

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

Complaint no.: 1903 of 2023
Date of filing: 16.05.2023
Date of order: 21.11.2024

Priyanka Lohia

R/o: - House no. 3044, Sector-23, Gurugram, Haryana-122017.

Complainant

Versus

M/s Vatika Limited

Regd. Office at: - Town Square, Near Vatika Sector Road, Sector-82A, Gurugram, Haryana-122004.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Karamjit Singh (Advocate)

Shri Venket Rao (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details 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	"Vatika India Next" at Sector-82, 82A, 83, 84 & 85 Gurugram.
2.	Project area	182 Acres
3.	Nature of Project	Residential Complex
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018
5.	Name of Licensee	M/s Buzz Technologies Pvt. Ltd. & Others.
6.	RERA registered/ not registered and validity status	Registered (For Vatika India Next Phase-II) Vide no. 36 of 2022 dated 16.05.2022 Valid upto 31.03.2029
7.	Unit No.	Plot no.7, Primrose, SF, ST. 82F-15, Sec-82F, VIN (As per BBA at page 88 of complaint)
		Plot no.7/ST. 82F-15/240/SF/82F/Vatika India Next. (As per addendum to the agreement dated 05.01.2018 at page no. 89 of complaint)
		Second Floor, 7, G-1, Vatika India Next, (Current Unit) (As per addendum to the agreement dated 11.01.2018 at page no. 90 of complaint)
8.	Unit area admeasuring	881.41 sq. ft. (As page 46 of complaint)
	Increase in super area (19.84%)	1056.33 sq. ft. (Current Unit Area) (As page 88 of complaint)
9.	Allotment Letter	21.04.2011 (As per page 37 of complaint)
10.	Date of buyer agreement (With original allottee i.e., Amit Narula)	12.05.2011 (As per page 43 of complaint)

11.	Possession clause	<p>10.1 Schedule for Possession of the said independent dwelling unit</p> <p>“That the company based on its present plans and estimates and subject to all just exceptions, contemplated to complete construction of the said building/said independent dwelling unit within a period of three (3) years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause (11.1), (11.2), (11.3) and Clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues.....</p> <p style="text-align: right;">(Emphasis Supplied)”</p>
12.	Due date of possession	12.05.2014 (Calculated 3 years from the date of execution of buyer's agreement)
13.	Total Sale Consideration	Rs.32,51,436/- (As per revised payment plan dated 11.01.2012 for 1056.33 sq. ft. super area at page 96 of complaint)
14.	Amount paid	Rs.21,42,092/- (As per receipts at page no.120-128 of complaint)
15.	Addendum to the agreement (For change in unit no.)	05.01.2018 & 11.01.2018 (As per page 89 & 90 of complaint)
16.	Agreement to sell	07.01.2018 (As per page 91 of complaint)
17.	Endorsement (In the name of complainant i.e., Priyanka Lohia)	22.05.2018 (As per page 87 of complaint and page 37 of reply)
18.	Tripartite agreement	07.06.2018 (As per page 99 of complaint)
19.	Permission to Mortgage	07.06.2018 (As per page 97 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer for possession	Not offered

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22.	Notice for Cancellation (Due to Gail Corridor)	31.07.2021 (As per page 131 of complaint)
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B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:
- i. That the respondent M/s Vatika Limited is the companies incorporated under the companies Act 1956 having corporate office at 7th Floor, Vaika Triangle, Mehrauli-Gurgaon Road, Sushant Lok Phase-I, Gurugram-122002 and at present its office is at Town Square, near Vatika Sector Road, Sector-82A, Gurugram-122004 and the project in question is known as "Vatika India Next" situated in the revenue estate of Villages Sihi, Sikhopur & Sikanderpur Badha, Tehsil & District-Gurgaon and comprised in the newly carved out sectors-82, 82A, 83, 84 & 85 of Manesar Urban Complex 2021 Gurgaon, Haryana.
 - ii. That Mr. Amit Narula S/o Mr. D. P. Narula R/o CP 210, Pitampura, New Delhi had booked a unit with construction linked payment plan in the residential colony of respondent known as "Vatika India Next", and in the process, officials of respondent presented the layout/master plan and other facts for the said residential colony, suggesting the same were approved from the Town and Country Planning Department of State of Haryana approved vide License No.113 of 2008 dated 01.06.2009.
 - iii. That Mr. Amit Narula had purchased/booked a unit in the project of respondent namely Vatika India Next and respondent had allotted priority no. Primrose/SF/178 to Mr. Amit Narula in Independent floors, Vatika India Next vide his allotment letter dated 21.04.2011. Thereafter a floor buyer agreement was also executed between respondent & Mr. Amit Narula through respondent's authorised signatory Mrs. Anjali Aggarwal vide dated 12.05.2011 and the same was duly endorsed by respondent in favour of the complainant vide dated 22.05.2018.

