

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

Complaint no.	762 of 2020
Date of filing	12.02.2020
Date of first hearing	03.03.2020
Order reserved on	04.09.2024

Bhupander Narain Gupta (Deceased) through his LR
Ajay Narain Gupta
R/o :- House no. 19, Bahubali Enclave, Karkardooma,
New Delhi- 110092

Complainant

Versus

1. M/s Vatika Sovereign Park Private Limited
Regd. Office at:- Flat no. 621A, 6th floor, Devika
Towers 6, Nehru Place, New Delhi

2. M/s Vatika Limited
Regd. Office at:- 7th floor, Vatika Triangle, Mehrauli-
Gurgaon Road, Sushant Lok Phase-I, Gurugram-
122002

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Arpita (Advocate)
Mr. Venket Rao and Mr. Pankaj Chandola (Advocates)

**Complainants
Respondent**

ORDER

1. This complaint has been filed by the complainants/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) rules, 2017 (in short, the rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

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

A. Unit and project related details.

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

Sr. No.	Particulars	Details
1.	Name of the project	Sovereign Park, Sector- 99, Gurgaon, Haryana.
2.	Project area	10.43125 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	119 of 2012 dated 06.12.2012
	Validity of license	05.12.2016
5.	Name of the licensee	M/s Planet Earthstate Pvt. Ltd. & others
6.	RERA registered/not registered	Registered vide no. 281 of 2017 dated 09.10.2017 area admeasuring 91345.535 sq. mtr.
	Valid up to	31.03.2021
7.	Date of booking	15.01.2013 (as alleged by complainant at page 5 of complaint and agreed by respondent on page 4 of reply)
8.	Unit details	1102, floor 11, building A (page 29 of complaint)
9.	Unit area admeasuring	2600 sq. ft (page 29 of complaint)
10.	Date of execution of the builder buyer agreement	Not executed
11.	Due date of possession	15.01.2016 (Deemed to be 3 years from the date of booking in view of "Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors." (12.03.2018 - SC); MANU/SC/0253/2018)
12.	Total sale price	Rs.2,27,54,750/- (inclusive of BSP, PLC, EDC/IDC, IFMSD) (as per SOA dated 18.03.2015 on page 23 of complaint)

	Basic sale price	Rs.1,98,47,750/- (as per SOA dated 18.03.2015 on page 23 of complaint)
13.	Amount paid by the complainant	Rs. 38,30,925.48/- (as per SOA dated 18.03.2015 page 25 of complaint)
14.	Occupation certificate	Not received
15.	Offer of possession	Not offered
16.	Termination cum refund letter	01.07.2015 Amount forfeited- Rs.31,55,498/- Amount to be refunded- Rs.6,50,484/- (page 90 of complaint)

Note: The original allottee/complainant "Mr. Bhupander Narain Gupta" met his demise on 20.04.2021 i.e., during the pendency of the complaint. Therefore, an application dated 07.06.2023 has been filed by the learned counsel for the complainant for impleadment of legal heir of the deceased original allottee/complainant "Mr. Ajay Narain Gupta." Same was allowed by the Authority vide its orders dated 10.01.2024 as the counsel for the respondent had no objection to the same.

B. Facts of the complaint

3. The complainant has made the following submissions vide his present complaint dated 12.02.2020 and vide filing CRA for refund dated 18.04.2022:
 - a) That the complainant was approached by the authorized representative of the respondent who through their lucrative brochure claimed the respondent to be one of the finest developers and the leading real estate developers in the country. There are fraudulent representations, and incorrect and false statements in the brochure and these statements were only to allure the complainant and other customers to invest in their project.
 - b) That the complainant believing on such false representations, assurances, warranties and claims at the pretext of the respondent through its authorized representative, booked a unit for the total sale consideration of Rs. 2,27,54,750/- in the said project on 15.01.2013 and accordingly paid an amount of Rs. 10,00,000/- vide cheque no. 266173 drawn on Bank of India as a booking amount.

- c) That the complainant believing the respondent made payments at different occasions from 15.01.2013 to 03.12.2013 as per the payment schedule and towards the sale consideration of the unit.
- d) That the builder buyer agreement was not executed by the respondent. As per Clause 13 of this agreement, the respondent promised to deliver the possession of the unit within 48 months from the date of execution of this agreement. So accordingly, the due date for the delivery of possession comes out to be in 2019 but the respondent has failed in fulfilling its obligation as per the agreement and till date, the possession has not been handed over to the complainant which is a clear violation of the agreement.
- e) That the complainant after the investment of the money in the project of the respondent realized that all the assurances and representations made by the respondent are fraudulent. The complainant on investigating came to know that the project of the respondent is at halt and no tenable progress at the work site was observed.
- f) That the construction of the project is at a stage where it would be impossible for the respondent to complete the project in next two years also. The complainant tried to contact the respondent time and again to seek clarifications about the stage-wise construction and completion of the project, but all went in vain as there was no response received from the respondent.
- g) That till date the complainant has paid a sum of Rs.38,30,925.98/- which is much more than construction done at the site as per the construction-linked payment plan. Instead of redressing the grievances of the complainant, the demands were raised by the respondent for the further payments without even reaching to that particular stage of the construction.
- h) That besides these illegal demands, the complainant made all the payments of the amount due, timely on or before the due date. But now, as there is no

response to the queries of the complainant from the respondent, the complainant does not find it wise to transfer lakhs and lakhs of amount without the tenable progress of the project or positive answers from the respondent and hence has stopped the further payments.

