

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

Complaint no. :	1747 of 2023
Date of filing:	19.04.2023
Date of decision :	26.04.2024

Anjana Agrawal

R/o # A-902, Sispal Vihar, AWHO, Sector-49,
Near Ninex City Mall, Near South City-II,
Gurugram 122018, Haryana

Complainant

Versus

M/s Vatika Ltd.

Office address: Unit-A002, INXT City Centre, Ground
Floor, Block A, Sector 83, Vatika India Next, Gurugram,
Haryana-122012

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Roop Singh (Advocate)
Ms. Ankur Berry (Advocate)

Complainant
Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint has been filed by the complainant/allottee 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 as provided under the provision 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 amount 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:

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Inxt City Center" at Sector 83 Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.72 acres
4.	DTCP License	122 of 2008 dated 14.06.2008
	valid upto	13.06.2018
	Licensee name	M/s Trishul Industries
5.	RERA registered/ not registered	Not registered
6.	Allotment letter	25.07.2011 (page no. 29 of complaint)
7.	Unit no.	222C, 2 nd floor (as per allotment letter on page no. 29 of complaint)
8.	Unit area admeasuring	500 sq. ft. (as per allotment letter on page no. 29 of complaint)

9.	New unit no.	432, 4 th floor, Block F (page no. 58 of complaint)
10.	Date of execution of buyer's agreement	25.07.2011 (page no. 31 of complaint)
11.	Endorsement in favor of complainant	05.08.2015 (Page no. 50 of complaint)
12.	Addendum to the agreement	25.07.2011 (page no. 50 of complaint)
13.	Possession Clause	<i>The developer will complete the construction of the said complex within 3 years from the date of execution of this agreement.</i>
14.	Due date of Possession	25.07.2014 (calculated from the date of agreement)
15.	Assured return clause	<i>This addendum forms an integral part of builder buyer agreement dated 25.07.2011</i> a. <i>Till offer of possession @ Rs. 71.50/- per sq. ft.</i> b. <i>After completion of the building @ Rs. 65/- per sq. ft.</i> <i>You would be paid an assured return w.e.f. 25.07.2011 on a monthly basis before the 15th of each calendar month.</i>
16.	Re-Allocation of unit	25.04.2013 (page no. 58 of complaint)
17.	Total consideration	Rs. 23,15,625/- (as per BBA on page 34 of complaint)
18.	Total amount paid by the complainant	Rs. 23,15,625/- (as per BBA on page 34 of complaint)

19.	Amount of assured return paid by the respondent	Rs. 13,00,000/- till September 2018 (annexure R2 on page no. 33 of reply)
20.	Completion certificate by respondent	27.03.2018 (page no. 37 of reply)
21.	Date of offer of possession to the complainant	Not offered
22.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
4. That on 25.07.2011, the original allottees, Mr. Mahinder Kumar Malhotra and Mrs. Adarsh Malhotra, booked a commercial unit in the project Vatika INXT City Centre (earlier Vatika Trade Centre), Gurugram, being developed by the respondent, for a total sale consideration of Rs. 23,15,625/-.
5. That the original allottees were allotted a unit measuring 500 sq. ft. (super area on 2nd floor, bearing unit no. 222C, block F, in the said Project. The builder buyer agreement was entered into between the original allottees and the respondent company.
6. That the original allottees paid the full sale consideration of Rs. 23,15,625/- on 25.07.2011. As per Clause D and Clause 2 of the BBA, the respondent had an obligation to handover possession of the unit in all aspects within a period of three years from the date of execution of the BBA, i.e. by 25.07.2014. Assuming that there was a delay of 6 months, the deemed date of possession of the unit was 25.01.2015.
7. Further, as per clause 2 of the BBA and Annexure A - Addendum to the BBA dated 25.07.2011, the respondent had an obligation to pay an

- assured monthly return (commitment charges) till the construction of the building is complete and the unit has been finally offered for possession.
8. That on 25.04.2013, the respondent unilaterally changed the booked unit no. 222C on 2nd floor to unit no. 432 on 4th floor in Block F, of the said project.
 9. That on 30.07.2015, the complainant purchased the said unit from the original allottees, Mr. Mahinder Kumar Malhotra and Mrs. Adarsh Malhotra. On 19.08.2015, the respondent endorsed the booking of the said unit in the name of the complainant.
 10. That between September 2015 to February 2018, the respondent paid the monthly assured return (commitment charges) to the complainant as applicable prior to completion of the building, i.e. Rs. 71.50/- per sq. ft., as per clause 2 of the BBA and annexure A - addendum to the BBA dated 25.07.2011.
 11. That on 27.03.2018, the respondent issued a letter to the complainant stating that construction work of the project, i.e. Block F of Vatika INXT City Centre is completed and is operational and ready for occupation. However, no intimation as to whether an occupation certificate (OC) has been received by the respondent from the concerned authorities or not was provided to the complainant.
 12. Further, through the said letter the respondent also informed the complainant that as per the terms and conditions of the BBA, the commitment charges shall be revised to Rs. 65/- per sq. ft. per month from the date of building getting operational. Consequently, the respondent made the payment of assured monthly return to the

complainant for the period February 2018 to September 2018 at the reduced rate, i.e. Rs. 65/- per sq. ft. per month.

13. That October 2018 onwards, the respondent stopped making payment of the assured monthly return (commitment charges) to the complainant. Therefore, the respondent is in violation of the terms and conditions of the BBA, particularly clause 2 of the BBA and annexure A - Addendum to the BBA dated 25.07.2011. Further, as per clause 32.1 (Leasing Arrangement) of the BBA, the respondent had an obligation put the said unit on lease after completion of the project. However, the respondent has neither paid the monthly assured return from October 2018 nor it has put the unit on lease, and therefore the respondent has contravened the terms and conditions as set out in the BBA.
14. That the complainant sent a number of email reminders to the respondent for payment of the assured monthly return as per the terms and conditions of the BBA, however, the respondent has completely failed to pay the assured monthly return from October 2018 to till date. Further, the respondent has not made any final offer of possession along with the occupation certificate (OC) till date in view of an elapse of more than 11 years from the date of booking of the said unit.
15. In view of the above facts and circumstances, the complainant is left with no option than to approach this Hon'ble Authority seeking necessary direction to the respondent as the respondent has completely failed to fulfill its obligation as per the terms and conditions set out in the BBA.
16. That as per Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act) if the promoter fails to complete or is unable to

give possession of an apartment, plot or building, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf. Therefore, as the respondent has completely failed to complete the construction of the unit and that no Occupation Certificate has been received by the respondent in respect of the said building in question, i.e. Block F, the respondent is liable to refund the entire amount deposited by the complainant along with interest at the prescribed rate of interest as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (HRERA Rules).

C. Relief sought by the complainant:

17. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the entire amount deposited by the complainant as per section 18 of the Real Estate (Regulation and Development) Act, 2016 along with interest at the prescribed rate of interest as provided in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 without any deduction.
18. On the date of hearing, the authority explained to the respondent/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.

19. The respondent by way of written reply made the following submissions:

20. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers agreement dated 25.07.2011, as shall be evident from the submissions made in the following paras of the present reply.
21. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'assured return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent company having not taken registration from SEBI Board cannot run, operate, and continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
22. Thus the assured return scheme proposed and floated by the respondents has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid till

- September, 2018. The complainant has not come with clean hands before this Hon'ble Authority and has suppressed these material facts.
23. That it is also relevant to mention here that the commercial unit of the complainant is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by the complainant is not meant for physical possession.
24. That the complainant has come before this Hon'ble Authority with unclean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant has instituted the present false and vexatious complaint against the respondent company who has already fulfilled its obligation as defined under the BBA dated 25.07.2011. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
25. That the complainant purchased the unit from erstwhile allottees vide assignment dated 19.08.2015 owing to the name, good will and

reputation of the respondent company. That it is a matter of record and admitted by the complainant that the respondent duly paid the assured return to the complainant till September, 2018. Further due to external circumstances which were not in control of the Respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction. Further it is to be noted that once the construction of the tower, was completed the letter informing the same was issued to the erstwhile allottees on 27.03.2018.

26. The present complaint of the complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either

of the party should not be made to suffer due to act and/or omission of part of the other.

27. That the complainant are attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent and hence, the complaint deserves to be dismissed.
28. That, it is evident that the entire case of the complainant' is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the complainant deserves to be dismissed with heavy costs.
29. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, And hence deserves to be dismissed.
30. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided

based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

31. 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

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

33. 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 promoter, the allottees and the

real estate agents under this Act and the rules and regulations made thereunder.

34. 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 refund the entire amount deposited by the complainant as per section 18 of the Real Estate (Regulation and Development Act, 2016 along with interest at the prescribed rate of interest as provided in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 without any deduction.

35. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

36. Clause 2 of the buyer's agreement dated 25.07.2011 provides the time period of handing over possession and the same is reproduced below:

2. Sale Consideration

*.....
The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment as per Annexure A by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.*

37. The original allottee namely, Sh. Mahinder Kumar Malhotra and Ms. Adarsh Malhotra booked a unit in the project of the respondent namely Vatika Trade Center, Gurgaon. They were allotted a unit no. 222C on 2nd floor admeasuring 500 sq. ft. The builder buyer agreement was executed between the respondent and the original allottees on 25.07.2011 and also an addendum to the builder buyer agreement was got executed on the same day. Thereafter, the unit was reallocated from Vatika Trade Center to Vatika INXT City Centre from unit no. 222C on 2nd floor to unit no. 432 on 4th floor of Block F vide letter dated 25.04.2013. Further the unit was endorsed in favor of the complainant vide endorsement letter dated 05.08.2015.
38. As per clause 2 of the builder buyer agreement dated 25.07.2011 the unit was to be offered within a period of 3 years and the respondent was also obligated to pay the assured return to the allottee. As per clause 2 of the builder buyer agreement the due date of possession comes out to

be 25.07.2014. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

39. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

40. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
41. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
42. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided 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."

43. 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.
44. 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., 26.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
45. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 23,15,625/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.
46. The respondent-promoter has paid an amount of Rs. 13,00,000/- as an assured return upto September 2018 to the complainant-allottee. The said amount shall be adjusted while making the payment of refund amount.

G. Directions of the authority

47. 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):
- a. The respondent/promoter is directed to refund the amount

i.e., Rs.23,15,625/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- b. The amount of assured return already paid to the complainant be adjusted.
 - c. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
48. The complaint stands disposed of.
49. File be consigned to registry.



Sanjeev Arora
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 26.04.2024

HARERA
GURUGRAM