- iv. That respondent had changed the numbering system and area change floors in Vatika India Next and allotted new unit to Mr. Amit Narula and new unit was Plot No.7, Primrose, SF, ST.82F-15, Sec-82F, VIN in place of old unit i.e., plot no.7, Primrose, SF, ST.82F-15, Sector-82F, VIN and revised area was be 1056.33 sq. ft. and the same was informed by respondent to Mr. Amit Narula vide letter dated 11.01.2012.
- v. That respondent had again started re-allotment process and allotted a new unit to Mr. Amit Narula bearing unit no. plot N07/ST.82F-15/240/SF/82F/Vatika India Next instead of old unit i.e., Plot No.7, Primrose, SF, ST.82F-15, Sec-82F, VIN, for which an addendum builder buyer agreement was executed between respondent & Mr. Amit Narula vide dated 05.01.2018.
- vi. Further, the respondent had again started re-allotment process and again allotted a new unit to Mr. Amit Narula bearing no. Second Floor, 07/G-1, Vatika India Next, Gurgaon-122004 instead of old unit i.e., plot no7/ST.82F-15/240/SF/82F/Vatika India Next and also executed & signed new addendum builder buyer agreement between respondent & Mr. Amit Narula vide dated 11.01.2018.
- vii. Thereafter, on 07.01.2018 Mr. Amit Narula agreed to sell his above said unit bearing number second floor, 07/G-1, Vatika India Next, Gurgaon-122004 and the complainant namely Mrs. Priyanka Lohia was agreed to buy the above said unit from Mr. Amit Narula for a total sale consideration of Rs.49,40,000/- out of them Rs.5,40,000/- was paid by the complainant to Mr. Amit Narula vide two cheque bearing numbers (One Cheque bearing no.012129 dated 29-12-2017 of Rs.1,00,000/- & another cheque bearing number 012130 dated 07-01- 2018 of Rs.4,40,000/- both were drawn on Union Bank in favour of Mr. Amit Narula) at the of execution of agreement to sell dated 07.01.2018 and rest of the amount i.e., Rs.44,00,000/- was paid by

IFHL to Mr. Amit Narula vide granted loan account bearing number 882985 dated 26.04.2018 by IFHL to the complainant and a agreement to sell between Mr. Amit Narual & the complainant was also executed in this regards and the same was signed by both Mr. Amit Narula & the complainant in the presence of two witnesses and same was attested by Sh. Ramniwas Advocate, Natoray Public, Gurugram vide dated 14.05.2018.

- viii. That after receiving the total sale consideration of Rs.49,40,000/- from the complainant, Mr. Amit Narula had transferred his above said unit in favour of the complainant and on undertaking & indemnities given by Mr. Amit Narula, his rights, interest, obligations on the unit bearing number Second Floor,07/G-1, Vatika India Next, Gurgaon-122004, respondent had endorsed the same in favour of the complainant vide dated 22.05.2018.
- ix. That the respondent had transferred the unit of Mr. Amit Narula i.e., Second Floor, 7, G-1, Vatika india Next, Gurugram-122004, in favour of the complainant and the same was also informed by respondent to the complainant through welcome letter dated 22.05.2018.
- x. That the complainant had approached the India Bulls Housing Finance Pvt Ltd for the loan of her above said unit and IHFL had sanctioned loan of Rs.44,00,000/- vide loan account number 882985 in lieu of the complainant's above said unit after taking permission to mortgage from respondent vide dated 07.06.2018 and the said loan amount was transferred by the IFHL to Mr. Amit Narula through cheque bearing cheque number 547051 dated 04.05.2018 because the complainant had purchased her above said unit from Mr. Amit Narula for a total sale consideration of Rs.49,40,000/- vide agreement to sell dated 07.01.2018.
- xi. That Mr. Amit Narula had purchased/booked the said unit from respondent for a sale consideration of Rs.31,89,773/- and Rs.21,42,092/- was paid by Mr. Amit Narula to respondent through various payments as and when

demanded by respondent because the said unit was brought by Mr. Amit Narula at construction linked plan and the same were acknowledged by respondent through various receipts bearing receipt no.33223 dated 19-12-2019 of Rs.59,663/-, receipt no.38224 dated 19-12-2019 of Rs.2,00,000/-, vide Receipt Voucher No.919447163 dated 28-04-2011 of Rs.2,66,350/-, vide Receipt Voucher No.919453310 dated 21-06-2011 of Rs.3,99,526/-, vide Receipt Voucher No.919472049 dated 24-01-2012 of Rs.2,16,118/-, vide Receipt Voucher No.919536290 dated 22-08-2014 of Rs.3,20,811.61/-, vide Receipt Voucher No.919539363 dated 06-10-2014 of Rs.4,81,217.41/-, vide Receipt Voucher No.P/C#18-05-784948 dated 14-05-2018 of Rs.11,436/- & vide Receipt Voucher No.P/C#18-05-785153 dated 17-05-2018 of Rs.1,86,970/- and the same were endorsed by respondent in favour of the complainant vide dated 22.05.2018 on the backside of these receipts.

- xii. That as per the clause 10.1 of the said builder buyer agreement, respondent committed to the complainant that they will hand over the possession of the said unit within 3 years from the date of execution the builder buyer agreement dated 12.05.2011.
- xiii. That the complainant as well as Mr. Amit Narula had paid the payment within due time as and when demanded by respondent but after purchasing the above said unit from Mr. Amit Narula, respondent did not raise any demand note from the complainant because the said unit of complainant is based on construction linked plan and respondent did not raise construction over the unit of complainant up till date.
- xiv. That now after 12 years from the date of booking by Mr. Amit Narula and after 4 years & 10 months from the purchase of the said unit by complainant from Mr. Amit Narula, neither respondent had hand over the possession of the unit to the complainant nor paid any delay possession charges to the complainant in lieu of the said unit of the complainant.

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- xv. That when respondent had started construction over the land where the said unit of complainant was exist, the same was not purchased by respondent from the land owner and they(respondent) have sold the units without purchasing land from the land owner and had started construction over the said land and when these things were came into the knowledge of the said landowner then said landowner had got stopped the construction over the said land where respondent had allotted the unit to the complainants, that's why up till date respondent have constructed only half unit of the complainants up till year end of 2021 and now respondent had demolished the same.
- xvi. That this act & conducts of respondent shows that he deliberately, knowingly defrauded with the complainants by selling the unit to the complainants and started construction over the said land which was not purchased by the respondent at the time of the said allotment.
- xvii. That the complainant had sent many e-mails to respondent, requested therein to start construction over the unit of complainant and handover possession of the same to complainant and the same were sent by complainant at respondent's email id i.e., crm.floors@vatikagroup.com vide dated 29.09.2020, 10.03.2021, 19.07.2021 & 03.08.2021 out of them one email was replied by respondent vide dated 03.08.2021 and the same was after the termination letter sent by respondent to the complainant stated therein that " we would like to apprise you that, we shall soon be scheduling possession of your unit in Vatika India Next. The tentative timeline are expected to come between end- January, 2022 to mid-June, 2022. We shall keep you posted, should there be any likelihood of getting it done earlier, we shall happy to let you know". But up till neither respondent had started construction over the unit of complainant and the half structure which was

constructed by respondent at the building where complainant's unit was exist, was also demolished now by respondent

- xviii. That now after 12 years from the date of booked by Mr. Amit Narula and after 4 years & 10 months from the purchase of the said unit from Mr. Amit Narula by the complainant, instead of giving possession of unit to the complainants, respondent had sent a frivolous termination letter to the complainant vide Ref#10-08-0016162 dated 30.07.2021 and mentioning therein that "due to the Gail corridor", which is totally false & illegal because the Gail corridor is already exist in the said township of respondent and the same was also sanctioned by the respondent vide his license no.76 of 2011 dated 07.09.2011 and now presently it exist at adjacent to the boundary wall & backside of respondent's another project i.e., seven lamps, so how respondent can say that due to Gail corridor he unable to handover the unit to the complainant and straightway terminates the builder buyer agreement dated 12.05.2011 without any reasonable cause which is purely wrong & illegal and not binding the rights of the complainants.
- xix. That the complainant had filed a consumer complaint before the President D.C.D.R.C, Gurugram in this regard bearing consumer complaint number 869/2022 titled as Priyanka Lohia Vs Vatika Ltd and the same was withdrawn by the complaint through her counsel vide dated 03.04.2023.
- xx. That the complainants were shocked when respondent terminates her above said unit without any reasonable cause and were in mental pressure from that time onwards.
- xxi. That the complainant has every legal right to get possession of their above said unit in the above said project of respondent after paying the balance sale consideration, either on the existing place or if respondent became helpless to handover the said unit on existing place then respondent will have to allots the same at any other place which is on the similar location or

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as desired by the complainants at the same price in the above said project of respondent.

- xxii. That there is a clear unfair trade practice and deficiency in the services of the respondents and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of the respondent which makes them liable to answer the Hon'ble Authority.
- xxiii. That the cause of action for the present complaint arose at the time when respondent had sent frivolous termination letter vide Ref#10-08- 0016162 dated 31.07.2021 which is purely wrong & illegal and not binding the rights of the complainants.
- xxiv. That at the time of the filing of the present complaint before the Hon'ble authority, complainant had paid Rs.49,40,000/- to the seller of the said unit, out of them Rs.21,42,092/- was paid by Mr. Amit Narula before selling it to the complainant and the same was endorsed by respondent in favour of the complainant vide dated 22.05.2018 and now respondent is adamant to terminate the said unit of complainant and wants to refund of Rs.19,24,010/- instead of Rs.21,42,092/- and what about the amount of Rs.49,40,000/- which was paid by complainant to seller of the said unit and is still due towards complainant and complainant obligates the same to pay through instalment.

C. Relief sought by the complainant:

4. The complainant has filed the present compliant for seeking following relief(s):
- Direct the respondent to pay interest at prescribed rate for every month of delay from 22.05.2018 till the date of actual possession.
 - Direct the respondent to handover the possession of complainant unit which was allotted by respondent or to handover some alternate unit to the complainant on similar/existing place in same project on same price.

- c. Pass an order to cancelled the frivolous termination letter dated 31.07.2021.
 - d. Pass an order to directing the respondent to pay the interest on sanctioned loan of Rs.44,00,000/- (including Rs.5,40,000/- were paid by complainant to Mr. Amit Narula at the time of execution of agreement to sell) in lieu of the said unit of the complainant which was disbursed by the IFHL to the complainant and the same was also mentioned in tripartite agreement executed between the complainant, respondent and IHFL.
 - e. Any other relief which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 present complaint on the following grounds:
- i. That, Amit Narula learned about the residential colony project launched by the respondent, titled as 'Independent Floors' in the 'Vatika India Next', situated at Sector 82, Gurgaon and approached the respondent repeatedly to know the details of the said project.
 - ii. That after having keen interest the original allottee, decided to invest and thus book an independent floor titled as 'Primorse Floors', vide application form dated 19.12.2009, upon own judgement and investigation.
 - iii. That the respondent vide welcome letter dated 16.02.2010, acknowledged the booking of the original allottee and the receipt of Rs.2,59,663/-, paid as booking amount against the unit in question. Thereafter, the respondent vide letter dated 01.06.2010, intimated the original allottee that the designing of master layout plan for floors shall commence now as from past

months it was held up, due to some government process of earmarking the main roads and the sector roads and also informed that the allotment process will commence soon.

- iv. That the respondent vide allotment letter dated 26.04.2011, allotted a unit no. 7, