

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

<b>Complaint no.</b> :	<b>4192 of 2022</b>
<b>Date of filing complaint:</b>	<b>07.06.2022</b>
<b>Date of decision</b> :	<b>16.08.2024</b>

Pradeep Jain Resident of : S-57, Greater Kailash - 1, New Delhi - 110048	<b>Complainant</b>
Versus	
1. M/s Vatika Ltd 2. Mr. Gautam Bhalla (Director of M/s Vatika Limited) 3. Mr. Anil Bhalla (Director of M/s Vatika Limited) <b>Regd. office:</b> 4 <sup>th</sup> floor, Vatika Triangle, Block - A, Sushant Lok-1, Block A, M.G Road, Gurugram 4. M/s Sahar Land and Housing Pvt. Ltd. (Through its directors) 5. M/s Crazy Properties Pvt. Ltd. (Through its Directors) <b>Regd. office:</b> 224A, 2 <sup>nd</sup> Floor, Devika Towers, 6, Nehru Place, New Delhi-110019	<b>Respondents</b>

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**
**APPEARANCE:**

Shri Rahul Bhardwaj Advocate

Complainant

Ms. Ankur Berry Advocate

Respondents

**ORDER**

- 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. N.	Particulars	Details
1.	Name and location of the project	Vatika India Next Phase II, Sector 82, Revenue estate of village sikanderpur badha, tehsilmanesar,district, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	489.71225 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2018. valid upto 31.05.2022
5.	Name of licensee	M/S VATIKA LTD
6.	RERA Registered/ not registered	Registered vide no. 36 of 2022 dated 16.05.2022
7.	Plot	1.24 acre
8.	Date of Agreement to sell	09.05.2019 (Page no 25 of complaint)

9.	Due date of possession	09.05.2022 (Calculated from the date of agreement) [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
10.	Legal Notice for Termination by complainant.	26.05.2022 (Page no 54 of complaint)
11.	Total sale consideration	Rs. 37,81,00,800/- (Page no 27 of complaint)
12..	Amount paid by the complainant	Rs. 2,00,00,000/- (2crore) (Page no 27 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That believing upon the representations of the respondent no.2 and 3 through the respondent no. 1 company, complainant agreed to purchase the commercial plot admeasuring 1.24 acres in sector-82, situated in revenue state of Sikanderpur Badha, Tehsil Manesar, District Gurugram for a total sale consideration of Rs. 37,81,00,800/-. Accordingly, a formal agreement to sell (ATS) dated 09.05.2019 executed between the complainant and the respondents. In furtherance to the agreement, the complainant had paid the total sum of Rs. 2,00,00,000/- to the respondent no. 1 company.

4. That it was agreed between the parties that the balance sale consideration was to be paid once the respondents will secure no objection certificate from HDFC Bank as the said land was encumbered with HDFC Bank under the project loan. Further, the respondents also agreed to share all the requisite documents such as sale deed of the said land, sanctioned plan, superimposed plan, payment receipts of Rs.4,00,00,000/- towards IDC/EDC charges by the respondent no.1 company etc. with the complainant.
5. That however, the respondents mischievously did not share any document with the complainant as mentioned hereinabove and unscrupulously sent the letter dated 28.06.2019 calling upon the complainant to make the balance payment of Rs. 27,26,70,560/-. Upon receiving the said letter, the complainant got to know that the respondents dishonestly secured no objection certificate from HDFC Bank by undervaluing the sale transaction of Rs.37,81,00,800/-. The complainant duly replied to the said letter and asked the respondents to share the complete details of correspondences with HDFC Bank.
6. That the complainant in the reply to the letter dated 28.06.2019, narrated the whole incident how the respondents have duped an innocent buyer. The complainant also got to know that the respondents have played a fraud upon him by not applying for NOC from DTCP prior to proposed assignment. As per clause 4 of policy dated 18.02.2015 it is incumbent upon the respondents to seek permission from DTCP for change of beneficial interest in the licensed land prior to proposed assignment, however, the respondents fraudulently tried to usurp the sale transaction of Rs.37,81,00,800/- without getting appropriate

sanctions/permissions in favor of the complainant from DTCP or other concerned authority.

7. That due to the aforesaid illegal acts on the part of the respondents, the complainant filed a complaint against the respondents on 4th May 2022 with the Station House Officer, Police Station Greater Kailash-1, New Delhi-110024 under Section 406, 420, 34 and 120B of Indian Penal Code, 1860.
8. That subsequent to the filing of the said complaint, the complainant also got issued a legal notice dated 6th May, 2022, whereby the complainant terminated the said agreement to sell dated 09.05.2019 executed between the complainant and the respondents and also called upon the respondents to make a refund of Rs.2,00,00,000/- (Rupees Two Crores Only) which was paid by the complainant to the respondent no.1 company at the time of execution of the said agreement to sell dated 09.05.2019.
9. That the land which has been sold by the respondents to the complainant, shows grossly incomplete signs in all aspects. The NOC obtained by the respondents from the HDFC Bank has been obtained by undervaluing the sale transaction of Rs.37,81,00,800/-; The respondents have failed to provide the NOC from the DTCP, Haryana to the complainant.

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

10. The complainant has sought the following relief(s):
  - I. Direct the respondents to refund the entire deposited amount of Rs.2,00,00,000/- which has been deposited against the said land in question so booked by complainant along with interest @ 24% per

- annum compounded annually, on the amounts from 09.05.2019 till its actual realization.
- II. Direct the respondents to pay an adequate compensatory interest on the entire deposited amount of Rs.2,00,00,000/- for delayed execution of the sale deed.
  - III. Direct the respondents to pay a sum of Rs.50,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony caused to the complainant along with interest from the date of filing the present complaint till its realization.
11. But vide application dated 26.04.2024 wherein he sought amendment of relief
- I. Direct the respondents to adhere with the terms and conditions of the agreement to sell dated 09.05.2019 and accordingly allot the said parcel of the land to the complainant.
  - II. Direct the respondents to provide the possession of the said parcel of the land allotted to the complainant in lieu of the agreement to sell dated 09.05.2019.
  - III. Direct the respondents to pay delay possession interest @ prescribed rate from the due date of possession till the actual date of possession of the plot as per the provisions of RERA Act, 2016.
  - IV. Direct the respondents to pay a sum of Rs. 1,50,000/- towards litigation.
- D. Reply by the respondent no.1.**
12. The respondents-builder has contested the complaint on the following grounds.

13. The respondent no. 2-5 were directed to file reply within stipulated time otherwise the authority shall be bound to struck off the defence of respondent no. 2-5 . The reply has not been filed. Hence the defence is struck off.
14. That it is a matter of fact and record that no allotment of any unit of any particular project of the respondent was made to the complainant. That moreover, there exists no builder buyer dispute/relation in the present case and hence, this Hon'ble Authority does not have the subject matter jurisdiction to deal with the present complaint.
15. That the contractual relationship of the parties is limited to the agreement to sell dated 09.05.2019 which is neither an allotment nor a builder buyer agreement and has no essence/conditions of a builder buyer agreement/model RERA agreement. That the said agreement to sell merely records an understanding between the parties in lieu of sale of an encumbered land. That this arrangement between the parties does not fall within the meaning and ambit of the Act or the Rules and Regulations thereunder.
16. That the jurisdiction of the Hon. Authority is derived from the Act which establishes the builder-buyer relationship by virtue of an allotment or a sale of a real estate property/unit, without which, the complainant cannot be said to be an "allottee" within the meaning of Section 2(d) of the Act.
17. That the legislature in its utmost wisdom has implemented the Act with the intent to cover the disputes between the "allottees" and the promoter. While it is a matter of fact and record that the respondent no. 1 is one of the most prominent and renowned promoters of a number of real estate projects, in all of which, the respondent no. 1 has

ensured and displayed its bonafide in acting and fulfilled its obligations under the Act.

18. That however, on the other hand, the complainant cannot be said to be an allottee without any allotment being made by the respondent. That in the absence of an allotment/builder buyer agreement having been executed between the parties, no obligation under the Act can be drawn and the jurisdiction of this Ld. Authority has been ousted, hence, the relief sought by the complainant cannot be granted by this Hon'ble Authority.
19. That the complainant has failed to produce any document/record to sufficiently or even remotely show any allotment in his favour and in such circumstances, it cannot be deemed that a builder-buyer dispute exists between the parties. That at this instance, it is submitted that the burden of proof falls under the complainant under Section 101 of the Indian Evidence Act and until and the unless the same is discharged by the complainant, the respondent cannot be asked to disprove its case.
20. That without prejudice to the objections stated herein, it is vehemently submitted that the stance/ground of the complainant is highly lopsided. That no booking in the name of the project was accepted which is evident from documents placed on record by the complainant.
21. The complainant has paid a mere sum of Rs 2,00,00,000 showing his interest in the company of the respondent no. 1 and has not been made against any particular project of the respondent and in such circumstances, the complainant cannot be termed as an "allottee".
22. That hence, for any alleged grievance, the Hon'ble Authority does not have the subject matter jurisdiction to deal with the present case and hence, this complaint is liable to be dismissed at the very outset.



23. 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. Written Submissions filed by respondent no. 1:**

24. That the present complaint was never maintainable since the present complainant is not an allottee.
25. That the present complaint has been filed on the basis of an agreement to sell dated 09.05.2019, whereby the agreement was to sell an un-numbered plot with definitive size of 1.24 acres in Sector-82. The said land does not lie within any project which comes within the purview of RERA Authority and thus this complaint was never maintainable.
26. That further in terms of the agreement dated 19.05.2019, Clause 2.1.2 "The seller shall provide to the buyer NOC from the Bank and only thereafter will the buyer will complete 70% payment of the sales consideration plus 70% of EDC/IDC within three weeks of receiving of NOC by the Seller which will be equivalent to Rs. 27,26,70,560/- .....". Further the complainant was already aware of the lien over the plot and admittedly the NOC was issued from the HDFC Bank on 17.05.2019. The NOC dated 17.05.2019 was made part of the record by the complainant himself (Page 34,35,36 of the Complaint). "Wherein the Bank has no objection to sale of the plot if sale proceeds to an amount of Rs. 18 Crores were received in the ESCROW account". That this NOC was duly supplied to the complainant for complying the terms of the ATS, whereby remaining payment was to be paid in 3 weeks i.e by 07.06.2019, however the complainant failed to make the payment

and thus the respondent was constrained to issue letter dated 28.06.2019. That though in terms of ATS payments (70%) were to be made in 3 weeks of NOC yet the respondent issued the letter after 2 extra week and gave another 7 days to the complainant to make payment, failing which the agreement was to be terminated.

27. That the complainant chose to stay silent even though the termination of the ATS had taken place on 05.07.2019 (7 days from Termination Notice dated 28.06.2019), and the Advance money (Clause 2.2 of ATS) has already been forfeited.
28. That the ATS thus neither comes within the purview of the RERA, nor can be enforced since already terminated in 2019. Thus the present complaint ought to be dismissed as neither the Complainant comes with the definition of "Allottee" nor the respondents come within the definition of "Promoter" as there is no project involved and the terms were simpliciter an agreement for sale within the Transfer of Property Act, 1882.

**F. Jurisdiction of the authority:**

29. 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.*

30. 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.

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

**G.I Direct the respondents to adhere with the terms and conditions of the agreement to sell dated 09.05.2019 and accordingly allot the said parcel of the land to the complainant.**

**G.II Direct the respondents to provide the possession of the said parcel of the land allotted to the complainant in lieu of the agreement to sell dated 09.05.2019.**

**G.III Direct the respondents to pay delay possession interest @ prescribed rate from the due date of possession till the actual date of possession of the plot as per the provisions of RERA Act, 2016.**

31. In the present complaint, the complainant had booked a plot admeasuring 1.24 acres in the project of the respondents namely, Vatika India Next Phase II, situated at sector 82, Gurugram, Haryana. The agreement to sell for the said plot was got executed interse parties on 09.05.2019 for a total sale consideration of Rs. 37,81,00,800/-. Out of the total sale consideration the complainant had paid an amount of Rs. 2,00,00,000/-.
32. There is a lien over the said plot and admittedly the NOC was to be issued by the HDFC Bank. As per clause 2.1.2 the respondents has to provide the complainant NOC from the Bank and only thereafter the complainant will complete 70% payment of the sales consideration plus 70% of EDC/IDC within three weeks of receiving of NOC by him which will be equivalent to Rs. 27,26,70,560/-. The respondents company failed to obtain the NOC from the HDFC resulting in non-payment by the complainant. The respondents due to non-payment by the complainant issued a letter dated 28.06.2019 (page 33 of complaint) in which it was stated that *"We are hereby notifying you to comply with your obligation towards the payment amounting to Rs. 27,26,70,560/- to the Company, within 7 days, from the date of this Notice, failing which the Agreement between us shall stand terminated and the amount paid by you shall stand forfeited."*
33. As per documents on record the authority observes that although vide letter dated 17.05.2019 issued by HDFC Limited wherein it is stated

that HDFC has no objection in selling the property to the said customer provided a minimum amount of 18 Crores shall be received into Vatika Ltd. Escrow account no. 05720350000172 maintained by HDFC Bank Limited. Further there is no document placed on record which corroborate the fact of having deposit 18 crore into the said account therefore, the said NOC cannot be taken into consideration by the authority. Hence, the demand raised by the respondents vide letter dated 28.06.2019 is invalid.

34. The complainant wishes to continue with the project and hereby seeking possession of the unit along with delay possession charges. The authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondents is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
35. The Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**

36. In view of the above-mentioned reasoning, the date of agreement to sell ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 09.05.2022, manifesting that there has been a delay of in handing over possession, making the respondents liable to pay delayed interest charges as per section 18 of the Act, 2016 along with possession.
37. **Payment of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the 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.
38. 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.
39. 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., 16.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
40. The definition of term 'interest' as defined under section 2(z) 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.

41. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondents/promoter which is the same as is being granted to them in case of delayed possession charges.
42. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. The possession of the plot admeasuring 1.24 acres in sector 82 Gurugram, Haryana was to be delivered by 09.05.2022. However, the respondents/promoter have not allotted a specific plot number to the complainant and also have failed to handover possession of the plot to the complainant till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities to allot a specific unit number and to hand over the physical possession. The authority is of the considered view that there is delay on the part of the respondents to offer possession of the allotted plot to the complainants. Further no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
43. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to sell to handover the possession of the plot within the stipulated period. Accordingly, the

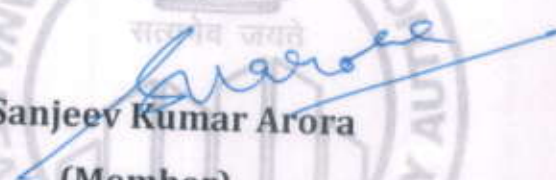
non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondents are directed to pay delayed possession charges on the amount paid by the complainant to it from the due date of possession i.e., 09.05.2022 till valid offer of possession plus two months (after obtaining OC/CC) at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

#### **H. Directions of the Authority**

44. 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 respondents are directed to handover the possession of the all plot admeasuring 1.24 acres in their project within three months(90 days) after obtaining valid occupation certificate from the competent authority.
  - ii. The respondents are directed to pay delayed possession charges on the amount paid by the complainant to it, from the due date of possession 09.05.2022 till valid offer of possession plus two months (after obtaining OC/CC) at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.
  - iii. The respondents shall not charge anything from the complainant which is not the part of the 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., 11.10% by the respondents/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.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
45. Complaint stands disposed of.
46. File be consigned to the Registry.

  
**Sanjeev Kumar Arora**  
(Member)

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 16.08.2024**

**HARERA**  
**GURUGRAM**