

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

| | | |
|----------------------------------|---|--------------------|
| Complaint no. | : | 410 of 2023 |
| Date of filing complaint: | | 03.02.2023 |
| Date of decision | : | 23.07.2024 |

| | |
|---|---------------------|
| 1. Shila Devi 2. Hitender Kadian Both R/o: H.no. 191, sector-14, Rohtak, Haryana | Complainants |
| Versus | |
| M/s Vatika Limited Address: Vatika Triangle, 4 th Floor, Sushant Lok, Phase-I, Block A, M.G. Road, Gurugram, Haryana-122002. | Respondent |

| | |
|------------------------|-----------------|
| CORAM: | |
| Shri Arun Kumar | Chairman |
| Shri Vijay Kumar Goyal | Member |
| Shri Ashok Sangwan | Member |

| | |
|-----------------------------------|-------------|
| APPEARANCE: | |
| Shri B.K. Yadav (Advocate) | Complainant |
| Shri Dhruv Dutt Sharma (Advocate) | 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 under the provisions of the Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

| S.N. | Particulars | Details |
|------|---------------------------------|---|
| 1. | Name of the project | Emilia in Vatika India Next, 82,82A,83,84,85, Gurgaon, Haryana |
| 2. | Nature of project | Residential Colony |
| 3. | Area of the project | 182.8 acres |
| 4. | Rera registration | Registered vide no. 36 of 2022 dated 16.05.2022 valid upto 31.03.2029 |
| 5. | DTCP License no. | 113 of 2008 dated 01.06.2008 valid upto 31.05.2018 |
| 6. | Welcome Letter | 17.12.2010 (Page no. 40 of complaint) |
| 7. | Unit no. | 5, block E, street 2, 2 nd floor (page 42 of complaint) |
| 8. | Built up area of unit | 781.25 sq. ft. (page no. 52 of complaint) |
| 9. | Date of allotment letter | 25.11.2010 (page 42 of complaint) |
| 10. | Date of builder buyer agreement | 21.04.2011 (page 49 of complaint) |
| 11. | Possession clause | <i>Schedule for Possession of the said independent dwelling unit</i> |

| | | |
|-----|--|--|
| | | <p><i>"10.1 That the company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause(11.1), (11.2), (11.3) and clause (38) or due to failure of allottees to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments..."</i></p> <p>(Emphasis supplied)</p> |
| 12. | Due date of possession | <p>21.04.2014</p> <p>(calculated from the date of execution of BBA)</p> |
| 13. | Total sale consideration | <p>Rs. 23,16,419/-</p> <p>(as per BBA at page 52 of complaint)</p> |
| 14. | Total amount paid by the complainant | <p>Rs.9,44,620/-</p> <p>(as alleged by complainant at page 35 of complaint and agreed by respondent vide termination letter on page 117 of complaint)</p> |
| 15. | Termination of builder buyer agreement | <p>06.11.2018</p> <p>(page 16 of reply)</p> <p>Due to GAIL pipeline</p> |
| 16. | Offer of possession | Not offered |
| 17. | Occupation certificate | Not obtained |

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- i. That the real estate project named "Emilia Floor", which is the subject matter of present complaint, is situated at Sector-83, Gurugram, Haryana, therefore, the Hon'ble Authority do have the jurisdiction to try and decide the present Complaint.
 - ii. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers, like complainants that they have secured all the necessary sanctions and appropriate approvals authorities from for the construction and completion of the real estate project sold by them to the consumers in general.
 - iii. That the respondent were very well aware of the fact that in today's scenario looking at the status of the construction of housing as well as commercial projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing the same. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and the consumer will not go

through the hardship of paying rent along-with the instalments of loan like in the case of other builders in market.

- iv. That the respondent is in right to exclusively develop, construct and build residential/commercial building, transfer or alienate the unit's/floor/space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments, etc. in favour of the allottees.
- v. That on the assurances given by the respondent as well as their agents, the complainants were much influenced with assurance conveyed by the respondent through their wide publicity and the complainants booked an independent floor in the said project "Emilia Floors " being developed & constructed by the respondent. It is pertinent to mention here that the complainants booked their individual floor.
- vi. That on dated 22.12.2009, the complainants booked a floor/ unit in their above said project and at the time of booking /registration, the complainants have paid booking amount.
- vii. That at the time of booking of the flat, the officials of the respondents duly assured the complainants that the respondent would deliver the physical possession of the above mentioned flat within 36 months i.e. three years.
- viii. That a total amount of Rs.9,44,620/- has been paid by the complainants to the respondent respect of the above said floor/unit.
- ix. That all the negotiations before the booking of the unit and at the time of making payment to the respondent in the shape of Cheques/DO/bank transfer, the complainants were lured by respondent to invest in the project on the pretext that delivery of the

apartment will be done within 36 months. As per clause no. 10.1 of the buyer's agreement, the possession of the unit will be handed over to the complainant within 36 months from the signing of agreement.

- x. That as per clause no. 11.2 of the agreement, if the developer fails to handover the actual physical possession of the flat to the buyers, in that case, the allottee/complainant shall be entitled to receive simple interest @ 6% per annum from the developer.
- xi. That the complainant paid the amount as per the plan opted by the complainant but when the complainant visited the spot, the construction work was stopped by respondent and the complainant waited for some time but no work on the site was resumed and still the project is yet to be completed. According to clause 10.1 of the agreement between the parties, the respondents were supposed to deliver the possession of the said apartment in 36 months but till today no possession has been offered by the respondent company despite the fact that more than 106 months have been passed.
- xii. That the complainant has made several visits to the respondent office and made several requests to the company for refund of his hard-earned money but there has been no response. That the complainant had booked his residential independent flat under construction linked plan, but the respondent has taken amounts over and above the actual cost of the said flat decided at the time of Booking of said unit.
- xiii. That it is pertinent to mention herein that the respondent had terminated the booking of the complainants without any rhyme and reasons and without giving any satisfactory reply for the same.

- xiv. That, thereafter, the complainants repeatedly followed up with the officials of the respondent to refund the entire paid amount along with interest @24% per annum, but the respondents avoided the matter on one pretext or the other.
- xv. That the respondent has ignored the requests of the complainants as raised above. It is pertinent to mention here that the terms of the agreement are completely one sided and favoured only the company/respondent and the same has been formulated in a way that the respondent/builder can take undue advantage of their dominant position at the site where the project is being developed and harass the complainants into making payments even if the same was not due depending on the stage of construction of the project.
- xvi. That the complainants have paid more than 40% of the total amount towards the consideration of the unit/flat which includes the amounts of the entire due instalments, despite the fact that till date no facility has been provided till date, The respondent, on the other hand, are enjoying the money collected from the complainants by putting it for their own use or other use by diversifying.
- xvii. That the complainant has been duped be fooled in the name of residential colony which could never be brought to reality by the respondent and the complainant booked the above said flat for his residential purposes and had invested his hard-earned money in the respondent's project only, but more than 106 months has been passed and the hard-earned money of the complainant is blocked. In this way the respondents cheated the complainant and hence being aggrieved has filed this complaint.

- xviii. That as per provision 18 of RERA Act, 2-016, the respondent is bound to refund the entire paid amount with interest @ 24% per annum to the complainants from the respondent.
- xix. That the complainants further declare that the matter regarding which this complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.
- xx. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Gurugram which is within the jurisdiction of this Authority.

C. Relief sought by the complainant:

4. The request of the complainant for amendment of the relief was allowed vide order dated 11.07.2023, pursuant to which complainant filed an application for amendment of the relief dated 25.07.2023 for restoration of the unit and the actual physical, vacant possession of the unit and if respondent is not able to deliver the original allotted unit as booked by the complainant, then respondent to handover another unit of same size in the same project or another project in Gurugram. The same was allowed by the Authority vide order dated 14.12.2023 and the respondent was directed to allot alternate unit.
5. That pursuant to the amendment of relief application dated 25.07.2023 complainant has sought following relief(s):
- I. Direct the respondent to pay delayed possession charges as per the provision of the Act, 2016.

II. Direct the respondent to restore the booking of the complainants and handover the actual physical vacant possession of the unit. If the respondent is not able to deliver the same unit as booked by the complainant, then direct the respondent to handover another unit of same size in their same project or another project in Gurugram.

6. 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) (a) of the act to plead guilty or not to plead guilty.

C. Reply by respondent:

7. The respondent contested the complaint on the following grounds:

- i. That at the outset, the respondent humbly submits that each and all averments and contentions, as made in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.
- ii. That the complaint filed by the complainants before the Authority besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before the Authority as the relief being claimed by them, besides being illegal, misconceived, and erroneous, cannot be said to even fall within the realm of jurisdiction of the Authority.
- iii. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised

cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

- iv. That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived, and erroneous.
- v. That apparently, the complainant filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No reliefs much less any interim relief, as sought for, is liable to be granted to the complainants.
- vi. That the respondent has already terminated the builder buyer agreement vide termination letter dated 06.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. As per clause 11.5 of the agreement, it has been agreed that in the event of failure to handover the possession, the company shall be entitled to terminate the agreement and refund the amount. The respondent also offered to refund the amount to the complainants along with 6% interest p.a. However, it was the complainants who did not come forward to collect the money.
- vii. That in the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same enumerated below:
- viii. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the Respondent to file

a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the Respondent were adversely affected, and the respondent was forced to reevaluate its construction plans which caused a long delay.

- ix. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and landowners.
- x. Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.
- xi. That it was due to the aforesaid reasons which were beyond the control of the respondent, the unit of the complainants became non-deliverable.
 - a. All other averments made in the complaint were denied in total.
8. 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 on the basis of these undisputed documents and submission made by the parties.

E. 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.

E. I Territorial jurisdiction

10. 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 the present complaint.

E. II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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 complainant at a later stage.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay interest for every month of delay as per provisions of the Act, 2016.

G.II Direct the respondent to handover physical Possession of the unit in question

13. Both the above-mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
14. The complainant booked a villa in the project of the respondent and in consonance of same, a buyer's agreement dated 21.04.2011 was executed inter-se parties. It is an undisputed fact that the complainant has already paid an amount of Rs.9,44,620/- towards total consideration of Rs.23,16,419/-. The respondent sent a letter namely "termination of builder buyer agreement" dated 06.11.2018. The complainants approached the Authority seeking possession of the allotted floor as one of their reliefs, whereas the respondent, submitted that the said unit is not available due to passing of GAIL pipeline over the allotted area.
15. That pursuant to the amendment of relief application dated 25.07.2023 for restoration of the unit and the actual physical, vacant possession of the unit and if respondent is not able to deliver the original allotted unit as booked by the complainant, then respondent to handover another unit of same size in the same project or another project in Gurugram. The same was allowed by the Authority vide order dated 14.12.2023 and the respondent was directed to allot alternate unit. The Authority observes that termination of unit on account that unit is not available due to passing of GAIL pipeline over the allotted area is unjust and not valid and it is not a proper ground of termination of builder buyer agreement.

16. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

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

17. Clause 10.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

10.1 Schedule for Possession of the said independent dwelling unit

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

2. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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.

18. The legislature in its wisdom in the subordinate legislation under the 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.
19. 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., 23.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
20. **Rate of interest to be paid by complainants/allottees for delay in making payments:** 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;"*

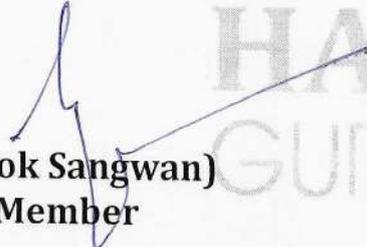
21. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the agreement executed between the parties on 21.04.2011, the possession of the subject floor was to be delivered within three years from the date of execution of agreement. Therefore, the due date of handing over possession was 21.04.2014. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement dated 21.04.2011 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
22. Accordingly, 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 complainants are entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. 21.04.2014 till the actual handing over of possession or offer of possession + 2 months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

23. **Possession:** The Authority observes that it is high headedness on part of the respondent that despite booking of the subject unit way back in 2009, the respondent is now denying providing the possession of the unit to the complainants.
24. In view of the submissions of the parties, the respondent is directed to provide alternative unit to the complainants at the same rate at which the unit was earlier purchased. The rationale behind same is simple, that the allottees booked the plot in the project way back in 2009 and paid the amount then only, in a hope to get the possession.
25. Moreover, the delayed possession charge component is levied to balance the time-value component of the money. However, the same is made applicable on the amount then paid by the allottee for the delay in handing over of the possession by the respondent and the same is balanced vide provision of section 2(za) of the Act. The complainants cannot be made suffer due to fault of the respondent and supposed to pay for the unit as per today's rate.

H. Directions of the Authority:

26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent is directed to make offer of an alternative unit of the same size and same rate as per builder buyer agreement dated 21.04.2011 within two months from the date of this order.

- ii. The respondent is directed to pay interest at the prescribed rate of 11% p.a., for every month of delay from the due date of possession i.e., 21.04.2014 till offer of possession after obtaining occupation certificate plus two months or actual handing of possession whichever is earlier.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent-builder is directed not to change anything which is not part of builder buyer agreement.
27. Complaint stands disposed of.
28. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.07.2024