

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

Complaint no. : 4761 of 2022
Date of filing : 12.07.2022
Date of decision : 16.04.2024

Neeru Jain
R/o: Plot no. 360, Udyog Vihar, Phase-IV,
Gurugram, Haryana-122016.

Complainant

Versus

M/s Vatika Ltd.
(Through Managing Directors/Directors)
Regd. Address: Unit-A-002, ground floor, Block-A
Vatika INXT City Centre, Sector-83, Vatika India Next,
Gurugram, Haryana-122012.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav

Advocate for the complainant

Shri Venket Rao along with Shri Pankaj
Chandola

Advocates for the respondent

ORDER

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

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obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S.N.	Particulars	Details
1.	Name of the project	"Vatika India Next", Sectors 81, 82, 82A, 83, 84 & 85 Gurugram, Haryana
	<i>Initially the complainant was allotted a unit in the project "Vatika Infotech City-Jaipur"</i>	
2.	Letter of allotment of plot in Vatika Infotech City-Jaipur	06.02.2006 [Page 29 of complaint]
3.	Letter by respondent to the complainant regarding right to switchover	31.07.2007 [Page 31 of complaint]
4.	Respondent offering the complainant to allot plot on NH8 in Gurugram vide letter dated	08.01.2008 [Page 32 of complaint]
5.	Letter sent by the complainant consenting to the change in unit	12.01.2008 [Page 33 of complaint]
	<i>Change in the project to 'Vatika India Next'</i>	
6.	Preliminary allotment letter	13.01.2009 [Page 36 of complaint]
7.	Allotment letter	29.05.2009

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		(annexure P8, page 39 of complaint)
8.	Plot no.	208, block D admeasuring 300 sq. yards (Page 39 of complaint)
	Re-allotment of plot vide addendum to plot buyer's agreement dated 20.05.2015	Plot no. 19/Club Avenue/82F/300/Sector 82 measuring 300 sq. yards. [Page 81 of complaint]
9.	Date of execution of plot buyer's agreement (in respect of unit no. 208, block D)	30.06.2011 [Page 48 of complaint]
10.	Date of execution of addendum to plot buyer's agreement	20.05.2015 [Page 81 of complaint]
11.	Possession clause	<p>10. Handing over possession of the said plot to the allottee</p> <p><i>That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this agreement unless there is a delay or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure ii or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement. The promoter, upon completion of development work in the said township and carving out, demarcation and measurement of plots shall offer in writing to the allottee to take over</i></p>

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		<p><i>physical possession of the said plot in terms of this agreement within thirty days from the date of issue of such notice and the promoter shall hand over vacant possession of the said plot to the allottee subject to the allottee having complied with all the terms and conditions of this agreement and is not in default under any of the provisions of this agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the promoter in this regard. (Emphasis supplied)</i></p> <p>[Page 58 of complaint]</p>
12.	Due date of possession	30.06.2014
13.	Total sale consideration	Rs. 54,45,000/- [As alleged by the complainant at page 24 of complaint]
14.	Paid up amount	Rs. 54,96,622/- [As alleged by the complainant at page 24 of complaint]
15.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:
- i. That in December 2005, the marketing staff of the M/s Vatika Landbase Pvt. Ltd. – a unit of Vatika Group, had approached the complainant/allottee for booking a plot in the project namely **“Vatika Infotech City-Jaipur”**, situated at Ajmer Road, Jaipur. The complainant visited the project site and the local office and Gurugram office of the respondent where they allured the

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complainant with a colourful brochure and proposed specification and timely possession of the project.

- ii. That being relied on the representation and assurance of the marketing staff and office bearers of the respondent, on 06.02.2006, the complainant booked a plot size admeasuring 768 sq. yds. at the basic sale price of Rs. 6250/- per sq. yds in the project "Vatika Infotech City-Jaipur" for a total sale consideration of Rs. 48,00,000/- and issued two cheques of Rs. 12,00,000/- each and Vatika Landbase Pvt. Ltd. issued two payment receipts in favor of the complainant.
- iii. That on 06.02.2006, Vatika Landbase Pvt. Ltd. issued a letter of allotment of a plot and gave the rights to transfer the allotment to alternative sites for a plot size 300 sq. yd. with priority no. GL - 286.
- iv. That on 31.07.2007, the respondent sent a letter to the complainant and stated that "As per terms & condition of your allotment Letter, you have the right to switch over your investment from Jaipur project to any other alternative location (Chandigarh / Mohali / Gurgaon) wherein an integrated township may be developed by us". Thereafter, the complainant requested to transfer the funds to plotted township at Gurgaon and the respondent acknowledged the request and allotted a plot admeasuring 300 sq. yards in the project Vatika India Next at NH

- 8, Gurgaon. On 12.01.2008, Mr. S.R. Sharma on behalf of the complainant sent a letter to the respondent and retreat the option for a plot at Gurgaon.
- v. That on 13.01.2009, the respondent sent a letter to complainant regarding the allotment of plot at 'Vatika India Next' for priority no. GL/276 and requested to present at the office of respondent. Thereafter on 29.05.2009, the respondent issued an allotment letter to complainant and confirmed the booking of the plot no. 208, Block-D, Size admeasuring 300 sq. yards. and raised a demand of Rs. 15,62,000 for the amount due including PLC charges. It is pertinent to mention here that the complainant has chosen a park-facing plot. On 29.05.2009, the complainant sent a letter to the respondent for execution of plot buyer agreement.
- vi. That on 30.06.2011, after a long follow up a pre-printed, unilateral, arbitrary plot buyer's agreement was executed inter-se the respondent and the complainant regarding the plot no. 208, Block no. D, size admeasuring 300 sq. yards at Sector - 82, Gurugram. According to clause 10 of the plot buyer's agreement, the respondent has to give possession of the said plot within a period of 3 years from the date of execution of this agreement. Therefore, the due date of possession was on or before 30.06.2014. Moreover, as per the plot buyer's agreement, the complainant had paid Rs. 51,60,000/- i.e. 94.76% of the total cost of the plot, before

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execution of the said agreement and rest Rs. 2,85,000/- was payable at the time of offer of possession.

- vii. That on 19.09.2014, the complainant sent an email to the respondent and asked about the possession of the plot no. 208, Block-D. Thereafter on 20.05.2015, the complainant sent a letter to the respondent regarding the re-allotment of plot no. 19 on Club Avenue Road measuring 271.98 sq. yards against D/300/208 measuring 300 sq. yards. It is pertinent to mention here that the respondent represented that due to a change in layout plan and numbering of the plots, a new number of the plot bearing number 19 on Club Avenue Road, Block - F, Sector - 82, Gurugram has been allotted. It is further pertinent to mention here that as per the addendum it is specifically mentioned that "Therefore in Builder Buyer's Agreement dated 30/06/2011 executed between Allottee, and the company herein the Plot, wherever it is written in the Agreement, shall be read as Plot No. 19/Club Avenue/82F/300/Sector 82...".
- viii. Thereafter, the complainant followed up with the respondent to get possession of the plot, but the respondent delayed the possession on one pretext and the other. That on 11.05.2022, the respondent sent an email stating that due to unforeseen circumstances, they cannot deliver the plot.

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- ix. It is pertinent to mention here that the complainant never consented to the refund of the paid amount. It is highly pertinent to mention here that the respondent company is managed by greedy and lawless persons. Respondent deliberately is not giving possession of the plot to get the benefit of price escalation in the plots in the project. The respondent sold hundreds of plots after the execution of the BBA and addendum and is currently selling the plots in the open market. Moreover, the respondent has applied for the registration of the project (plots) with the Hon'ble Authority and has unsold inventory. It is prima facie clear from the act and conduct that the respondent is offering a refund to get benefit by selling the plot at a high rate in the open market. **It is most respectfully submitted that a probe needs to be initiated to find out the malpractice done by the respondent with the innocent allottees.** Moreover, as per the statement of account issued by the respondent, the total cost of the plot was Rs. 54,82,000/- and the complainant had paid Rs. 54,96,622/- i.e. more than 100% sale consideration of the plot. It is further pertinent to mention here that the plot was booked in 2006 and BBA was executed in 2011.
- x. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be



punished and compensate the complainant. Due to the acts stated above and the violation of the terms and conditions of the plot buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice. The complainant being an aggrieved person has filed the present complaint before the Hon'ble Authority for violation/contravention of provisions of this Act.

C. Relief sought by the complainant

4. The complainant has filed the present complaint for seeking following relief:
- i. Direct the respondent to get possession of the fully developed plot with all amenities.
 - ii. Direct the respondent to get the delayed possession interest @ prescribed rate from the due date of possession till i.e. 30.06.2014 till the actual date of possession (complete in all respect with all amenities).
 - iii. Direct the respondent to provide a copy of Sanctioned plans, layout plans along with specifications, approved by the competent authority, and changed plans after GAIL corridor and roads alignments.

- iv. Direct the respondent to provide unsold inventory list in the project "Vatika India Next" at NH - 8 and year-wise inventory from the year 2011 to till date.
 - v. Direct the respondent to provide the latest layout plan of the plot allotted to the complainant.
 - vi. Direct the respondent to provide the status of plot No. 19/Club Avenue/82F/300/Sector 82 and Plot No. D/300/208, Sector - 82, Gurgaon.
 - vii. To grant any other relief to which he is found entitled by this Hon'ble Authority.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the present complaint on the following grounds:
- i. That in around January 2006, the complainant herein learned about the project titled as '*Vatika Infotech City*' (herein referred to as '*Earlier Project*') being launched by the respondent at Jaipur Ajmer Road and repeatedly approached the respondent to know the details of the said project. The complainant herein 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, the complainant on 06.02.2006, booked a plot admeasuring 768 sq. yds in the earlier project for a total sale consideration of Rs. 48,00,000/- and allotted a priority unit no. GL - 286 vide allotment letter dated 06.02.2006.
 - iii. That thereafter, the complainant approached the respondent and requested to shift the allotment made by the complainant at any other project being developed by the respondent in city other than Jaipur. On 08.01.2008, the respondent upon considering the request of the complainant granted rights for transferring the allotment made by the complainant and offered an alternative plot in the new township being developed at NH-8, Sector 82, 82A, 83, and 86.
 - iv. That further, the complainant upon considering the alternative units being offered by the respondent decided to transfer the allotment made by the complainant in an alternate plot admeasuring 300 sq. yards in the project titled as '*Vatika India Next*' (hereinafter referred to as '*Subsequent Project*') situated at NH- 8, Sector 82, 82A Gurgaon Haryana. Thereafter, the respondent vide allotment letter dated 29.05.2009, allotted a plot

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- bearing no. 208, Block D admeasuring to 300 sq. yards for a total sale consideration of Rs. 51,60,000/- in the aforesaid project.
- v. That on 29.05.2009, the respondent vide letter for execution of agreement served two copies of the agreement and requested the complainant to sign the builder buyer agreement and return the signed copy of the same.
- vi. That on 03.03.2010, the respondent was constrained to cancel the plot being booked by the complainant for not receiving the payments of Rs. 15,62,000/- which the complainant was obligated to pay at the time of allotment. However, the same was withdrawn upon the assurances of the complainant.
- vii. That on 30.06.2011, a builder buyer agreement was executed between the complainant and the respondent for the plot bearing no. 208 in the aforesaid project.
- viii. That due to the reasons beyond the control of the respondent, the respondent was constrained to re-allot the complainant another plot being developed by the respondent in the same township being developed by the respondent. However, the same could not be initiated as the complainant failed to come ahead and provide requisite documents as and when demanded by the respondent.
- ix. That on 01.08.2013, the respondent vide re-allotment letter called upon the complainant and informed that due to change in the master layout plan and other fine tunings/amendments in the



master lay out plan the respondent was constrained to re-allot the plot being allotted to the complainant. That vide same letter dated 01.08.2013, the respondent herein requested the complainant to submit the original documents to enable the respondent in proceeding further with the re-allotment. Further on 21.11.2013, the respondent vide reminder for re-allotment letter dated intimated the complainant about the re-allotment and requested the complainant to visit their office for providing requisite documents so as to enable the respondent to re-allot a new plot to the complainant.

- x. That in spite after requesting the complainant to come ahead and provide the original documents as may be required for the registration, the complainant had failed to show up every time. That again on 21.01.2014, the respondent vide reminder for re-allotment letter requested the complainant to visit their office for fulfilling the formalities as may be required in the process of re-allotment. Despite requesting the complainant on several occasions, the respondent herein again was bound to issue reminder letter for re-allotment dated 16.05.2014 requesting the complainant to visit the office of the respondent and provide all the originals as may be required to enable the respondent to move further with the re-allotment.

- xi. In the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- xii. That subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /group housing/commercial/institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
- xiii. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company, company was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent

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developments have repeatedly marred and adversely impacted the progress of the company's projects. To further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the company have resulted in the company being unable to deliver.

- xiv. That the delay in the project is due to reasons beyond the control of the respondent company. Clause 12 of the BBA provides that in case of any unforeseen circumstances faced by the respondent in mid-way of development of the subject project, then extension time would be granted for completion of the project and had also agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to act or notice or notification issued by the Government or Public or Competent Authority. Further, as per clause 31 of the BBA, the complainant was well aware that the respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under 'Force Majeure'.
- xv. That since the starting the respondent was committed to complete the project and has invested each and every amount so received

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from the complainant towards the agreed total sale consideration. The project was hindered due to reasons beyond the control of the respondent:

- *Laying of GAIL Pipe Line and loss of land in ROU Alignment of GAIL corridor-* That the respondent has planned the whole township prior to the GAIL notification which came during the year 2009 and after this the respondent gave detailed representation to the GAIL authorities and HUDA administration for re-routing the GAIL pipeline since the respondent has received license in the township and had sold villas to third parties based on approved lay-out plans. Meanwhile, during the pendency of granting project license, GAIL had granted permission for reducing ROU from 30 mtrs. To 20 mtrs. Vide its letter dated 04.03.2011 that passes through the project land. Although GAIL had reduced the ROU by 10 mtrs., but since they had denied the re-routing of the GAIL corridor, the respondent not only lost the number of plots & villas but had to re-design the project land that consumed the money and time. Hence, the construction of the project got delayed.
- *Acquisition of sector road land parcels in the township-* The delay in acquisition of sector roads and subsequently various patches

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of sector road coming under litigation along with no policy acquisition of 24 mtrs. Road has resulted in massive delay in laying of services, thus impacting development.

- *Acquisition of sector roads by government notifications and orders-* Since, the 24m road / sectoral plan roads function as sub-arterial roads of the development and also serves as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e., water supply, sewerages, drainage, electricity etc., it is important to have the same in the township. Two sector roads are falling in the project land and due to non-acquisition of the same, the respondent has totally lost the road connectivity and supply of construction materials etc. to the project land has become a big challenge.
- *Lockdown on account of COVID-19-* The government of India imposed a lockdown on all commercial activities in the light of the pandemic situation from 22.03.2020. Due to uncertainty and fearing sickness, most of the construction workers left for their homes and the non-availability of manpower impacted the productivity very severely.

xvi. That hence the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources

of the Ld. Authority. That the present complaint is an utter abuse of process of law and hence, deserved to be dismissed.

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

E. Jurisdiction of the authority

8. 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

9. 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

10. 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.

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

F. Findings on the relief sought by the complainant

F.I Possession and delay possession charges

12. **Reliefs sought by the complainant:** The below-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected:

- i. Direct the respondent to get possession of the fully developed plot with all amenities.
- ii. Direct the respondent to get the delayed possession interest @ prescribed rate from the due date of possession i.e. 30.06.2014 till

the actual date of possession (complete in all respect with all amenities).

13. 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."

14. Clause 10 of the plot buyer's agreement provides for time period for handing over of possession and is reproduced below:

"10. Handing over possession of the said plot to the allottee

*That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, **within a period of three years from the date of execution of this agreement** unless there is a delay or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure ii or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement. The promoter, upon completion of development work in the said township and carving out, demarcation and measurement of plots shall offer in writing to the allottee to take over physical possession of the said plot in terms of this agreement within thirty days from the date of issue of such notice and the promoter shall hand over vacant possession of the said plot to the allottee subject to the allottee having complied with all the terms*

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and conditions of this agreement and is not in default under any of the provisions of this agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the promoter in this regard.”
(Emphasis supplied)

15. **Due date of handing over possession and admissibility of grace period:** The promoter vide clause 10 of the plot buyer's agreement has proposed to hand over the possession of the said unit within 3 years from the date of execution of the said agreement. In the present complaint, the plot buyer agreement was executed on 30.06.2011. Therefore, the due date of handing over possession as per the plot buyer's agreement comes out to be 30.06.2014.
16. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

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17. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. 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., 16.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
19. 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;"*
20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent

/promoter which is the same as is being granted to them in case of delayed possession charges.

21. The authority observes that the aforesaid plot buyer agreement dated 30.06.2011 was executed between the complainant and the respondent in respect of unit bearing no. D-208, block D admeasuring 300 sq. yards in the project namely 'Vatika India Next'. Thereafter, an Addendum to the said Plot Buyer Agreement was executed by the complainant on 20.05.2015 in respect of Plot no. 19/Club Avenue/82F/300/Sector 82 admeasuring 300 sq. yards. The addendum dated 20.05.2015 states that *'All the terms & conditions of the executed Builder Buyer's Agreement shall remain the same & binding on the parties'*. The complainant has filed the present complaint on 12.07.2022 seeking possession of subject unit and delay possession charges as per proviso to section 18 (1) of the Act.
22. On 07.02.2023 and 20.07.2023, the respondent was directed to file copies of original layout plans showing the unit of the complainant and all subsequent amendments in the layout plans showing how the unit of the allottee has been omitted subsequently within 15 days. However, the respondent has failed to place on record the requisite documents as per the directions of the authority. On the contrary, the counsel for the respondent states that the requisite documents are already on record and if clarification is needed, the said documents will be placed on record within 2 weeks if so directed by the authority.

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23. The counsel for the respondent states that subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /Group Housing/Commercial/Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans. The counsel for the respondent further states that it had planned the whole township prior to GAIL Notification which came during the year 2009 and after this notification, M/s Vatika Limited submitted a detailed representation to the Gail authorities and HUDA administration for re-routing of the GAIL pipeline since the company had received the licenses in the township and had sold the plots to third parties based on approved layout plan. Vatika not only lost number of plots but had to re-design the project land that consumed money and time and hence the construction of project got delayed. The respondent is ready to refund the amount deposited by the complainant as per agreement.
24. On this the counsel for the complainant states that the complainant intends to continue with the project and is seeking

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physical possession of the plot and delay possession charges as provided under the proviso to section 18(1) of the Act.

25. After carefully considering the facts presented in this case, it is evident that initially, the complainant booked a plot in the year 2006 in the project "*Vatika Infotech City-Jaipur*". Thereafter, the unit of the complainant was shifted to plot no. 208, block D admeasuring 300 sq. yards in Vatika India Next, Gurugram, Haryana. The respondent instead of handing over the possession of the said plot, apprised the complainants that the possession of the booked plot cannot be delivered and therefore, reallocated another plot 19/Club Avenue/82F/300/Sector 82 measuring 300 sq. yards vide addendum dated 20.05.2015 to the complainant. However, the respondent again failed to handover the possession of the re-allotted plot in the light of the reasons submitted by the counsel for the respondent before this authority which are already mentioned in the preceding paragraph of this order and thus, the respondent is ready to refund the amount deposited by the complainant as per the agreement executed inter se parties. However, the complainant-allottee wished to continue with the project. The authority observes that the complainant herein has paid an amount of Rs. Rs. 54,96,622/- against the total sale consideration of Rs. 54,45,000/- which is more than the agreed total sale consideration. The authority observes that in the present matter despite the total sale consideration stands paid by the complainant-allottee long back but the

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respondent has failed to handover possession of the of the subject unit till date of this order and even the occupation certificate/ completion certificate has not been granted in respect of the subject project till date. It is highhandedness on the part of the respondent that despite booking the subject unit in the year 2006 and thereafter, shifting of the unit in the year 2009 in the project Vatika India Next, Gurugram, the respondent is now denying to provide possession of the subject unit to the complainant. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that since the possession of the reallocated plot cannot be granted in view of factual matrix explained above, therefore the respondent shall make an offer of alternative unit to the complainant. The rationale behind the same is simple that the allottee booked the project way back in 2006-09 and had paid more than the sale consideration in a hope to get the possession of the subject plot. In light of these observations, the respondent is directed to allot an alternate plot of the same size, similar location and at the same rate at which the unit in question was earlier purchased, within 2 months from the date of this order and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.

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26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. due date of possession i.e., 30.06.2014 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

F.II Providing sanctioned plans and other information

Relief sought by the complainant: below-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected:

- i. Direct the respondent to provide a copy of Sanctioned plans, layout plans along with specifications, approved by the competent authority, and changed plans after GAIL corridor and roads alignments.
- ii. Direct the respondent to provide unsold inventory list in the project "Vatika India Next" at NH - 8 and year-wise inventory from the year 2011 to till date.
- iii. Direct the respondent to provide the latest layout plan of the plot allotted to the complainant.

- iv. Direct the respondent to provide the status of plot No. 19/Club Avenue/82F/300/Sector 82 and Plot No. D/300/208, Sector - 82, Gurgaon.
27. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. In view of the above, the respondent-promoter is directed to provide such information/copies to the complainant within 2 months from the date of this order.

G. Directions of the authority

28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to allot an alternate plot/unit of the same size, similar location at the same rate at which the unit in question was earlier purchased, within 2 months from the date of this order and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.

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- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % p.a. w.e.f. due date of possession i.e., 30.06.2014 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent-

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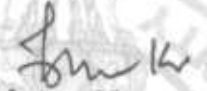
promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.04.2024

HARERA
GURUGRAM