- i) The complainant on various occasions made personal visits to the respondent's office but always returned bare-handed without any solutions or reliefs. Further, the respondent being in a dominant position, sent him the termination cum refund letter dated 01.07.2015, whereby he deducted an amount of Rs.31,55,498.50/- from the total paid amount of Rs.38,30,925.48/- illegally for no fault of the complainants. The complainants in response to this letter made several requests to the respondents to refund their entire paid amount but all went in vain as the words/requests of the complainant fell on the deaf ears of the respondent.
- j) That the respondent no. 2 misrepresented that they are license holders for the project and fraudulently showed that they are license holders of license no. 119 of 2012 in an advertisement of Delhi editions of "Hindustan" (Hindi) dated 25.09.2014 and "Times of India" dated 28.09.2014.
- k) That respondent no. 2 was not authorized to give any advertisement for the sale of property as it was not the license holder as per the Haryana Development and Regulation of Urban Areas act, 1975 and that the said license was issued in favour of Plant Earth Estate Private Limited.
- l) That respondent no. 2 misrepresented and cheated the complainant and all this came to the knowledge of the complainant vide the replies of RTI applications made to various officials. Moreover, the DTCP has not issued any sanction to Plant Earth for giving permission to respondent no. 2 to sell any property and that respondent no. 2 has deliberately concealed the facts.
- m) That the complainant being aggrieved by the actions of the respondent, decides to demand the refund of his paid amount and get the compensation

for the same as the respondent has gravely violated Section 18(1) of the RERA Act.

- n) That the respondent collected the monies from the complainant prior to obtaining License from Town & Country Planning Department, Haryana. It has also come to the knowledge of the complainant that requisite approvals from the authorities have also not been taken by respondent concerned, which further strengthens the belief of the complainant that it has committed fraud on public at large by alluring them towards project, in question which is completely wrong and illegal and violation of the Section 11(3) of the Act.
- o) That on account of inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondent and the complainant had rightly claimed to withdraw from the project and claimed total refund of amount along with other interest as per the Act, 2016.

C. Additional submissions on behalf of the complainant:

4. The complainant has made the following submissions vide its additional submissions dated 09.09.2022 and further written submissions dated 28.08.2024:
- a) That respondent no. 2 had booked the unit of the complainant, and it came to the knowledge of the complainant that respondent no. 2 never had the license to develop/advertise/market/sell the project "Sovereign Park."
- b) That license no. 119 of 2012 dated 06.12.2012 and license no. 65 of 2013 dated 20.07.2013 was issued by Director, Town and Country Planning Department, Haryana in favour of Planet Estates Pvt. Ltd.
- c) That respondent no. 2 sent the builder buyer agreement only after about one-and-half-year of booking. That it is clearly mentioned in the BBA that Vatika Ltd. (Respondent no.2 herein) is the "Developer" of the project. The relevant para of the BBA is reiterated below:

"VATIKA LTD, a company registered under the Companies Act, 1956 having its head corporate office at 7th Floor, 'Vatika Triangle', Mehrauli-Gurgaon Road, Sushant Lok Phase-1, Gurgaon-122002 (hereinafter referred to as

the 'Developer' which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) through its duly authorised signatory Sh. of the _____ FIRST PART."

- d) That even the account statement issued by respondent no. 2 only mentions the name of Vatika Limited. The advertisements form an essential part of the order and even as on date, the property is still being advertised by Vatika Limited, i.e., respondent no.2, whereas respondent no.2 has no authority to do the same.
- e) That around March 2015, respondent no.2 sent to the complainant an addendum to builder buyer agreement. That to the complete shock and surprise of the complainant, respondent no. 2 changed the very terms of the BBA and stated that M/s. Vatika Sovereign Park Pvt. Ltd. (Earlier known as M/s. Planet Earth Estates Private Ltd. And Respondent no.1 herein) is the developer. The relevant para of the Addendum is reiterated as under:
- "M/s Vatika Sovereign Park Private Limited (Earlier known as M/s Planet Earth Estates Private.Limited), a Company incorporated under the Companies Act 1956 having its registered office at Flat No. 621-A, 6th Floor, Devika Towers, 6, Nehru Place, New Delhi - 110"019 and corporate office at 7 Floor, Vatika Triangle, Block-A, Sushant Lok, Gurgaon - 122002 (hereinafter referred to as "Developer" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) acting through its duly authorized signatory of the FIRST PART"*
- f) That the Department of Town and Country Planning has in para 2 of its letter dated 13.07.2015 has rejected the claim, the letter stated that:
- "The averment made regarding the relationship between Vatika Ltd., & the licensee company also not found justified in view of the development agreement executed on 01.11.2012 between the licensee company and the Vatika Ltd."*
- g) That multiple RTIs noted the true nature of the relationship between the respondent no. 1 and no. 2. The respondent no.2 misrepresented itself to be the developer of the project however, it is respondent no.1. The following was noted in the information obtained under various RTI:

DATE	MEMO NO. OF RTI	RELEVANT OBSERVATION IN THE RTI
01.09.2014	RTI-2575-JE(VA)-2014/20667	<i>License no. 119 of 2012 dated 06.12.2012 was granted to Planet Earth Estates Pvt. Ltd. for Group Housing in sector-99, Gurgaon. Only licensee is authorized to sell the project. This Department has not issued any sanction to Planet Earth Estate Pvt. Ltd. for giving permission to Vatika Ltd. to sell any property.</i>
19.09.2014	RTI-2614-JE(VA)-2014/22980	<i>license no. 119 of 2012 dated 06.12.2012 was granted to Planet Earth Estate Pvt. Ltd. Cro Vatika Ltd. for development of Group Housing Colony in Sector 99, Gurgaon. The photocopy of the said license is enclosed. Further, the para wise reply of your RTI application are as wader: No clarification be provided under the RTI Act, 2005. However, the issue relates between the licenses and the builder. No permission was granted to Vatika Ltd. Therefore it is not authorized in the said project. The copy of the license issued to Planet Earth Estate Pvt. Ltd. is enclosed. No clarification / opinion can be provided under the RTI Act, 2005. This department has not issued any sanction to Planet Earth Estate Pvt. Ltd. for giving permission to Vatika Ltd. to sell their property As per office record, there is no collaboration agreement entered between Planate Earth Estate Pvt. Ltd. and Vatika Ltd.</i>
04.06.2014	RTI-2469-B-JE(VA)-2015/9333	<i>The building plan w.r.t. license no. 65 of 2013 & 119 of 2012 has been 9. approved vide memo no. 24710 dated 24.10.2014. Applicant has not applied for grant of Occupation Certificate regarding license no. 113 of 2008 & 114 of 2008 till date</i>
13.09.2014	RTI-2469A-PA(B)-2015/12424	<i>In respect of the complaint dated 30.03.2015 and 06.04.2015, it is intimated that best efforts have been made to trace out the said complaint, but the same are not available in office record, but similar complaint from Mr. R.K. Goyal was received and Department has taken following action on the same:-After receipt of the complaint the comments of the licensee company were sought vide memo dated 05.02.2015 and on non-receipt of any reply, reminder in this regard was issued vide memo dated 19.03.2015, but the company had failed to submit any reply, therefore, show cause notice was issued vide memo dated 05.05.2015 with the direction to show cause within a period of 15 days. Meanwhile, the licensee company has submitted a reply to memo dated 19.03.2015 on 13.04.2015 mentioning that the name of the licensee company has been changed to Vatika Sovereign Parks Pvt. Ltd. and being a subsidiary company of Vatika Ltd., the booking is being done by the Vatika Ltd. An attempt was also made to explain about the relation between the licensee company and the Vatika Ltd., but the licensee company had failed to submit copy of fresh certificate of incorporation, whereby the name of the company was changed. The averments made regarding the relationship between Vatika Ltd. & the licensee company also not found justified in view of the</i>

		<i>development agreement executed on 02.11.2012 between the licensee company and the Vatika Ltd., therefore, the case stands submitted for orders of higher authorities</i>
30.10.2014	RTI-2469A-PA(B)-2015/21269	<i>In respect of license No. 119 of 2012 and 65 of 2013, it is submitted that the licenses was granted in favour of Planet Earth Estates Pvt. Ltd. after taking into account the technical capacity of Indiabulls Real Estates Ltd., who has further transferred the development rights of the colony in favour of Vatika Ltd. without taking prior permission of the Department, therefore, the Department has initiated process for cancellation of the license in question under the provisions of Rule 18 of Rules 1976 and granted an opportunity of being heard for 16.11.2015 at 3.00 P.M. before taking final decision in the matter. It is for your information.</i>

- h) That the respondent has touched all the ingredients of Sections 406, 420, and 120B of the Indian Penal Code, 1860. The respondent had all the intention to cheat and rob the complainant of his hard-earned money which is punishable under these sections.
- i) That the complaint is not barred by limitation as the Authority itself has held in a catena of judgments that the Limitation Act does not apply on the RERA and the aggrieved allottee/homebuyer can approach the RERA forum for the reliefs provided under the RERA Act.
- j) That Section 14 of the Limitation Act, which provides exclusion of the time of proceedings spent before the court not having the jurisdiction of the subject matter. Thus, the time taken before the civil court shall be excluded while calculation the period of limitation for the present complaint. That the present complaint was filed before the RERA forum in 2020 and hence, is not barred by the limitation. The respondent failed to refund the amount deposited by the complainant, hence, illegally retaining the amount and making unlawful gains on that amount. The cause of action is stil continuing and subsisting in favour of the complainant and against the respondent.
- k) That the RERA courts are specialized forums established to handle real estate disputes exclusively. That the Authority has the power to adjudicate upon the

issue of refund with interest as claimed by the Allottee under Section 18 of the Act.

- l) That further, Section 79 of the RERA Act, bars the jurisdiction of the Civil court to entertain any suit or proceeding of a matter the authority under RERA ACT is empowered to deal. Thus, the interpretation of the respondent of the order of civil court is wrong and denied. That the subject matter of the present complaint is to be exclusively dealt by the Hon'ble RERA Authority. That the order of the Civil court has to be given a purposive interpretation for the proper adjudication of the rights of the parties.
- m) Thus, the present complaint is maintainable before the RERA Authority as the RERA is the appropriate forum for the adjudication of the builder buyer dispute. The respondent has made unsubstantiated claims and submissions to escape the liability of refunding the money.
5. The complainant "Sh. Bhupander Narain Gupta" died on 20.04.2021, i.e., during the pendency of the complaint before the Authority. An application for impleading the legal heirs of the complainant "Sh. Ajay Narain Gupta" and "Nirmal Gupta" was filed on 07.06.2023 and same was allowed by the Authority vide its orders dated 10.01.2024.

D. Relief sought by the complainants:

6. The complainants have sought following relief(s):
- I. Direct the respondent to refund the amount of Rs.38,30,925.48/-.
 - II. Direct the respondent to pay interest on the deposited amounts by the complainant till the date of refund, i.e., on pro-rata basis.
 - III. Penalty be imposed upon both the respondents under Sections 38 and 61 of the Act for violations of Sections 11(3), 11(4)(a), 12, 13 and 18(1) of the Act.
 - IV. Grant leave to the complainants to approach AO for compensation for mental agony, harassment, financial loss and utter malafide acts of the respondent also being violative of the Act.
 - V. Pass any other orders against the respondents, individually or collectively.

7. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) of the Act to plead guilty or not to plead guilty.

E. Reply by the respondents:

8. During the proceedings of the day dated 15.03.2023, the counsel for the complainant submitted that there is a discrepancy in reply filed by respondent no. 1 dated 07.12.2022, wherein the Board of Resolution was filed by respondent no.1 i.e., M/s Vatika Sovereign Park Pvt. Ltd.” whereas the same was signed and stamped by respondent no.2, i.e., “M/s Vatika Limited.”

Therefore, the respondents were directed to clarify the same.

9. In pursuance of the same, the respondent filed an application providing clarification on behalf of the respondent that due to inadvertent clerical errors and non-verification of documents, the authorization of both the respondents and complete facts and circumstances could not be placed on record. Further, both the respondents filed a rectified written statement dated 18.05.2023, thereby contesting the complaint on following grounds:
- a) That the claim of the complainant is barred by the law of limitation as the respondent herein had accepted the refund of amount left out of the paid amount, already issued termination cum refund letter dated 01.07.2015 and had already refunded the amount left after making the necessary deductions. The complainants were required to file the said complaint within 3 years from the date of cancellation, i.e., by 01.07.2018. However, the complainant failed to file the said complaint within statutory time period and thus the instant complaint under reply is liable to be dismissed on this ground alone.
- b) That the respondents decided to develop the group housing project “Sovereign Park”, situated at Sector-99, Gurugram, Haryana admeasuring 21717 sq. mtrs., and it was assured by the licensee that the requisite

permissions from the competent authorities for the said project have been duly received.

- c) That after having keen interest in the above said project launched by the respondent, the complainant upon its own examination and investigation desired to purchase a unit in the year 2013 and approached the respondents and on 15.01.2013 booked a unit bearing no. 1103, admeasuring super area 1645 sq. ft for a total sale consideration of Rs. 1,11,86,000/-.
- d) That the instant complaint has been preferred by the complainant under Section 31 of the Act seeking relief of refund of paid-up amount from the respondents. The complainant has expired, and the present complaint has been filed in the name of the allottee who has already been expired and thus, the present complaint is not maintainable.
- e) That the present complainant has neither provided any succession certificate nor the details of any authorized person who have filed the complaint before this Authority. Thus, the present complaint fails to follow the provisions of the law and accordingly the same shall be dismissed at the very outset.
- f) That a builder buyer agreement was served upon the complainant on 25.11.2014, for unit bearing no. 1102, admeasuring super area 2600 sq. ft for a total sale consideration of Rs.2,27,54,750/- and the complainant was requested to return the signed copy of the same on 15.11.2014.
- g) That upon not receiving the signed copy of the agreement the respondent herein was constrained to send a reminder letter dated 09.01.2015, along with the copy of the agreement, reminding the complainant regarding the builder buyer agreement and again requesting to return the signed copy of the same within a period of 15 days.
- h) Thereafter, on 13.03.2015, the respondents again served a copy of the Addendum to Builder Buyer Agreement upon the complainant and requested to return the signed copy of the same. However, the complainant failed to

return the signed copy of the same and as a result had not executed any agreement with the respondent.

- i) That the respondents herein have made several reminders and follow-ups with the complainant for execution of the agreement and also for the payment of the instalments but the same were left unanswered by the complainant. Upon constant default and several reminders which were left unanswered the respondents herein had no other choice except to cancel the unit.
- j) That on 05.02.2015, the respondents herein has served a payment demand calling upon the complainant to clear the outstanding dues of Rs. 30,46,962.31/- within 15 days. Further, after lapse of 15 days, the respondents were constrained to send another reminder for outstanding payment of outstanding dues on 18.03.2015, requesting the complainant to come ahead and make payment of the instalments due.
- k) That upon not receiving any response, the respondents herein were constrained to serve a Termination Cum Refund Letter dated 29.05.2015 and 01.07.2015, and along with the cheque bearing no. 000005, dated 23.06.2015, of refundable amount of Rs. 6,50,484.50/- left after making necessary deductions, as per the understanding.
- l) That the complainant had already preferred a recovery suit before the Ld. District Court Saket, Delhi for the instant dispute in the year 2016, but the same was withdrawn by the complainant with a direction to approach proper court having appropriate territorial jurisdiction.
- m) That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the BBA. It is pertinent to apprise to the Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act,

2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

- n) That the respondent was further bound to adhere with the order and notifications of the Courts and the government. The details of ban on construction activities vide various directions of NGT or statutory authorities, etc. are detailed as under-

Sr. No.	Courts, Authorities, etc. along with date of order	Relevant case laws	Duration of Ban being imposed by respective Court/Authority
1.	National Green Tribunal (08.11.2016 and 10.11.2016)	Vardhman Kaushik Vs. Union of India	08.11.2016 to 16.11.2016 (8 days)
2.	National Green Tribunal (09.11.2017)	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)
3.	National Green Tribunal (18.12.2017)	Vardhman Kaushik Vs. Union of India	18.12.2017 to 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi (14.06.2018)	Order/Notification dated 14.06.2018	14.06.2018 to 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018 to 12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 to 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 to 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 to 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India	04.11.2019 to 14.02.2020 (3 months and 11 days)

		W.P. (C) 13029/1985	
10.	Ministry of Housing & Urban Affair, Government of India - Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021,	3 months

- o) That Section 18 read with Section 19 of RERA Act, 2016 and Rule 15 read with Rule 16 of Haryana Real Estate (Regulation and Development) Rules provide for the right of the allottee to demand refund along with interest and compensation only on failure of the promoter to offer possession in accordance with the agreement to sale duly completed by the date specified therein.
10. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

F. Additional submissions on behalf of the respondent:

11. The respondent has made the following submissions vide its additional submissions dated 20.02.2024:
- a) That the complainant after the said cancellation, approached the Hon'ble District Court, Saket by filing a civil suit bearing no CS/208020/2016 for the recovery of money in January 2016, that is, before the enactment of Real Estate (Regulation and Development) Act, 2016. It is submitted herein that considering the prevailing law of that time, the recovery suit was the appropriate legal remedy for the recovery of money. Further, while the said matter was ongoing, the Complainant filed an application for return of plaint under Order 7 Rule 10 due to defective territorial jurisdiction. Considering the same, the Hon'ble Court vide Order dated 09.08.2018 returned the plaint to the complainant with the direction to present the plaint before the court

of appropriate territorial jurisdiction under Order 7 Rule 10. Therefore, the Civil Suit was returned, and the complainant was liable to present the same before the Civil Court, Gurugram as it is. It is to note herein that return of plaint does not tantamount to dismissal of the suit and the matter for the said period is always considered as pending sub judice and therefore, approaching any other Court or Authority by filing a separate suit or complaint will be barred by the Doctrine of Res-Subjudice.

- b) That as per Order 7 Rule 10A, when the plaint is returned by the court then it has to be filed as it is to the proper court instead of filing a fresh suit or any other complaint. The complainant herein was also supposed to file the said recovery suit as it is in the court of appropriate territorial jurisdiction instead of filing the present complaint before the Authority.
- c) That the said suit which was returned is still pending as it has neither been dismissed by the Court nor withdrawn by the complainant. It is a settled law that when the plaint is returned under Order 7 Rule 10, then the suit cannot be considered as dismissed as the party has been allowed to present the same as it is with the proper jurisdiction. Therefore, the complainant herein cannot file the fresh complaint in this Authority when the civil suit is still pending and well maintainable before the Civil Court as the same was initiated prior to coming in force of RERA Act, 2016.
- d) That the present complaint is barred by law of limitation, as in year 2015, the unit of the complainant was terminated vide Termination cum Refund Letter dated 29.05.2015/01.07.2015 and also a cheque of the refundable amount was also sent to the complainant on the same date.
- e) That the period of limitation for challenging the cancellation is 3 years. In the present complaint, booking was terminated on 01.07.2015, so the period of limitation for filing complaint against the respondents comes out to be 01.07.2018. The complainant herein failed to file the complaint against the

respondents within the statutory time period and is therefore barred by the period of limitation.

- f) That as per Section 14 of the Limitation Act, 1963, the period for which the plaintiff has been prosecuting in the court of wrong jurisdiction or other cause like nature, then such period shall be excluded from the limitation period of such suit when filed in court with appropriate jurisdiction. As per Section 14(2) of the Limitation Act, 1963, the suit must be filed against the same party and for the same relief before the court having jurisdiction.
- g) It is also submitted that the complainant's plaint was returned in year 2018 and till date he has failed to comply with the provision of return of plaint. The complainant herein is not entitled for any relief so prayed as there exist no cause of action as much as in favour of the complainant or against the respondent. Thus, the complaint under reply is liable to be dismissed.

G. Jurisdiction of the Authority:

12. The respondent raised an objection that this Authority does not have the territorial jurisdiction to deal with the present complaint. However, the Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

G. I Territorial Jurisdiction:

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

G.II Subject-matter Jurisdiction:

14. 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. 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.

H. Findings on the objections raised by the respondent:

H.I Objection raised by the respondent regarding the complaint being non-maintainable on the ground of being barred by limitation.

H.II Objection raised by the respondent regarding the complaint being non-maintainable on the ground of failure of complainant to follow the due procedure for return of plaint as provided under Order 7 Rule 10A of CPC.

16. The respondent contends that the complaint is not maintainable as it is barred by limitation, citing that the unit of the complainant was terminated vide Termination cum Refund Letter dated 29.05.2015/01.07.2015 and a cheque of the refundable amount was also sent to the complainant on the same date. It was further submitted by the respondent that the period of limitation for challenging the cancellation is 3 years. In the present complaint, booking was terminated on 01.07.2015, so the period of limitation for filing complaint against the respondents comes out to be 01.07.2015 till 01.07.2018. The complainant herein failed to file the complaint against the respondents within the statutory time period and is therefore barred by the period of limitation. Further, for the purpose of applicability of Section 14(2) ✓

of the Limitation Act, 1963, the suit must be filed against the same party and for the same relief before the court having jurisdiction. Further, the respondent submitted that the present complaint was to be filed in the court of appropriate jurisdiction, i.e., before the Civil Court, instead of filing it before this Authority.

17. Further, the cause of action to file the present case arose in July, 2015 i.e., when the respondent issued the termination cum refund letter in favour of the complainant, thereby cancelling his allotment in the project being developed by it. Aggrieved with the same, the complainant approached the Hon'ble District Court, Saket by filing a civil suit bearing no CS/208020/2016 for the recovery of money in January 2016, i.e., before the enactment of Act of 2016 wherein the Hon'ble Court vide order dated 09.08.2018 returned the plaint to the complainant with the direction to present the plaint before the court of appropriate territorial jurisdiction under Order 7 Rule 10 in August, 2018, i.e., after coming into force of the RERA Act, 2016. The complainant herein is seeking the relief of refund of entire amount paid by him to the respondent and RERA was introduced to provide speedy resolution to homebuyers against the delayed possession. The contention of the respondent that only the Civil Court had the requisite territorial jurisdiction is devoid of merits as the special law prevails over the general law, whenever there is a conflict between the two. Therefore, the provisions of the RERA Act, 2016 being a special law would prevail over the provisions of general law. Further, Section 89 of the RERA Act, 2016 provides that the provisions of this Act shall have an overriding effect over any other Act. This is reinforced by Section 79 of the RERA Act, 2016, which is reiterated for ready reference:

"79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any

court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

18. Accordingly, the Authority is of the view that it has both the territorial as well as subject matter jurisdiction to deal with the present complaint.
19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that ***“the law assists those who are vigilant, not those who sleep over their rights.”*** Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
20. It is also observed that the Hon’ble Supreme Court in its order dated 10.01.2022 in ***MA NO.21 of 2022 of Sua Moto Writ Petition Civil No.3 of 2020*** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter, the cause of action arose in July, 2015. The complainant filed the present complaint in February, 2020 which is 4 years and 7 months from the date the cause of action arose. As per Section 14 of the Limitation Act, 1963, the period for which the plaintiff has been prosecuting in the court of wrong jurisdiction or other cause like nature, then such period shall be excluded from the limitation period of such suit when filed in court with appropriate jurisdiction. Therefore, the Authority is of the view that the period between January 2016 till August 2018 (2 years and 7 months) i.e., while the case was subjudice in Hon’ble District Court, Saket is to be excluded for the purpose of computation of the period of limitation in

terms of Section 14 of the Limitation Act, 1963. Therefore, after taking into consideration the exclusion period from January 2016 till August 2018, it is determined that the present complaint is within limitation. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

H.III Objections regarding force majeure.

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

H.IV Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

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

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

excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

24. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 15.01.2016. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.
- I. Findings on the relief sought by the complainant.**
- I.I Direct the respondent to refund the amount of Rs.38,30,925.48/-.
- I.II Direct the respondent to pay interest on the deposited amounts by the complainant till the date of refund, i.e., on pro-rata basis.
- I.III Penalty be imposed upon both the respondents under Sections 38 and 61 of the Act for violations of Sections 11(3), 11(4)(a), 12, 13 and 18(1) of the Act.
- I.IV Grant leave to the complainants to approach AO for compensation for mental agony, harassment, financial loss and utter malafide acts of the respondent also being violative of the Act.
- I.V Pass any other orders against the respondents, individually or collectively.
25. 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.
26. The complainant was allotted unit no. 1102, 11th floor, tower A in the project "Vatika Sovereign Park", Sector 99, Gurugram, Haryana of the respondent/builder. The builder buyer agreement was not executed between the parties. The complainant had paid an amount of Rs.38,30,925.48/- against the basic sale consideration of Rs.1,98,47,750/-. The due date of possession had to be calculated from the date of booking in view of "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)*;

MANU/SC/0253/2018." Accordingly, the due date of possession comes out to be 15.01.2016.

27. The plea of the respondents is that the unit of the complainant was cancelled by the respondents vide termination cum refund letter dated 01.07.2015 on account failure of the complainant to make payment of the outstanding dues and to return the signed copy of the builder buyer agreement. To corroborate further, the respondent placed on record reminders dated 25.11.2014 and 09.01.2015 being sent by the respondents to the complainant to execute the builder buyer agreement. A reminder dated 13.03.2015 sent by the respondent to execute an addendum to builder buyer agreement was also placed on record. Further, demand letters dated 05.02.2015 and 18.03.2015 were being sent by the respondents to the complainant to make payment of outstanding dues.
28. On the other hand, the complainant contended that he had not received any of the reminders prior to cancellation of his unit and is seeking refund of amount paid by him to the respondent by way of filing the present complaint on the ground that fraud and cheating was committed upon him since the very inception by the respondents. The complainant contended that respondent no. 2 i.e., "Vatika Limited" had misrepresented themselves to be the license holders of the project, bearing license no. 119 of 2012 in an advertisement of Delhi edition of "Hindustan" dated 25.09.2014 and "Times of India" dated 28.09.2014. However, respondent no. 2 was not authorised to advertise for sale of property as it was not the license holder as per the Haryana Development and Regulation of Urban Areas Act, 1975. The said license was issued to Planet Earth Estate Private Limited. Through various RTI applications made to various officials, it came to knowledge of the complainant that the DTCP has not issued any sanction to Planet Earth Estates Pvt. Ltd. For giving permission to respondent no. 2 to sell any property.

29. The Authority based on verbal as well as written submissions of both the parties and thereafter, on perusal of information obtained under the RTI Act placed on record by the complainant is of the considered view that respondent no. 2 i.e., "Vatika Limited" never had the license to develop/advertise/market/sell the project "Sovereign Park." The license no. 119 of 2012 dated 06.12.2012 and license no. 65 of 2013 dated 20.07.2013 was issued by DTCP, Haryana in favour of Planet Earth Estates Pvt. Ltd. Only and respondent no. 2 had no pre-requisite authority to develop the said project. The relevant portion of RTIs highlighting the fact that respondent no. 2 had no authority to develop/advertise/market/sell the project "Sovereign Park" is as under:

DATE	MEMO NO. OF RTI	RELEVANT OBSERVATION IN THE REPLY TO APPLICATION UNDER THE RTI ACT
01.09.2014	RTI-2575-JE(VA)-2014/20667	<p>"i) License no. 119 of 2012 dated 06.12.2012 was granted to Planet Earth Estates Pvt. Ltd. for Group Housing in sector-99, Gurgaon. Only licensee is authorized to sell the project.</p> <p>ii-iii) This Department has not issued any sanction to Planet Earth Estate Pvt. Ltd. for giving permission to Vatika Ltd. to sell any property."</p>
19.09.2014	RTI-2614-JE(VA)-2014/22980	<p>"... license no. 119 of 2012 dated 06.12.2012 was granted to Planet Earth Estate Pvt. Ltd. C/o Vatika Ltd. for development of Group Housing Colony in Sector 99, Gurgaon. The photocopy of the said license is enclosed. Further, the para wise reply of your RTI application are as under:</p> <ul style="list-style-type: none"> i. No clarification be provided under the RTI Act, 2005. However, the issue relates between the licenses and the builder. ii. No permission was granted to Vatika Ltd. Therefore it is not authorized in the said project. iii. The copy of the license issued to Planet Earth Estate Pvt. Ltd. is enclosed. iv. No clarification / opinion can be provided under the RTI Act, 2005. v. This department has not issued any sanction to Planet Earth Estate Pvt. Ltd. for giving permission to Vatika Ltd. to sell their property.

		vi. <i>As per office record, there is no collaboration agreement entered between Planate Earth Estate Pvt. Ltd. and Vatika Ltd.</i>
13.09.2014	RTI-2469A-PA(B)-2015/12424	<p><i>".....In respect of the complaint dated 30.03 2015 and 06.04.2015, it is intimated that best efforts have been made to trace out the said complaint, but the same are not available in office record, but similar complaint from Mr. R.K. Goyal was received and Department has taken following action on the same:-</i></p> <p><i>After receipt of the complaint the comments of the licensee company were sought vide memo dated 05.02.2015 and on non-receipt of any reply, reminder in this regard was issued vide memo dated 19.03.2015, but the company had failed to submit any reply, therefore, show cause notice was issued vide memo dated 05.05.2015 with the direction to show cause within a period of 15 days. Meanwhile, the licensee company has submitted a reply to memo dated 19.03.2015 on 13.04.2015 mentioning that the name of the licensee company has been changed to Vatika Sovereign Parks Pvt. Ltd. and being a subsidiary company of Vatika Ltd., the booking is being done by the Vatika Ltd. An attempt was also made to explain about the relation between the licensee company and the Vatika Ltd., but the licensee company had failed to submit copy of fresh certificate of incorporation, whereby the name of the company was changed. The averments made regarding the relationship between Vatika Ltd. & the licensee company also not found justified in view of the development agreement executed on 02.11.2012 between the licensee company and the Vatika Ltd., therefore, the case stands submitted for orders of higher authorities for taking further necessary action"</i></p>
30.10.2014	RTI-2469A-PA(B)-2015/21269	<p><i>"In respect of license No. 119 of 2012 and 65 of 2013, it is submitted that the licenses was granted in favour of Planet Earth Estates Pvt. Ltd. after taking into account the technical capacity of Indiabulls Real Estates Ltd., who has further transferred the development rights of the colony in favour of Vatika Ltd. without taking prior permission of the Department, therefore, the Department has initiated process for cancellation of the license in question under the provisions of Rule 18 of Rules 1976 and granted an opportunity of being heard for 16.11.2015 at 3.00 P.M. before taking final decision in the matter. It is for your information."</i></p>

30. Since the respondent no. 2 had no authority to develop or sell the project, therefore, therefore, the termination cum refund letter dated 01.07.2015

issued by respondent no. 2 in favour of the complainant is declared to be void-ab-initio and is hereby quashed.

31. Further, the complainant herein, intends to withdraw from the project and is seeking refund of the entire amount paid by him under Section 18(1) of the Act of 2016, *ibid*.

"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."

32. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and seeks refund of the amount received by the promoter in respect of the unit with interest on account of fraud and cheating being committed upon him by the respondents. The matter is covered under Section 18(1) of the Act of 2016. Accordingly, the respondents are liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.

33. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

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

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

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

34. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ease uniform practice in all the cases.

35. Consequently, as per the 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., 04.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.

36. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- i. *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- ii. *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"* ✓

37. The non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (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 Haryana Rules, 2017.
38. Further, the allottee is also entitled to his right under Section 18(2) of the Act to claim the relief of compensation owing to loss occurred to him due to defective title of the land on which the project is being developed or has been developed. The complainant is therefore, at liberty to approach the Hon'ble Adjudicating officer for seeking the relief as to compensation under Section 18(2) of the Act of 2016, *ibid*.

J. Directions of the authority

39. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
- I. The respondent/promoter is directed to refund the amount received by it from the complainant, i.e., Rs. 38,30,925.48/- 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 the actual date of refund of the deposited amount within the timelines provided in Rule 16 of the Haryana Rules, 2017.
 - II. The amount if any refunded earlier by the respondents to the complainant shall be adjusted/deducted from the amount payable by respondents to the complainant in terms of direction no. I issued by the authority above.

III. The Authority also grants leave to the complainant to approach the Adjudicating Officer for seeking the relief of compensation, if any.

IV. 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.

40. Complaint stands disposed of.

41. File be consigned to registry.

Dated: 04.09.2024



(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram