

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

<b>Complaint no.:</b>	<b>1507 of 2023</b>
<b>Date of filing:</b>	<b>06.04.2023</b>
<b>Date of decision:</b>	<b>12.09.2024</b>

1. Ajay Kumar Mahna
2. Renu Mahna

**Both R/o:** 4D/GH-10, Sunder Apartment, Paschim Vihar, West Delhi, New Delhi-110087.

**Complainants**

**Versus**

M/s Vatika Ltd.

**Office address:** Vatika Triangle, 4<sup>th</sup> Floor, Sushant Lok Phase-I, Block-A, Mehrauli Gurgaon Road, Gurugram, Haryana-122002.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Ms Surbhi Garg Bhardwaj (Advocate)

Shri Venket Rao (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 complainants, 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	"Premium Floors" by Vatika India Next at Sector-81,82, 82A, 83, 84 & 85, Gurugram.
2.	Project area	393.358 acres
3.	Nature of Project	Residential Plotted Colony
4.	DTCP license no. and validity status	1. 113 of 2008 dated 01.06.2008 Valid upto 31.05.2018 2. 71 of 2010 dated 15.09.2010 Valid upto 14.09.2018 3. 62 of 2011 dated 02.07.2011 Valid upto 01.07.2024 4. 76 of 2011 dated 07.09.2011 Valid upto 06.09.2017
5.	Name of Licensee	M/s Vatika Ltd.
6.	Rera registered/ not registered and validity status	<b>Not Registered</b>
7.	Unit No.	29/SF/360/Sector Rd-1/V/N (page 21 of complaint)
8.	Unit area admeasuring (Super Area)	360 sq. yds. (page 34 of complaint)
9.	Application form	30.12.2011 (page 24 of reply)
10.	Allotment letter	02.04.2012 (page 21 of complaint)
11.	Date of buyer's agreement	25.07.2012 (page 31 of complaint)
12.	Addendum to the buyer's agreement (Addition of terms regarding to home loan)	15.06.2013 (page 40 of reply)

13.	Possession clause	<b>15. Schedule for Possession of the said apartment.</b> <i>"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said house/ said residential floor within a period of 3 (three) years from the date of execution of this agreement unless there shall be delay pr there shall be failure due to reasons mentioned in other clauses herein or due to failure of allottee(s) to pay in time the price of the said residential floor along with all other charges and sues in accordance with the schedule of payments given in annexure-II or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this agreement."</i> <b>(Emphases Supplied)</b>
14.	Due date of possession	25.07.2015 (Calculated from the date of execution of buyer's agreement)
15.	Total Sale Consideration	Rs.89,69,972/- (page 34 of complaint)
16.	Amount paid s	Rs.25,80,867/- (out of which Rs.12,10,766/- released by Indiabulls housing finance limited) (as per SOA dated 03.01.2024 at page 44 of reply)
17.	Tripartite Agreement	29.06.2012 (page 63 of complaint)
18.	Permission to Mortgage	11.07.2012 (page 68 of complaint)
19.	Mail by allottee (regarding acceptance of Offer of buy-back of unit under subvention scheme)	09.07.2015 (page 70 of complaint)

20.	Mail by respondent (regarding refund of under buy-back scheme)	20.07.2015 (page 47 of reply)
21.	Mail by respondent (regarding re-allotment option)	23.12.2019, 25.02.2020 & 26.08.2020 (page 48-50 of reply)
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered
24.	Pre-EMI's paid by respondent	Rs.2,74,706/- (As stated by respondent during proceedings dated 25.07.2024)
25.	Payment receipts dated 11.03.2016 for loan closer (issued by Indiabulls Housing Finance Limited)	Rs.12,25,285/- (As per payment receipts provided with Written submissions)

**B. Facts of the complaints:**

3. The complainants have made the following submissions in the complaint:

- i. That the complainants, Mr. Ajay Kumar Mahna and Mrs. Renu Mahna are respectable and law-abiding citizens currently residing at 4D/GH-10, Sunder Apartment, Paschim Vihar, West Delhi, New Delhi-110087.
- ii. That the complainants are allottees within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The respondent, M/s Vatika Limited 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 somewhere around 2011, the respondent approached the complainants through its representatives and offered to buy a independent residential floor in their newly launched project namely, Vatika Premium Floors' located in the township and residential plotted colony of the respondent namely 'Vatika India Next' at Sector 82, Gurugram. The representatives of the respondent company told the complainants about the moonshine reputation of the company thereby assuring that the project in question was being developed only after taking all due approvals and government permissions and that the

project aims at providing exclusive independent premium residential floors featuring highest design standards.

- iv. That being caught in false assurances and promises of the respondent and relying on the goodwill of the respondent company, the complainants booked an independent residential unit/floor in the said project by filling the application form and by paying an amount of Rs.1,50,000/- vide instrument bearing no. 000002 dated 30.12.2011 and an amount of Rs.2,72,566/- vide instrument bearing no. 000003 dated 07.01.2012, towards the booking of said unit.
- v. That thereafter, vide allotment letter dated 02.04.2012, the respondent allotted an independent residential floor bearing no. 29/SF/360/Sector Rd-1/V/N, located on 2nd floor in Plot bearing no. 29, Type-3BR admeasuring super area of 1365.04 sq. ft. to be constructed on a plot of land measuring 360 sq. yards, for BSP of Rs.82,41,720/- and total cost of Rs.89,69,972/-. This was followed by further payments in accordance with the demands raised by the respondent company.
- vi. That after almost 7 months from the date of booking, on 25.07.2012, a flat buyer's agreement was executed between the complainants and the Respondent for the unit in question.
- vii. That as per clause 15 of the agreement, the respondent had undertaken to complete the construction and handover possession within a period of 3 years from the date of execution of agreement, i.e. by 25.07.2015. However, the respondent miserably failed in handing over possession of the unit in question till said due date and even after that till date.
- viii. That the booking was made under home loan linked payment plan under subvention scheme wherein the respondent undertook to make the Pre-EMIs to the financial institution from which the complainants would take financial

assistance. Accordingly, the complainants applied home loan and the same was approved by Indiabulls Housing Finance Limited (IHFL) and a tripartite agreement dated 29.06.2012 was executed between the parties, Rs.71,21,373/- being the loan sanction amount.

- ix. That thereafter, vide demand letter dated 09.05.2012, the respondent raised demand of third instalment. However, the complainants pointed out that as per the payment plan annexed with the tripartite agreement, said payment was due upon 90 days of booking or commencement of earth work, whichever later and earth work had not begun at the construction site. However, the respondent said that it was due only upon completion of 90 days of booking and any delay in payment would attract penal interest @ 18% per annum. Having no option after said statement of the respondent and to avoid any imposition of penal interest, the complainants asked IHFL to disburse the amount. Accordingly, an amount of Rs.12,08,266/- was disbursed by IHFL followed by a payment of Rs.1,02,400/- by the complainants towards shortfall.
- x. That till date, the complainants have paid a total sum of Rs.25,80,867/- towards the aforesaid residential flat in the project from 2011 till date as and when demanded by the respondent.
- xi. That post execution of the agreement, the complainants patiently waited for the respondent to handover possession in accordance with agreement as well as the representations made at the time of booking. However, the respondent even did not raise any payment demand. To this, the complainants checked the construction status and were shocked to be informed by the respondent's site office that no construction was commenced for the unit in question. The complainants thereupon immediately approached the corporate office of the respondent company in order to inquire about the non-commencement of

construction work and expected date of handover, wherein they were informed that there was some technical problem that would be resolved soon and construction would be complete in time.

- xii. That believing the representations of the representatives of the respondent, the complainants patiently waited for handover intimation. However, to their surprise, no payment demand was raised. Accordingly, the complainants again visited the respondent's office on 29.06.2015 only to find out that construction had still not commenced and there was no scope for the same in future as the land was not cleared with government sanctions and approvals and there was some forced occupation over the land and it could not be committed as to when construction could commence for said unit. This left the complainants devastated as not only they were informed at the time of booking that all government sanctions and approvals are in place for the unit but the fact of land not being cleared and being occupied by someone else was never informed to them by the respondent. It was the respondent who was duty bound firstly to not have lied regarding the approvals but to also keep the complainants informed regarding the status of construction. Rather, it was the complainants who had to pay visit to the project site and respondent's office time and again in order to inquire about the construction status.
- xiii. That thereafter, the complainants requested the respondent to either return back their money or give an alternate unit in the same project. However, the representatives of the respondent told that no alternate unit for the project in question was available. Further, Mr. Dhiraj Kumar, relationship manager-client Services offered buy-back for said unit at a price to cover interest @12% per annum. To this, the complainants agreed to said buy-back option and gave their nod to said offer vide e-mail dated 09.07.2015. However, again to the utter shock of the complainants, no response was given by the respondent to



said mail and upon visiting the Respondent's office again, vague response was given without any concrete commitment as to buy-back or refund of the amount paid by the complainants. Later, the representatives of the respondent promised to give an alternate possession but again all in vain.

- xiv. That thereafter, time and again, the complainants kept visiting the respondent's office and contacting by way of calls and painstakingly pursue them to refund back their money and also highlighting their age and that it is their hard-earned money and life savings that has been retained by the respondent but all in vain. To add to the misery of the complainants, IHFL started raising EMI demands from the complainants thereby furthering the harassment being meted out to them. However, the respondent simply turned deaf ears to the innumerable requests of the complainants who had to pay the entire Pre-EMI amount that was payable by the Respondent and eventually in order to close the loan, entire loan amount from their own pocket and life savings.
- xv. That throughout the period from booking till execution of agreement and even after that, the complainants showed utmost faith in the Respondent company and despite few lapses on the latter's part, they kept making payment as and when demanded. However, the respondent miserably failed in sticking to their commitments. Rather, the respondent defrauded the complainants by inviting applications and taking money for a project/unit for which the requisite government approvals were also not in place.
- xvi. That the aforesaid chain of events clearly highlight the ill will and misconduct of the respondent who defrauded the complainants of their hard earned money and cheated them by causing wrongful loss to them. The respondent played fraud upon the complainants from day one and befooled them despite knowing that the land in question was subject to litigation. Had the



respondent been virtuous on their part, at least some construction work would have been carried upon the site.

- xvii. That the complainants booked the unit with high hopes and dreams that they will be able to live in the same along with their family and give them a safe and comfortable environment to live in. However, the respondent simply refrained from adhering to his commitments, though the respondent never failed in raising payment demands irrespective of the pace of construction, but when it came to completing construction and handing over possession, they failed miserably. The respondent is accordingly liable to be heavily penalized for the same.
- xviii. That the respondent had made representations and tall claims that the project will be completed on time. On the contrary, the respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the complainants for so many years thereby causing wrongful loss to the complainants and wrongful gain to the Respondent.
- xix. That after waiting indefatigably for 12 years from the date of booking despite paying all the instalment's as and when demanded by the Respondent and after chasing the respondent for last 9 years, the complainants have gone through tremendous adversity and harassment. The present complaint has been filed in order to seek refund of the full amount paid by the complainants (inclusive of PEMLI payment made by the complainant which was to be paid by the Respondent) along with interest at the prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of payments till the date of actual receipt of refund.
- xx. That as per section 11 (4) of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to abide by the terms and agreement of the sale.

- xxi. That the flat buyer's agreement clearly specifies that like time is of essence for the buyer, similarly, it is of essence for the developer/builder as well.
- xxii. That as per section 18 of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to refund back the amount paid by the allottee in case of failure in handing over of such possession as per the terms and agreement of the sale.
- xxiii. That accordingly, the complainants are entitled to below mentioned reliefs in accordance with The Real Estate (Regulation and Development) Act, 2016 read with Haryana Real Estate (Regulation and Development) Rules, 2017. The complainants also reserve their right to file a separate complaint seeking compensation from the respondent.

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

4. The complainants has sought following relief(s):
- a. Direct the respondent to refund the amount paid i.e., Rs.25,80,867/- along with interest from the date of payment till the date of actual receipt.
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 has contested the complaint on the following submission:
- i. That the present complaint has been preferred by the complainants before the Ld. Haryana Real Estate Regulatory Authority, under section 31 of Act, 2016, without any concrete or credible contentions and hence liable to be dismissed as it is filed without any cause of action.
- ii. That the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains. That the complaint herein has failed to provide correct/complete facts and the

same are now being reproduced hereunder for necessary and proper adjudication of the present matter.

- iii. That the complainants have not approached the Ld. Authority with clean hands and has suppressed/concealed the relevant facts with the intent to mislead this Ld. Authority through the representation of the one-sided facts.
- iv. That around 2011, the complainants came to know about the commercial project titled '*Premium Floors*', situated at Sector 82, Vatika India Next, Gurugram. After being aware of the project, the complainants approached the respondent, to know about the specifications and veracity of the project.
- v. The complainants after enquiring and gaining all information about the project, on its own will, vide application form dated 30.12.2011, booked a unit, admeasuring 360 sq. yds., and paid an amount of Rs.1,50,000/-, for further registration.
- vi. That the respondent, on 13.01.2012, as per the payment schedule opted by complainants, sent a letter to complainants, intimating complainants that the payment of instalment no. II, amounting to Rs.8,23,919/-, is due within 45 days of booking against the priority no. 360/SF/082 and was payable on or before 29.01.2012.
- vii. The complainants even after being requested made the payment after a delay of 2 months, of Rs.8,45,135/-, against the allotted unit. Thereafter, the respondent vide allotment letter dated 02.04.2012, allotted a unit bearing no. 29, 2<sup>nd</sup> Floor, Street Rd-1, admeasuring 360 sq. yds.
- viii. That the respondent, on 09.05.2012, as per the payment schedule opted by complainants, sent a letter to complainants, intimating complainants that the payment of instalment no. III, amounting to Rs.13,73,100/-, was due on 29.03.2012, i.e., within 90 days of booking against the priority no.

360/SF/082 and was payable on or before 19.05.2012 but the same was again delayed by the complainant.

- ix. That on 29.06.2012, a tripartite agreement was executed between the complainants, respondent and Indiabulls Housing Finance Ltd. As per the tripartite agreement, the respondent and the complainants share a joint liability to pay the Pre-EMI interest on the loan amount. Therefore, the complainants were also liable to pay the same.
- x. That on 25.07.2012, a builder buyer agreement, was executed between the complainant and the respondent with respect to the allotted unit, for total sale consideration of Rs.89,69,972/- in the project in question.
- xi. That the complainants herein were well aware of the terms of the agreement and had agreed to sign upon the same upon own judgment and investigation post being satisfied with each and every terms of the agreement. That as per *Clause 15 of the Agreement*, so signed and acknowledged the respondent herein provided and estimated time period of 3 (Three) years for completing the construction of the project and the same was subject to various hindrances in midway of construction of the project which are purely beyond the control of the respondent. That the agreement for the said unit was signed by complainants on 25.07.2012, and as per the agreement so signed and acknowledged the complainants were aware of the fact that the respondent was obligated to handover the possession of the unit by 25.07.2015, subject to *force majeure*.
- xii. That the provision of *Clause 2 of the Agreement* the complainants herein have understood and agreed that out of the paid amount 10% of the total sale consideration plus brokerage shall be considered as earnest money. As per the said term the respondent was well within its rights to forfeit the earnest

money in the event of failure on account of the complainants in terms of the agreement.

- xiii. That then an addendum to the agreement, dated 15.06.2013 was signed between the complainants and the respondent, wherein the respondent and the complainants agreed that after sanction of loan, the payments shall be received from the IHFL Ltd. to the respondent, and the respondent shall pay an interest till 24 months from the date of first disbursement of the loan amount.
- xiv. That the clause 773 of the agreement the complainants have understood and agreed that if upon the expiry of the 24 months the agreement is cancelled then in such case the developer i.e., the respondent beside the earnest money shall be entitled to deduct the interest paid by it to the IHFL.
- xv. That the complainants wanted to withdraw from the project and has requested for refund then in view of the terms of the agreement and the addendum executed thereafter, the respondent herein shall be entitled to deduct first the earnest money amount and the pre-EMI interest paid on behalf of the complainants from the amount paid by the complainants and not the.
- xvi. That as per clause 12 of the agreement, the time is the agreement with respect to the complainants' obligations to pay the instalments against the unit in accordance with the schedule of payments, opted by the complainants. It can be clearly seen from the above contentions that the complainants had failed in performing its *sole responsibility* of paying the instalments on time, even after receiving the reminders from the respondent for the same.
- xvii. That the respondent vide letter dated 08.07.2013, intimated the complainants regarding the outstanding instalment of Rs.1,84,157/-, due against the unit in



question and requested the complainants to pay the same within 15 days of this letter but, the complainants failed to do so.

- xviii. The complainants herein have only paid an amount of Rs.25,80,867/- against the total sale consideration of Rs. 89,67,972/- and still a substantial amount was due and payable against the allotment of the complainants.
- xix. That the complainants in the beginning of July, 2015, demanded for refund of the paid amount, which was before the due possession date as per the clause 15 of the agreement. After receiving the requests for refund of the paid amount from the complainants, respondent approved their request and called upon the complainants to submit the documents for refund vide email dated 20-07-2015. However, the complainant failed to submit the documents with the respondent.
- xx. That the complainants herein have raised the request for refund at the *pre-mature* stage before the due date of possession and hence as per the settled law the complainants shall be liable to pay the earnest money as per the agreement. Thereafter, the respondent conveyed the complainants to visit its office for further considering the request of the complainants but the complainants kept on delaying. It was also intimated to the complainants that to initiate refund the complainants shall be required to return the original documents but the complainants kept on moving the date further for signing of documents.
- xxi. That the complainant has concealed that fact that vide email dated 23.12.2019, 25.02.2020 and 26.08.2020 the complainant was offered several ready to move in units in the same price, same category and in same sector by the respondent.
- xxii. That the complainants herein voluntarily have approached the respondent to withdraw from the project before the due date of the possession and as per



The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, the complainants dated 05.12.2018, the complainants are liable to pay the earnest money as agreed under the agreement.

- xxiii. That as per the provisions of the earnest money regulation notified by the Ld. Authority on 05.12.2018, the respondent herein is entitled to deduct 10% of the total sale consideration.
- xxiv. That according to Section 18 and 19 of the RERA Act, 2016, the complainants are entitled to refund with interest, if the possession is delayed by the promoter/builder. Herein, the complainants have demanded the refund before the due date of possession i.e., 25.07.2015. Therefore, in this matter there is no period of delay in possession as the refund was already demanded before the possession date. The complainants herein, shall not be entitled to refund along with interest, as there was no waiting period of possession for the complainants. Even if refund is allowed, then the same shall be allowed without interest, as the complainants have already demanded for refund before the due possession.
- xxv. That the complaint under reply is barred by the law of limitation as the complainants herein failed to return the original documents to enable the respondent to initiate the *pre-mature* request of the complainants for refund on 06.07.2015. However, the complainant herein after lapse of almost eight years has now approached this Ld. Authority in the year 2023. Hence, the claim of the complainants is liable to be dismissed for this ground alone.
- xxvi. That in accordance with the addendum the respondent was required to pay the pre-EMI till 24 months from the date of first disbursement of the loan amount. It was also agreed that if the complainants within 24 months opted



to discontinue with the project, then the respondent shall have no obligation to pay the further interest.

- xxvii. The respondent in lieu of the addendum had made a payment of Rs.2,74,706/- (approx.) as Pre-EMI, on behalf of the complainants which need to be reconciliation with the financial institution at a later stage. It is pertinent to note that this Pre-EMI interest payment is on the loan obtained by the complainants for itself, i.e., to make timely payments against the unit purchased by the complainants. As the Pre-EMI interest is paid on behalf of the complainants by the respondent, then such amount shall be adjusted/deducted while allowing the amount of refund to the complainants.
- xxviii. That in the interest of justice in case the Ld. Authority allows the relief so prayed that should be subject to the deduction of the earnest money amount which the Ld. Authority has upheld in many cases and the amount of pre-EMI, which the respondent has paid on behalf of the complainants.
- xxix. That to the shock of the respondent, the complainants have filed the present complaint before the Ld. Authority. It is further submitted that if the complainants is allowed to obtain refund from the respondent, then it shall be allowed after making necessary deductions such as earnest money, brokerage etc, as the complainants have send the request for withdrawal from project before the due possession date.
- xxx. That in case the relief of refund is allowed then the same shall be subject to the necessary deductions which the complainants have agreed under the agreement.
- xxxi. That claim of the complainant in the complaint under reply is also barred by the law of limitation as the complainant after seeking to withdraw from the project in the year 2015, has now today approached this Ld. Authority in the

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year 2023, after lapse of almost 8 years and thus the same is liable to be dismissed for this ground alone.

xxxii. That the complainants herein, have suppressed the above stated facts and has 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 complainants are sustainable before this Ld. Authority and in the interest of justice.

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. Written submission made by the complainants.**

8. The complainants have filed the written submission on 04.09.2024 and the same are taken on record.

- The counsel for the complainants submits that on 11.03.2016, the complainants had already made a payment of Rs.12,25,285/- to Indiabulls Housing Finance Limited for closer of loan and copy of two payment receipts issued by Indiabulls Housing Finance Limited are already annexed with the written submissions.
- The counsel for the complainants submits the copy of What's App chat in which the complainants declined to take possession of an alternate unit offered as not suitable for them.

**F. Jurisdiction of the authority**

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

**F.1 Territorial jurisdiction**

10. 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.

**F. II Subject matter jurisdiction**

11. 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.*

12. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**G.I. Direct the respondent to refund the amount paid i.e., Rs.25,80,867/- along with interest from the date of payment till the date of actual receipt.**

13. On consideration of documents and submission made by both the parties, the Authority observes that the complainants booked a unit in the project of the respondent namely "Vatika Premium Floors" by Vatika India Next, Gurgaon. The complainants were allotted a unit no. 29/SF/360/SectorRd-1/V/N admeasuring 360 sq. yds. vide allotment letter dated 02.04.2012. Thereafter on 29.06.2012, a tripartite agreement was executed between the complainants,

respondent and Indiabulls Housing Finance Limited and complainants were approved a loan of Rs.71,21,373/- against the allotted unit. Further, a builder buyer agreement was executed between the complainants and respondent on 25.07.2012 for total sale consideration of Rs.89,69,972/- out of which the complainants and financial institution paid an amount of Rs.25,80,867/-. Furthermore on 15.06.2013, an addendum to the buyer's agreement was executed between both the parties, in which the terms and conditions relating to subvention scheme were agreed between complainants and respondent.

14. Thereafter, vide email dated 09.07.2015 the complainants accepted the option of buy-back scheme. The relevant para of the said email is extracted below for ready reference:

*"... that under the given circumstances the Vatika Limited will buy-back the unit at a price to cover interest @12% on the amount paid by me subject to my consent. 6. After considering all the options available to me, **I hereby give my consent, under compelling circumstances, to accept the offer for buy-back of the said unit by Vatika Limited at a price to cover interest @12% on the amount paid by me till date.**"*

Further, the respondent in its reply pleaded that the complainants made a request for refund vide email dated 09.07.2015 subsequent to which the respondent vide email dated 20.07.2015 accepted the request of the complainants and agreed to refund the amount received along with interest @12% via cheque within 3 months. However, the Authority observes that email dated 09.07.2015 indicates that the complainants are accepting the offer of buy-back of the unit allotted instead of seeking refund of the paid-up amount as pleaded by the respondent.

15. Furthermore, after lapse of 4 years the respondent has sent various emails dated 23.12.2019, 25.02.2020 and 26.08.2020 providing the complainants an option for re-allotment of ready to move in unit of same category and same price in same sector. However, the respondent failed to produce any relevant document where the complainants accepted the said offer for opting

alternative unit. Moreover, no refund has been initiated by the respondent till date.

16. Thereafter the complainants filed the present complainants seeking refund of the paid-up amount on account of failure of the respondent to handover the possession of the subject unit within agreed timeframe.
17. Herein, the complainants intends to withdraw from the project and are seeking refund of the amount paid by them 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...*

***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)***

18. Clause 15 of the buyer's agreement dated 25.07.2010 provides the time period of handing over possession and the same is reproduced below:

***15 Schedule for possession of the said independent dwelling unit***

*"That the developer 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 other clauses herein 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)"***

19. As per clause 15 of the builder buyer agreement dated 25.07.2012 the unit was to be offered within a period of 3 years to the complainants-allottees. As per clause 15 of the builder buyer agreement the due date of possession comes out

to be 25.07.2015. 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....."*

20. It has come on record that against the sale consideration of Rs.89,69,972/-, the complainants have paid an amount of Rs.25,80,867/- 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 till date. 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."*

21. 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.
22. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to take possession of the unit and they are well within right to seek refund of the paid-up amount.
23. 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.
24. **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 subsection (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."

25. 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.
26. 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%.
27. The definition of term "interest" as defined under section 2(za)(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, ...*
28. Therefore, The authority hereby directs the promoter to return the amount received by him i.e., Rs.25,80,867/- 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*.



29. Moreover, vide written submission dated 04.09.2024, the counsel for the complainants submitted the copy of receipts dated 11.03.2016 of payment made to Indiabulls Housing Finance Limited for loan closure in 2016.
30. During the proceedings dated 25.07.2024, the respondent submits that the respondent has already paid an amount of Rs.2,74,706/- towards pre-EMI's interest.

**H. Directions of the authority**

31. 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):
- The respondent/promoter is directed to refund the entire amount i.e., Rs.25,80,867/- 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.
  - The amount of Pre-EMI's of Rs.2,74,706/- paid by the respondent shall be adjusted/deducted from the payable amount.
  - 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.
32. Complaint stands disposed of.
33. File be consigned to the registry.

Dated: 12.09.2024

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