

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

Complaint no.	2460 of 2023
Date of filing complaint	23.06.2023
First date of hearing	29.11.2023
Date of decision	07.08.2024

Dharmesh Gupta

**R/o:** House no.7, Road no. 7, Upper Ground Floor,  
East Punjabi Bagh, Delhi- 110026

**Complainant**

Versus

Vatika Limited

**Registered office:** Vatika Triangle, 4<sup>th</sup> floor,  
Sushant Lok, Phase 1, Block A, Mehrauli- Gurugram  
Road, Gurugram- 122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Rishabh Jain (Advocate)

Ms. Arjeet Kaur (Advocate)

Complainant

Respondent

**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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Xpressions by Vatika", Sector-88A and 88B, Village Harsaru, Gurugram
2.	Nature of Project	Independent Residential Floor
3.	RERA Registered or not registered	271 of 2017 dated 09.10.2017 valid upto 08.10.2022
4.	DTCP License and validity status	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
5.	Date of allotment	05.02.2016 (Page 31 of reply)
6.	Date of execution of builder buyer agreement	23.03.2016 (Page 30 of complaint)
7.	Unit no.	HSG-028-Sector-88B, Plot No-37, ST. H-35, Level-1 (Page 33 of complaint)
8.	Unit area	1350 sq. ft. Super area (Page 33 of complaint)
9.	Possession Clause	<b>Clause 13.</b> <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said residential floor within a period of 48 (Forty Eight) months 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 herein or due to failure of the Allottee(s) to pay in time price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-1 or as per demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."</i>



		(Page 33 of complaint)
10.	Due date of possession	23.09.2020 (Calculated to be 48 months from the date of execution of builder buyer agreement dated 23.03.2016 + Grace period of 6 months in as per HARERA notification no. 9/3-2020 dated 26.05.2020, for the projects having completion/due date on or after 25.03.2020)
11.	Basic Sales Price	Rs. 80,32,500/- (As per Account statement dated 25.08.2022 at page 68 of complaint)
12.	Total sale consideration	Rs. 97,63,730/- (As per Account statement dated 25.08.2022 at page 68 of complaint)
13.	Amount paid by the complainant	Rs. 97,63,730/- (As per Account statement dated 25.08.2022 at page 68 of complaint)
14.	Occupation certificate	26.05.2022 (Page 35 of reply)
15.	Possession Certificate	18.08.2022 (Page 33 of reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- a) That the respondent lured the prospective customers including the complainant to buy a floor in a residential plotted colony "Xpressions by Vatika" situated at Sector 88A and 88B, Gurugram, Haryana. The project was launched in 2013 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.
- b) That the complainant booked a floor in the said project of the respondent by paying Rs.2,00,000/- as booking amount in August, 2015.
- c) That the builder buyer agreement was executed between the parties on 23.03.2016 and floor no. HSG-028, Level 1, Plot no. 37, admeasuring 1350 sq. ft. super area was allotted to the complainant. The total sale



consideration of the floor is Rs.83,32,500/- as per table under clause 1 on page no. 4 of the agreement.

- d) That the date of handing over of possession of the floor comes out to be 22.03.2020 as mentioned in clause 13 at page no. 11 of the builder buyer agreement. The date of possession is calculated after four years from the date of execution of the agreement.
- e) That the complainant always abided by the payment schedule and made payments as and when demanded by the respondent in a timely manner. The complainant had paid an amount of Rs.97,63,730/- to the respondent till August, 2022.
- f) That the respondent had surreptitiously imposed interest on overdue amounts of Rs.2,23,823/- on 22.11.2017 and in February 2018 the said amount has been adjusted as credit waiver. However, the complainant has never defaulted in making timely payments. Thus, the imposition of interest must be deleted from the account statement being vexatious and frivolous.
- g) That the respondent offered the possession of the said floor vide letter dated 17.08.2022. However, the respondent has not conceded any amount towards delay caused in delivery of the floor and had even failed to obtain completion certificate for the said project till date.
- h) That the complainant time and again approached the respondent for completion of the project and delivery of possession of the floor as per the builder buyer agreement executed between them. The respondent has miserably failed to submit any justified response to various letters, e-mails, telephone calls, seeking information about completion of the project. The respondent violated Section 19 of the Act, 2016.
- i) That the respondent has neglected its part of obligations by failing to offer a legitimate and rightful possession of the flat in time and is



therefore, bound to pay interest on the deposited amount to the complainant if there is a delay in handing over the possession of the floor.

- j) That the complainant does not intend to withdraw from the project. As per the obligations on the respondent-promoter under Section 18 of the Act, 2016 read with Rules 15 and 16 of the Rules, 2017, the promoter has an obligation to pay interest on delayed possession on the amount deposited by the complainant-allottee at the rate prescribed.
- k) That the complainant reserve his right to seek compensation from the respondent for which the complainant may file a separate application to the Adjudicating Officer, in case it is required.

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

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay interest for every month of delay in handing over the possession of the floor since 22.03.2020 to the complainant on the amount taken from the complainant towards sale consideration for the aforesaid floor, with interest at the prescribed rate as per the Act, 2016 till the date of offer of possession plus two months.
  - II. Direct the respondent to complete the development of the project and deliver the floor along with all the facilities and amenities like water, electricity, roads, green belt, etc. immediately and obtain completion certificate.
  - III. Direct the respondent to delete the sum of Rs.2,23,823/- charged by the respondent from the complainant towards interest on delay payments as the complainant has not defaulted in making payments.
  - IV. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant along with other charges.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent contested the complaint on the following on the following grounds vide its reply dated 28.02.2024:

- a) That the complainant learned about the residential project launched by the respondent titled as "Xpressions by Vatika" situated at Sector 88A



and 88B, Gurugram and visited the office of the respondent to know the details of the said project. The complainant further inquired about the specifications and veracity of the project and was satisfied with every proposal demanded necessary for the development.

- b) That on 04.08.2015, after having keen interest in the project being developed by the respondent and post being satisfied with specifications of the project, the complainant decided to book a unit vide Application form dated 04.08.2015 and paid an amount pf Rs.2,00,000/- as booking amount for further registration in the project.
- c) That the respondent vide allotment letter dated 16.01.2016 called upon the complainant and requested to come to office on 05.02.2016 for taking the allotment of the unit.
- d) That the respondent vide allotment letter dated 05.02.2016 allotted a unit bearing no. 37, Level 1 Floor, Street no. H-35, admeasuring 1350 sq. ft. super area in the aforesaid project.
- e) That the respondent vide letter dated 02.03.2016 served two copies of the builder buyer agreement for execution and requested the complainant to return the signed copy of the same for further execution.
- f) That on 23.03.2016, a builder buyer agreement was executed between the parties for a total sale consideration of Rs.83,32,500/-.
- g) That on 18.08.2022, the complainant has taken the possession after receiving occupation certificate dated 26.05.2022 from the competent authority.
- h) That as per clause 13 of the agreement, the possession of the unit was proposed to be handed over subject to force majeure conditions within a period of 48 months from the date of execution of the agreement unless there shall be a delay or there shall be a failure due to reasons beyond the control of the developer or due to the government rules,



orders, etc. or due to failure of allottee to pay in time the price of the residential unit along with all other charges and dues in accordance with the schedule of the payment. The respondent herein shall be entitled for extension for such period of delay caused due to force majeure circumstances.

- i) That the complainant has defaulted in making payments and was charged with interest on due amounts on 22.11.2017 of Rs.2,23,823/-. The complainant approached the respondent to waive off his interest and the respondent believing the assurances of the complainant waived off the interest of the complainant. The project has been hampered due to delay in payment of instalments by the complainant as well as various other allottees.
- j) That the complainant further agreed that he shall not be liable for any amount of compensation for such extension which is caused due to reasons beyond the control of the developer. The relevant abstract of clause 16 is mentioned below for reference:
- ".....The Allottee agrees not to claim compensation of any nature whatsoever (including the compensation stipulated in Clause 18 of this Agreement) for the period of extension of time for handing over the possession of the Residential Floor....."*
- k) That the Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45(1) of GMDA Act, 2017 transferred the properties falling within the ambit of NH 352W acquired by HUDA to GMDA for development and construction of NH 352W. Thus the construction was hindered due to re-routing of High-tension lines passing through the lands resulting in inevitable change in the layout plans.
- l) Furthermore, the project was hindered due to force majeure reasons beyond the control of the respondent such as direction of Hon'ble National Green Tribunal, Environment Pollution Control Authority,



Haryana State Pollution Control Board, Commissioner Municipal Corporation Gurugram, Hon'ble Supreme Court, Covid-19 pandemic, etc. which caused a delay of approximately 1.4 years in completion of the project. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This also led to further extension of time period in construction of the project and all such factors may be taken into consideration for the calculation of the period of the construction of the project.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

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

**E.II Subject matter jurisdiction**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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."

12. 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 complainants at a later stage.

**F. Findings on the objections raised by the respondent.**

**F.I Objections regarding force majeure.**

13. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.



**F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.**

14. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

15. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 23.03.2020. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 23.03.2020 i.e., before 25.03.2020. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

**G. Findings on the relief sought by the complainant.**

**G.I Direct the respondent to pay interest for every month of delay in handing over the possession of the floor since 22.03.2020 to the complainant on the amount taken from the complainant towards sale consideration for the aforesaid floor, with interest at the prescribed rate as per the Act, 2016 till the date of offer of possession plus two months.**

**G.II Direct the respondent to complete the development of the project and deliver the floor along with all the facilities and amenities like water, electricity, roads, green belt, etc. immediately and obtain completion certificate.**



16. The complainant was allotted unit no. HSG-028-Sector-88B, Plot No-37, ST. H-35, Level-1 in the respondent's project at total sale consideration of Rs.97,63,730/-. A buyer's agreement was executed between the parties on 23.03.2016. The possession of the unit was to be offered within a period of 48 months from the date of execution of the agreement. Therefore, the due date of handing over possession comes out to be 23.03.2020. The complainants paid the entire sale consideration of Rs.97,63,730/- towards the subject unit, and is ready and willing to retain the allotted unit in question.
17. The complainant herein intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 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."*

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. 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.*

19. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
20. 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., 07.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
21. 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;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.



23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the buyer's agreement executed between the parties on 23.03.2016, the possession of the said unit was to be delivered within a period 4 years from the date of execution of buyer's agreement. Therefore, the due date of handing over of possession comes out to be 23.03.2020. In the present complaint, the respondent without making an offer of possession to the complainant, issued a possession certificate in his favour on 18.08.2022 after obtaining occupation certificate on 26.05.2022 from the competent authority.
24. As per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainants. Since on perusal of documents on record it is found that possession had already been handed over by the respondent to the complainants, no direction to this effect is required to be passed by the Authority.
25. Also, there is 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 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 rate of the prescribed interest @ 11% p.a. w.e.f. 23.03.2020 till the date of actual handing over of possession i.e., till 18.08.2022 or till offer of possession plus two months, whichever is earlier. The date of offer of possession not being specified by any of the parties, the respondent is directed pay interest at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 21.03.2020 till the date of





actual handover of possession, i.e., till 18.08.2022 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

**G.III Direct the respondent to delete the sum of Rs.2,23,823/- charged by the respondent from the complainant towards interest on delay payments as the complainant has not defaulted in making payments.**

26. The complainant submitted that an interest of Rs.2,23,823/- has been charged by the respondent from the complainant towards interest on delayed payments. However, there exist no default on part of the complainant in making payments. On the other hand, the respondent submitted that complainant approached the respondent to waive off his interest and the respondent believing the assurances of the complainant waived off the interest of the complainant. Perusal of account statement dated 25.08.2022, annexed as Annexure 3 at page no. 68 of the complaint reveals that interest on overdue amount was charged upon the complainant on 22.11.2017, however the same was waived off by the respondent on 15.02.2018. In light of these findings, the relief sought by the complainant for deletion of amount charged by respondent on account of interest on delay payments becomes redundant.

**G.IV Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant along with other charges.**

27. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.



**H. Directions of the authority**

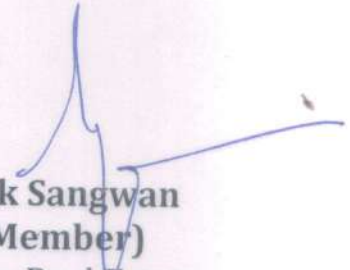
28. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed pay interest at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 21.03.2020 till the date of actual handover of possession, i.e., till 18.08.2022 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- III. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- IV. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.

**Dated:07.08.2024**



**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram