

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

Complaint no.:	1557 of 2023
Date of filing:	20.04.2023
Date of decision:	12.09.2024

1. Sanjay Shukla
 2. Sudha Shukla
- Both R/o 476, 2nd Floor, Sector-27, Gurugram-122001.**

Complainants

Versus

M/s Vatika Ltd.

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

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Kanish Bangia (Advocate)

Shri Venket Rao (Advocate)

Complainants

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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

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A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"EMILIA by Vatika India Next" at Sector-82, 82A, 83, 84 & 85 Gurugram.
2.	Project area	182 Acres
3.	Nature of Project	Residential Complex
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018
5.	Name of Licensee	M/s Buzz Technologies Pvt. Ltd. & Others.
6.	Rera registered/ not registered and validity status	Registered (for Vatika India Next Phase-II) Vide no. 36 of 2022 dated 16.05.2022 Valid upto 31.03.2029
7.	Unit No.	HSG-014A-Floor no.1-Plot no.38-2 nd , St-Scetor-83E-Vatika India Next (page 111 of complaint)
8.	New Unit No.	Plot no.38, Emilla, FF, ST. 83E-2, Sec.83E, VIN. (As per addendum agreement at page 113 of complaint)
9.	Unit area admeasuring	781.25 sq. ft. (page 78 of complaint)
10.	Increase in super area (by 18.43%)	925.23 Sq. ft. (page 111 of complaint)
11.	Allotment letter	22.11.2010 (page 72 of complaint)
12.	Date of buyer agreement	05.01.2011 (page 75 of complaint)
13.	Addendum to the buyer's agreement	24.07.2013 (page 113 of complaint)
14.	Possession clause	10.1 Schedule for Possession of the said independent dwelling unit

		<p><i>"That the company based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/said independent dwelling unit within a period of three (3) years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause (11.1), (11.2), (11.3) and Clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues...."</i></p> <p>(Empasis Supplied)</p>
15.	Due date of possession	05.01.2014 (Note: Calculated from the date of execution of buyer's agreement)
16.	Total Sale Consideration	Rs.22,06,521/- for (781.25 sq. ft.) (page 78 of complaint) And Rs.26,38,259/- for (925.23 sq. ft.) [After increased in super area] (page 114 of complaint)
17.	Amount paid by complainant	Rs.7,72,652/- (As mentioned in para 2 of termination letter for BBA at page 114 of complaint)
18.	Permission to Mortgage (in favor of HDFC Ltd.)	21.02.2011 (page 109 of complaint)
19.	Intimation for area change and numbering system of independent floors	10.07.2013 (page 111 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer for possession	Not offered
22.	Termination Letter (As the company is unable to deliver the unit due to uncertain backdrops)	06.11.2018 (page 114 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:



- i. That the complainants are a respectable and law-abiding citizen of this nation. The complainant is the allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016.
- ii. The respondent is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- iii. That the respondent announced the launch of "Emilia Floors at Vatika India Next" project in the year 2009. The complainants while searching for a residential flat were lured by the advertisements /brochures of the company to buy a flat in their project namely "Emilia Floors at Vatika India Next" project at Sector 81, Vatika India Next, Gurgaon. The respondent claimed that they have taken all due approvals, sanctions and government permissions towards development and construction of "Emilia Floors at Vatika India Next" project and after representing through brochures, about the facilities to be provided, the respondent managed to impress the complainants, who then decided to invest their hard-earned money in purchasing the unit at "Emilia Floors at Vatika India Next" project.
- iv. Relying on various representations and assurances given by the respondent company and on belief of such assurances, the complainants booked a floor by paying an amount of Rs.1,15,645/- and Rs.1,00,000/- vide cheque no. 680553 and 680552 dated 27.10.2009 and 29.10.2009., in the project Emilia Floors at Vatika India Next, Sector 81, Vatika India Next, Gurgaon.
- v. That the complainants received welcome letter announcing the launch of independent floor at Sector 81, Vatika India Next named as Emilia Floors and acknowledge with thanks the receipt of Rs.2,15,645/- against the

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- booking at Emilia Floors in Vatika India Next along with the particulars of the apartment booked by the complainant.
- vi. That after the long wait of almost 5 months, the complainants received an intimation of allotment stating that the government process of earmarking the main roads and the sector roads are almost complete and that the architectural team shall start the working on the design of the said land.
 - vii. That the letter also notified that once the design is frozen and released by the architectural team, the allotment of the apartment shall be provided based on the priority number.
 - viii. That the complainant, on 03.11.2010, again received an intimation of allotment stating that the proposed site plan of the independent floors has been issued by the architectural department and hence, also provided with the modus operandi or the procedure which shall be followed for the allotment of the floors.
 - ix. That the complainants received the provisional allotment letter towards the booking of the said unit bearing property no. HSG-014A-Floor No.1, Plot No.38, 2nd St. Sector 83E, Vatika India Next. in the project "Emilia Floors at Vatika India Next" Sector- 81, Vatika India Next, Gurgaon.
 - x. That as soon as the complainant received the allotment letter, he issued cheques of Rs.5,581/- and Rs.2,16,746/- as demanded bearing cheque number 680561 and 680560 dated 22.11.2010.
 - xi. That an floor buyer's agreement was executed between the complainant and the respondent on 05.01.2011. That, as per clause 10.1 of the buyer's agreement, the respondent shall endeavour to complete the construction of the said building/ independent dwelling unit within a period of 3 years from the date of execution of this agreement. Therefore, the due date of possession comes out to be 05.01.2014.

- xii. That the respondent, on 21.02.2011 issued a letter providing permission to mortgage the said floor of the complainant to HDFC Ltd.
- xiii. That the respondent, in his letter has confirmed that all the necessary permissions/approvals/sanctions for the construction of the said building from the concerned competent authority has been obtained and assured that the flat as well as the said building and the land thereto are not subject the any encumbrance, charge or liability of any kind whatsoever.
- xiv. That due to such false and frivolous statement granted by the respondent, namely Vatika Ltd., the bank provided a loan to Mr. Sanjay Kumar Shukla and hence, paid an amount of Rs.3,25,119/- in favor of the respondent towards the balance amount of the floor.
- xv. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned floor already paid a total sum of Rs.7,72,652/- towards the said unit against sale consideration of Rs.26,38,258/- as per the payment plan.
- xvi. That the respondent, on 10.07.2013 sent a letter regarding the intimation of area change and numbering system of independent floors in Vatika India Next. The Letter provided the new number of the unit, i.e., Plot no. 38, Emilia, FE, ST. 83E, VIN in place of its existing number HSG-014A-Floor No. 1, Plot No. 38, 2nd St. Sector 83E, Vatika India Next. That the area of the floor has also been changed to 925.26 sq. ft. i.e., 18.43% more than the tentative area mentioned in the Floor buyer's agreement.
- xvii. That the respondent, on 24.07.2013, provided with a letter, namely "addendum to the floors (vatika india next) builder buyer agreement" which provided the addendum and revised payment plan due to change in the floor no. which shall form the integral part & parcel of the floor buyer agreement dated 05.01.2011 along with an undertaking.

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- xviii. That the complainants, in order to know the status of the project, visited the site and were in utter shock that even basic construction had not been completed, even after a period of almost 6 years which was contrary to the respondent's claim that the project has been started and development of the project is as per the schedule.
- xix. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent, but the respondent was never able to give any satisfactory response regarding the status of the construction. The complainants visited the site multiple times but was shocked to see that there was no progress regarding the construction of the commercial unit. Further, the respondent was never definite about the delivery of the possession. That the respondent is guilty of unfair trade practices as they have been unable to live up to their end of the agreement.
- xx. That the respondent, on 06.11.2018 illegally issued the termination letter which stated that the company is terminating the agreement, namely floor buyer's agreement as it has been facing umpteen roadblocks in the construction and development works in the various projects in its licensed land.
- xxi. That the respondent, in the termination letter accepted the fact that the above-named project is not been completed as per the provided plan and the further construction of the same is also uncertain due to which the respondent has agreed to refund the entire amount of Rs.7,72,652/- along with an interest of 6% p.a.
- xxii. That the complainant, being aggrieved from the respondent and losing all the hopes of his dream house visited the office of respondent and sent various emails in order to know the status of his refund amount but to no avail.

- xxiii. The complainants after being aggrieved by waiting for almost more than 12 years and losing all the hope from the developer, having their dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the project and also losing considerable amount and time are constrained to approach this Hon'ble Authority for redressal of their grievance.
- xxiv. In *Fortune Infrastructure & Anr. Vs. Trevor D'Lime & Ors.* (2018) 5 SCC 442, the Honorable Supreme court held that that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him along with compensation.
- xxv. That the respondents are guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- xxvi. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their units and the provisions allied to it.
- xxvii. That the complainants after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- xxviii. According to the Real Estate (Regulation and Development) Act (RERA), 2016, the buyer has rights to cancel the allotment and claim a refund in case the builder fails to deliver the flat within the stipulated time, as stated in Section 18. The refund of the amount with interest to be paid by the promoter is a positive obligation under section 18 of the Act in case of failure of the promoter to hand over possession by the due date as per

builder buyer's agreement. Therefore, this complaint should be treated as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

- xxix. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), the complainants have fulfilled his responsibilities in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, he (they) herein is not in breach of any of its terms of the agreement
- xxx. That Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale.
- xxxi. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaints 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
- xxxii. The allottee(s) does not intend to continue with the project and therefore wishes to withdraw from the project and is / are seeking refund of the entire amount together with interest as provided under section 18(1) of the Act.
- xxxiii. That it is now well established through various judgements of the Honourable Apex Court that The allottee or home buyer holds an unqualified right to seek refund of the amount with interest if the builder fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the

project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act.

- xxxiv. That the Honourable Supreme Court of India vide its land mark judgement Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.] dated November 11, 2021 held that the allottee holds the right of refund on demand as an unconditional absolute right, if the promoter fails to give possession of the unit within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, provided that the allottee wishes to withdraw from the project.
- xxxv. Thus, the unqualified right of the allottee to seek refund is not dependent on any contingencies or stipulations.
- xxxvi. That the Hon'ble Supreme Court (SC) in the case of Kolkata West International City Pvt. Ltd. v. Devasis Rudra passed a judgment stating that the homebuyers are allowed to claim refund from the defaulting builders/developers in case there is a delay in delivery of possession of homes.
- xxxvii. That the present complaint is within the prescribed period of limitation.
- xxxviii. That the cause of action arose in favour of the complainants and against the Respondent on diverse dates when the complainant was first offered the flat, subsequently when the respondent refused to pay the assured interest in account of HC notification and further due to Covid-19.
- xxxix. That the complainants have not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other Court of Law. The complainants after losing all the hope from the respondent, after being mentally tortured and also losing

considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance and Hence this Petition.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- a. Restrain the respondent from raising any fresh demand with respect to the unit allotted to the complainants.
- b. Restrain the respondent from creating any third-party rights in the said property till the time the entire amount along with interest is refunded.
- c. Restrain the respondent from cancelling the allotment till the time the entire amount paid by the complainant is refunded with interest.
- d. To order the respondent to refund the entire amount of Rs.7,72,652/- paid by the complainants along with the prescribed rate of interest @ 10% p.a.
- e. To order the respondent to pay interest on the entire amount paid by the complainant at the rate as specified under the Act, 2016.
- f. To pass any other interim relief(s) which this Hon'ble Authority thinks fit in the interest of justice and in favor of the complainants.

5. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent contested the complaint on following grounds:

- i. That the present complaint under reply is bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed.
- ii. That the complainants have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter.

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- iii. That the complainants have not approached the Ld. Authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- iv. That in the year 2009, the complainants learned about the residential colony project launched by the respondent, titled as 'Emilia Floors' in the 'Vatika India Next', situated at Sector 82, Gurgaon and approached the respondent repeatedly to further know about the details of the said project. The complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- v. That after having keen interest in the project constructed by the respondent the complainants, decided to book the independent floor titled as 'Emilia Floors', vide application form dated 05.11.2009, upon his own judgement and investigation under the construction linked payment plan. The complainants were well aware of terms and conditions of the application form and had agreed to sign without any protest and demur.
- vi. Thereafter, the respondent vide provisional allotment letter dated 22.11.2010, allotted a unit on Plot no. 38, 2nd floor, in the abovementioned project being developed by the respondent.
- vii. That on 05.01.2011, a dwelling builder buyer agreement was executed between the complainant and the respondent for the Plot no. 38, 2nd Street, 2nd Floor, E Block, Sector 83E, admeasuring 781.25 Sq. ft. Built up area, having total sale price of Rs.22,06,521/- in the said Project.
- viii. That as per the provision of clause 9.2 of the agreement, the respondent was under obligation to duly intimate the complainant for any substantial change in the unit allotted to the complainant and in case the

complainant was having any objection the complainant was also obligated to raise objections/dispute if any pertaining to the said change within 30 days from the date of written intimation indicating his rejection.

- ix. That the respondent vide letter dated 10.07.2013, informed the complainant that the numbering of the plot is changed to Plot no. 38, FF, Emilia, ST.83E.Sec.83E, and area had been also revised to 925.24 sq. ft. and as per the terms and conditions of the agreement, the complainant had to remit an amount of Rs.3,99,533.61/-, for the revised area.
- x. That the respondent herein at times has duly intimated the complainant regarding the change in the unit number and the complainant had accepted the revised area and number of the floor with increased charges without any protest and demur, as there were no objections sent from the complainant's behalf to the respondent.
- xi. Further, the complainant signed the addendum dated 04.07.2013, for the allocation of new unit no. being Plot no. 38, Emilia, FF, ST.83E-2.Sec.83E, However, at the time of execution of said addendum the complainant has also not objected/disputed to any of these changes in the present complaint also.
- xii. That the complainant herein at any stage of the said re-allotment of unit, protested or made any objections to the same. Also, the complainant has not made any facts or averments against the said re-allotment in the present complaint preferred by the complainant before the Ld. Authority.
- xiii. That it is pertinent to bring into the attention of the Ld. Authority that as of date only partial payment had been received from the complainant towards the total sale consideration of the unit and still a substantial amount of money is due and payable by the complainant.

- xiv. That the present complaint is filed by complainants on baseless and absurd grounds. It is clearly mentioned under clause 12.1 of the agreement, 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 the completion of the project.
- xv. That the complainants in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the Government or Public or Competent Authority.
- xvi. That as per the agreement executed for the said villa, the complainants were 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 the category of force majeure.
- xvii. That since starting the respondent was committed to complete the project and has invested each and every amount so received from the complainants towards the agreed total sale consideration. It is submitted that the project was hindered due to the reasons beyond the control of the respondent.
- xviii. Subsequent to the booking and the signing of the agreement, the respondent was facing umpteen roadblocks in construction and development works in projects in its licensed land 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 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.

- xix. That based on our representation, a letter no (GAIL/ND/Projects/CJPL) dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa-Gurugram-Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram.
- xx. A meeting was held between Gail and the administrator Huda on 07.07.2009 to discuss feasibility which was approved. GAIL requested the Administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana.
- xxi. That on 05.08.2009, by District Town Planner to Gail India, proposed re-routing of gas pipe line should be through green belt/corridor proposed master plan.
- xxii. Further a Civil Writ Petition No 16532 of 2009 (O&M) date of decision 21.12.2009 - petitioner Shivam Infratech Pvt. Ltd Versus Union of India & Ors., was also filed by respondent. GAIL has denied for the re-routing alterative proposal.
- xxiii. Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approx 90-100 plots and villas effect due to this layout of GAIL Pipeline.
- xxiv. Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, respondent applied for license pertaining to the said project. Meanwhile, during the pendency of granting of 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.

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xxv. Although GAIL had reduced the ROW by 10 mtrs, but since they had denied the re-routing of the GAIL corridor, respondent not only lost number of plots and Villas but had to re-design the project land that consumed money and time and hence the construction of project get delayed.

xxvi. The government of Haryana had notified Gurgaon Manesar Urban Complex 2021, vide their notification dated 05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. of Haryana accordingly. The acquisition process of sector roads was initiated by the Govt. of Haryana in the year 2010.

- Sector dividing road 81/82, 82A/82, 82/83, 83/84, 84/85;
- Section 4 of Land Acquisition Act - 11-02-2010
- Section 6 of Land Acquisition Act - 19-02-2010
- Award/Compensation - 14-06-2010

However, the acquisition of sector dividing road 84/85 was de-notified by the government in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr roads has resulted in massive delay in laying of services, thus impacting development.

xxvii. After de-notification of Sector Road as mentioned in sub para (a) of (iii) above, the government had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure "Integrated Infrastructure Development, Including Roads, Water Supply, Drainage, Electricity, Telecom etc. By virtue of said policy, the farmers have to surrender their

land (falling under acquisition) to the Govt. and have to obtain TDR certificate there from in lieu of his/her land. Thereafter, the Farmers have to sale the TDR certificate to the Developers.

- xxviii. Director Town & Country Planning, Haryana, in a joint meeting held at Gurgaon, had directed to developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers, Munadi and public notice were published in leading newspapers on 29.11.2013 but it was very difficult to buy the land falling exactly within the proposed road section. Respondent had faced issues in purchasing land under TDR policy due to the reasons such as; (i) Farmers, whosoever is interested in selling his land would like to sell his/her entire land/ownership irrespective of the thing that developer want the entire land parcel or a piece of the same, (ii) There is no recourse or timeline for farmers who do not agree to sell their lands falling within roads result delay in acquisition by developer, (iii) Farmers do not wish to follow the lengthy acquisition process as same involves surrender of land to govt., obtaining of TDR certificate, negotiation with developers, Selling of land in full or part to developers etc, and (iv) Farmer is not satisfied with the amount of sale consideration offered by the developers and demanding huge amount which is much higher than the market rate.
- xxix. Since the 24m road/sectoral plan roads function as sub-arterial roads of the development and also serve as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e water supply, Sewerage, Drainage, Electricity, Telecom etc., it is important for us to have the same in our township/project land. Two sector roads (24 mtr) are falling in

the Project land and due to non-acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc to the project land has become big challenge for us.

- xxx. Some of the local land owners including a collaborator such as Janakraj, Dhani Mamchand etc. had entered into litigation in respect of their respective land parcel against respondent/Govt. and obtained stay orders. The said litigations have resulted in delay in construction of sector road and further delay in the construction activity in the project.
- xxxi. The inability of HSVP to resolve this issue of 100 square yards is affecting the entire development of the 84 mtr. sector road which is the main access point into this GH society. Please mark the access on a map along with photos of the current status of the road.
- xxxii. That as per the clause 11.5 of the agreement, it has been agreed and undertaken by the parties that in case the respondent is not in a position to deliver or handover the possession of the project then in that case the liability of the respondent shall be limited and restricted to the refund of the amount paid by the complainants along with simple interest of 6%. Thus, the respondent issued termination letter of the said villa on 06.11.2018, and offered refund of principal amount along with 6% simple interest per annum to complainants.
- xxxiii. That the respondent was committed to complete the project and has invested each and every amount towards the construction of the same. However, due to the reasons beyond the control which are explained hereinabove and not repeated herein for the sake of brevity, it has become impossible for the respondent to fulfil the contractual obligations as promised under the agreement and the said agreement has become void in nature.

- xxxiv. That the agreement between the complainants and the respondent has been frustrated as it is impossible for the respondent to provide the possession of the villa in question which is valid and approved by the DTCP. It is submitted that the Doctrine of Frustration as enshrined in Section 56 of the Indian Contract Act 1872, which deals with cases where the performance of it has become impossible to perform due to any unavoidable reason or condition.
- xxxv. That the complaint under reply is barred by the law of limitation as the respondent herein due to the obstructions as mentioned herein has already cancelled the unit of the complainant vide termination letter dated 06.11.2018, and had offered and called upon the complainant to come ahead to take the refund of the principal amount along with simple interest of 6% p.a. but the complainant itself has failed to show up and hence the complaint under reply is barred by law of limitation.
- xxxvi. That the complainant herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Ld. Authority and in the interest of justice. Hence, the present complaint under reply, is an utter abuse of the process of law and deserve to be dismissed.
7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.
- E. Jurisdiction of the authority**
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 the Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 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 objection raised by the respondent.

F.I Objection on account of GAIL Pipeline.

12. The respondent has raised a contention that the completion of project was hindered due to passing of GAIL Pipeline through the project. However,

the plea advanced in this regard is devoid of merits. Firstly, the unit was allotted to the complainants-allottees on 22.11.2010 and the GAIL notification regarding laying of pipeline come out in the year 2009, which is prior to the allotment, and subsequently the allotted unit was cancelled due to non-availability of unit on account of passing of GAIL pipeline through the township in the year of 2018, which is after 7 years (approx.) of notification and thereafter permission for reducing ROU from 30 mtrs. to 20 mtrs. in the year 2011. However, there is no justification for the wait for such long period and it is well settled principle of law that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

- G.I. Direct the respondent to refund the entire amount of Rs.7,72,652/- paid by the complainants along with the prescribed rate of interest @ 10% p.a.**
- G.II. Direct the respondent to pay interest on the entire amount paid by the complainant at the rate as specified under the Act, 2016.**
- G.III. To pass any other interim relief(s) which this Hon'ble Authority thinks fit in the interest of justice and in favor of the complainants.**
13. On the above-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.
14. In the present case, the complainants booked a unit in the project of the respondent namely "Emilia Floors" by Vatika India Next, Gurgaon. They were allotted a unit no. HSG-014A, Floor no.1, Plot no. 38, 2nd Floor, ST, admeasuring 781.25 sq. ft. vide allotment letter dated 22.11.2010. Thereafter, a builder buyer agreement was executed between the complainant-allottees and the respondent-promoter on 05.01.2011. Further, on 24.07.2013 an addendum to the buyer's agreement was executed between both the parties, in which the unit was reallocated from unit no. HSG-014A-Floor no.1-Plot no.38, ST, to unit no. Plot no. 38, Emilia,

FF, ST, and total admeasuring area was increased from 781.25 sq. ft. to 925.23 sq. ft. and states that *"All other terms and conditions of the executed floor buyer's agreement shall remain same & binding on the parties."*

15. Furthermore, during the proceedings dated 12.09.2024, the counsel for the respondent stated that the unit of the complainants was already cancelled vide cancellation letter dated 06.11.2018, due to reasons beyond the control of the company. Now the question arises before the Authority is that whether the cancellation letter dated 06.11.2018 is valid or not, in the eyes of law?
16. On consideration of the documents, the Authority observes that the cancellation letter dated 06.11.2018 was issued due to reasons beyond the control of the company. However, the same was returned to the respondent being unserved to the complainants, it is an admitted fact that the complainant has made the total payment of Rs.7,72,652/- which is 30% of the total sale consideration Rs.26,38,259/- (as per 925.23 sq. ft.) and no further demand was raised by the respondent and the cancellation letter was issued due to reasons beyond the control of the company after the lapsed period of 4 years from the due date of possession.
17. Further, the GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide letter dated 04.03.2011 as submitted by respondent in his reply. GAIL notification was prior to the execution of buyer's agreement dated 05.01.2011 and GAIL granted permission for reducing ROU vide letter dated 04.03.2011 was prior to the addendum to the agreement dated 24.07.2013. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have to offer alternative unit to the complainants failing which the respondent has to return the amount received from the complainant. The

respondent/promoter has failed to develop the unit and cancelled the unit on account of its own fault/omission. This, inconsistency casts doubt on the respondent reasoning for cancelling the unit.

18. Additionally, as per the cancellation letter dated 06.11.2018, the respondent has offered the complainants to refund the principal amount in respect of the booking along with interest of 6% p.a. Furthermore, as per the documents observes the Authority that the termination letter dated 06.11.2018 remains unserved and thereafter the information w.r.t. termination of the allotted was provided through mail on 07.01.2019. Moreover, the respondent has also failed to provide the document whether the occupation certificate/ Part completion certificate has been obtained and has also failed to return the amount received by it against the allotted unit.
19. In view of the reasons quoted above and documents placed on record, the authority is of the view that the cancellation of the allotment letter dated 06.11.2018 is not valid in the eyes of law.
20. In the present complaint, the complainants intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-
in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

21. Clause 10.1 of the buyer's agreement dated 05.01.2011 provides the time period of handing over possession and the same is reproduced below:

10.1 Schedule for possession of the said independent dwelling unit

*.....
"That the company based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/said independent dwelling unit within a period of three (3) years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause (11.1), (11.2), (11.3) and Clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues.....*

(Emphasis Supplied)"

22. As per clause 10.1 of the builder buyer agreement dated 05.01.2011 the unit was to be offered within a period of 3 years to the complainant-allottee. As per clause 10.1 of the builder buyer agreement the due date of possession comes out to be 05.01.2014. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

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

23. It has come on record that against the sale consideration of Rs.26,38,259/- , the complainants have paid an amount of Rs.7,72,652/- to the

respondent-promoter. However, the complainants contended that the due date of possession has been lapsed and No occupation certificate has been obtained against the said project by the respondent and subsequently, in the year 2018, the respondent has cancelled the allotment of the complainants by submitting that the unit was not available due to passing of GAIL pipeline through the project and is unable to give deliver the prooject. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

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

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or

unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

25. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
26. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

27. 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.

28. 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., 12.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

29. The definition of term "interest" as defined under section 2(z)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. 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—

... (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, ...

30. Therefore, The Authority hereby directs the promoter to return the amount received by him i.e., Rs.7,72,652/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

G.IV. Restrain the respondent from raising any fresh demand with respect to the unit allotted to the complainants.

31. In view of the findings detailed above on issues no.1, the above said relief stands redundant as complete amount paid by the complainants is being refunded back.

G.V. Restrain the respondent from creating any third-party rights in the said property till the time the entire amount along with interest is refunded.

G.VI. Restrain the respondent from cancelling the allotment till the time the entire amount paid by the complainant is refunded with interest.

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32. On the above-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.
33. Due to non-availability of allotted unit on account of passing of GAIL corridor, the above said relief stands redundant.

H. Directions of the authority

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

- a. The respondent/promoter is directed to refund the entire amount i.e., Rs.7,72,652/- received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
- b. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to the registry.

Dated: 12.09.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram