

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

Complaint no. :	4224 of 2023
Date of filing complaint:	06.10.2023
Date of decision :	09.08.2024

Mrs. Y Padmaja Subramanyam w/o Wing Commander Y Subramanyam Resident of : House no. 9-48/2 Sathyanarayana Puram, Varni Mandal, Nizamabad, Telangana - 503201	Complainant
Versus	
M/s Vatika Ltd Regd. office: 7 th floor, Vatika Triangle, Block - A, Susahnt Lok, Gurugram M/s Trishul Industries Plot no. 98, 2 nd floor, Sant Nagar, Delhi	Respondents

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Vashita Sharma Advocate	Complainant
Ms. Ankur Berry Advocate	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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

S.no.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
4.	DTCP license no.	122 of 2008 dated 14.06.2008 valid up to 13.06.2016
5.	Name of licensee	M/s Trishul Industies Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered *Since the project is not registered the registration branch may take the necessary action under the provisions of the Act, 2016
7.	Date of builder buyer agreement	12.05.2012 [pg. 32 of complaint]
8.	Unit no. (new)	507, 1 st floor block C, 500 sq. ft. (page 64 of complaint)

9.	Possession clause	<u>10. The developer contemplates to complete the construction of the said commercial unit within 48 months of the execution of the agreement.</u>
10.	Due date of possession	12.05.2016
11.	Sale Consideration	₹ 25,00,000/- [as per agreement on pg. 34 of complaint]
12.	Paid up amount as per BBA	₹ 25,00,000/- [pg.34 of complaint]
13.	Completion of construction	30.11.2018 (page 29 of reply)
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	assured return paid till	June 2018 "as per clause 12 of the agreement return is to be paid from the date of execution of agreement till completion of construction of the said building"
17.	Assured return paid	₹ 23,93,467/- (as per page 26 of reply)

B. Facts of the complaint:

- I. The complainant duly entered into and executed a builder buyer agreement with the respondents on the 12th of May 2012, with the intention of acquiring a commercial unit spanning an area of 500 square feet (super area). The

- execution of this agreement was accompanied by the payment of the basic sale price amounting to Rs. 25,00,000/-
- II. That subsequent to signing of the aforementioned agreement, the complainant received an email 'Space in INXT City Centre, Gurgaon' whereby the complainant was allotted a commercial unit bearing number No. 129, 1st floor, building block No. A, ad measuring 500 Sq. ft. in super area, India Next City Centre, Gurgaon.
- III. That as per an email dated 06 July 2018, 'Lease Intimation - M/s DPA Institute of Tourism and Hospitality Education - Vatika INXT City Centre', she was apprised of the leasing of the specified space and block to M/s DPA Institute of Tourism and Hospitality Education. The lease initiation date was recorded as 1 July 2018, accompanied by monthly lease payments amounting to Rs. 65/- per sq ft. It is noteworthy that the rental compensation was due for disbursement to the her on 1 July 2019, and the period spanning from 1 July 2018 to 30 June 2019 was classified as a rent-free interval. Evidently, in executing this course of action, Respondents undertook the decision-making process without engaging the complainant or seeking her input and consent, thereby negating her legitimate entitlement and right to receive rental remuneration during the period from 01 July 2018 to 30 June 2019.
- IV. That in consideration of the information conveyed through the email dated 06 July 2018 (Annexure C-6), the

complainant assumed and inferred that the building's construction had reached completion and that the requisite occupancy certificate had been procured by respondents from the relevant authorities.

- V. Notably, over an expanse of more than 11 (eleven) years since the initial allocation, the complainant has yet to receive any official communication indicating the completion of the project from the end of respondents.
- VI. That negligently compounding the situation, the respondents have proceeded with the allocation and leasing of a commercial space to M/s DPA Institute of Tourism and Hospitality Education since 2018, lacks legal authorization and authenticity, all while failing to conform to the essential legal prerequisites.
- VII. That in a recent attempt, the complainant sought to establish contact with respondent No. 1 on 30 July 2023 through the designated email address, crm@vatikgroup.com. The purpose was to communicate their concerns and seek updates on the matter. However, to the complainant's dismay, the email bounced back indicating that respondent No. 1's email address had been discontinued since November 2017.

C. Relief sought by the complainant:

3. The complainant has sought the following relief(s):

- I. Direct the respondents to pay delay penalty per annum in terms of Section 18 of the Act from the stipulated date till the date of realisation paid up amount.
- II. Direct the respondents to provide the complainant with the occupancy certificate from concerned authorities.
- III. Direct the respondent to fulfil their responsibilities of leasing out the unit at specified rates.
- IV. Direct the respondent to register the unit in favour of the complainant.

D. Reply by the respondent-builder.

4. The respondent-builder has contested the complaint on the following grounds. सत्यमेव जयते

5. Vide proceeding dated 26.07.2024, the respondent no. 2 was directed to file reply within 5 days otherwise the authority shall be bound to struck off the defence of respondent no. 2. The reply through application has been filed on 01.08.2024 by Respondent no.1 i.e., Vatika Limited wherein it has been stated that vide OLR no. 4 of 2017 the respondent no. 2 was liquidated and duly observed into Respondent no. 1. The said dissolution is documented and substantiated by the official liquidator report. It is also requested through the averment that the reply filed by Respondent no. 1 should be taken into consideration on behalf of respondent no. 2 as well.

I. 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, 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". Thus, the simultaneous reading of the 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 illegal. Thus the 'assured return scheme proposed and floated by the respondent 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 Rs. 23,93,467/- till June, 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.

- II. That it is also relevant to mention here that the commercial unit of the complainants were 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 complainants. Hence, the commercial space booked by the complainants' is not meant for physical possession.
- III. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others.
- IV. That 30.11.2018 also confirmed to the allottees that the project was ready and available for leasing. Further vide email dated 28.12.2018, the respondent sent email to all its allottees including the complainant regarding the stoppage of monthly return and also gave option to the allottees to shift to alternate project.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- E. Jurisdiction of the authority:**

7. 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

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 the entire Gurugram District for all purposes 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

8. So, given 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 relief sought by the complainant.

F.1 Direct the respondent to hand over possession of the aforesaid unit along with delayed possession charges.

9. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which 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."

10. In the instant case, the flat buyer agreement was executed between the complainant and the respondent on 12.05.2012, and as per clause 10 of the said agreement, the developer contemplated to complete the construction of the unit within 48 months from the date of the execution of agreement. The said clause is reproduced below:

"10. Subject to the aforesaid(force majeure conditions) and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of the execution of the agreement.

Therefore, the due date of possession comes out to be 12.05.2016.

11. The complainant-allottee has paid Rs. 25,00,000/- against the sale consideration of Rs. 25,00,000/- for the unit in question to the respondent.
12. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.
13. **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(s) 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.

14. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.
15. 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., 09.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
16. 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;"*
17. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the buyer's agreement executed between the parties, the developer contemplated to complete the construction of the unit within 48 months from the date of the execution of agreement. As such the due date of handing over of possession comes out to be 12.05.2016.
18. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
19. Since the occupation certificate of the building has not been obtained. The respondent is directed to get the conveyance deed executed within a period of three months from receipt of occupation certificate
20. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to

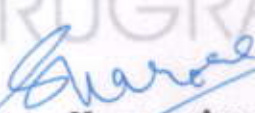
complete the construction of the unit within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession 12.05.2016 till valid offer of possession plus two months at the prescribed rate of interest i.e., 11% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the Authority

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession 12.05.2016 till valid offer of possession plus two months at the prescribed rate of interest i.e., 11% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. Since the occupation certificate of the building has not been obtained. The respondent is directed to get the conveyance deed executed within a period of three months from receipt

of occupation certificate as per section 17(1) of the Act of 2016.

- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - iv. 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(z) of the Act.
 - v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - vi. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
22. Complaint stands disposed of.
23. File be consigned to the Registry.


Sanjeev Kumar Arora
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2024