81-85, Gurgaon, Haryana.
19. That thereafter the original allottees, vide allotment letter dated 16.09.2013 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 6/M-2.4/83M/240 plot no. 6, street no. M-2.4, Block M, Sector-83, admeasuring 240 sq. yards (tentative area) was allotted vide provisional allotment letter dated 16.09.2013.
20. Thereafter, a buyer's agreement dated 21.10.2013 was executed between the original allottees and the respondent. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
21. That due to some changes or modifications as per the approved sanctioned plans in the said project, the original allottees were re-allotted a new unit bearing number 4/J-15/83J/240/SECTOR 83 admeasuring 240 sq. yards in the said project. That the said position was explained and understood by the original allottees. The original allottees after being fully satisfied about the

- re-allotment of the unit, executed an addendum to the buyer's agreement dated 18.06.2014 readily accepting the new unit.
22. That thereafter, at the request of the original allottees, an endorsement dated 08.07.2014 was made in favour of the subsequent allottees (Mr. Asad Mueed and Mr. Abdul Majeed) for transferring and conveying rights, entitlement and title of the original allottees in the unit in question to the subsequent allottees.
23. That the subsequent allottees were offered possession of the unit in question within the stipulated time. That the subsequent allottees were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the subsequent allottees. That the subsequent allottees took the vacant and peaceful physical possession of the said unit on 04.07.2015 after fully satisfying themselves with regard to the measurements, specifications and other compliances by the respondent as per the buyer's agreement.
24. That the request of the subsequent allottees, an agreement to sell dated 16.05.2018 was executed between the subsequent allottees and the complainants for transferring and conveying rights, entitlement and title of the subsequent allottees in the unit in question to the complainants. Further, in pursuant to the agreement to sell, an endorsement dated 24.05.2018 was made in favor of the complainants. As per clause 6 of the agreement to sell, the subsequent allottees have been delivered the peaceful and vacant possession of the said unit to the complainants on the spot.
25. That as per clause 10 of the agreement, the due date of possession was subject to the complainants having complied with all the terms and conditions of the agreement. That being a contractual relationship,

reciprocal promises are bound to be maintained. The rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That the respondent has completed its part of obligations well within time by handing over the possession of the said unit within the stipulated time.

26. That due to some further changes and modifications as per the approved sanctioned plans in the said project. That multiple options were given to the complainants and after being fully satisfied about the size and area of the unit, the complainants were re-allotted a new unit bearing number 2A, I-1 admeasuring 178.53 sq. yards in the said project. That the said position was explained and understood by the complainants. That the complainants after being fully satisfied about the re-allotment of the unit, executed an addendum to the buyer's agreement dated 08.04.2021 readily accepting the new unit. The said decrease in area is within the terms and conditions of the agreement and within the permissible limits as per the Model RERA Agreement and hence no contention/allegation in regard to the same can be accepted.
27. Furthermore, the delivery of possession was also subject to the force majeure circumstances as under clause 13 and clause 36 of the agreement.
28. 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

29. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

30. 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.

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority;

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

32. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside 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:

i. Direct the respondent to pay the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

33. 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."

34. In the present complaint, the unit bearing no. 6 street no. M 2-4 in Block M was booked by original allottee and the plot buyer's buyer's agreement between the original allottee and the respondent company was executed on 21.10.2013. Thereafter, the respondent has changed the unit to new unit bearing no. 4/J-15/83J/240 vide addendum to change plot on 18.06.2014. Further the original allottee endorsement the unit in favour of the second allottee on 08.07.2014. Thereafter, the complainant stepped into the shoes of allottee on 24.05.2018 vide endorsement. The respondent again changed the unit of the complainant vide addendum agreement dated 08.04.2021 and allotted unit bearing no. 2a, I-1 admeasuring 178.53 sq. yds.

35. The total sale consideration of the unit is Rs. 60,36,000/- out of which the complainants had made a payment of Rs. 74,97,815/-. It is pleaded on

behalf of the complainant that till date no occupation certificate has been obtained by them. But the plea of the respondent is otherwise and stated that they has already handed over the possession of the unit to the second subsequent allottee i.e., Mr. Azad Mueed on 04.07.2015 and possession handing over letter is on records.

36. The authority in this regard on perusal of documents has observed that the second subsequent allottee i.e., Mr. Azad Mueed has signed the possession handing over letter on 04.07.2015 for unit no. 04/J-15. But the unit was again transferred to new unit by respondent on 08.04.2021 which clearly indicates that the possession handing over letter is merely a document which got signed by them. Moreover, email dated 24.02.2020 (page 97 of complaint) is also relevant and reproduced hereunder for ready reference:

Due to non acquisition of roads to enable accessibility to your plot coupled with other regular obstructions and impediments beyond the control of the company have resulted in delay of project. Further, as discussed, we working towards resolving the issue and same shall be sorted tentatively in next 6 months time.

37. Therefore, it is clear that project is not complete. Even the occupation certificate of the project where the unit of the complainant is situated has not been obtained. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"10.
The developer based on its present plans and estimates and subject to all just exceptions, contemltaes to complete development of the said residential plot within a period of 3 years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses.."*

38. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, proviso

to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.

39. 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.
40. 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., 22.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
41. 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;”*

42. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
43. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of three years from the date execution of agreement. The agreement was executed on 21.10.2013 as such the due date of handing over of possession comes out to be 21.10.2016.
44. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due

date of possession i.e., 21.10.2016 till valid offer of possession plus two months after obtaining occupation certificate as per proviso to section 18(1) of the Act read with rule 15 of the rules.

ii. Direct the respondent to refund the excess amount collected from the complainants on account of decreased in area of the allotted unit/plot as per the terms and condition of the buyer's agreement along with interest till the actual realisation of the said amount.

45. The counsel for complainants has raised a plea regarding refund of the excess amount collected by the respondent w.r.t the reduced area of the unit. Originally the unit was admeasuring 240 sq. yds. and thereafter new plot was allotted admeasuring 178.53 sq. yds. In view of the said relief the authority observes that email dated 08.04.2021 is relevant and reproduced hereunder for ready reference:

*Dear Mr. Kumar,
Reference to our discussion, regarding the re-allotment of your allotted plot (plot no. 4, street J-14) of 240 Sq. yds.
The New plot which is opted by you is 2a, 1-1, Vatika India Next, Gurgaon (178.53 Sqyds).
We will refund the area change amount. The total refund of Rs. 24,58,800/-
Please note tax will be applicable on premium amount.
Regards
Dhiraj Kumar*

46. The authority is of the view that the respondent has taken an excess amount w.r.t the area of the unit and is liable to refund the said amount.

iii. Direct the respondent to quash the illegal maintenance charges demanded from the complainants.

47. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been

prescribed in the agreement or where the AMC has been demanded for more than one year.

iv. Direct the respondent to execute a conveyance deed for the unit in favour of the complainant.

48. In the present complaint there is no record w.r.t the occupation certificate. The authority directs the respondent-promoter to execute the conveyance deed in favour of the complainant after obtaining occupation certificate from the competent authority.

G. Directions of the authority

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

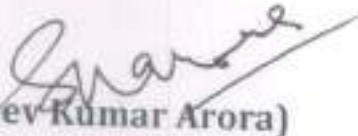
- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 21.10.2016 till valid offer of possession plus two months after obtaining occupation certificate as per section 19(10) of the Act.
- ii. The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- iv. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same

rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent is also directed not to charge anything which is not part of buyer's agreement.

50. Complaints stand disposed of.

51. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.03.2024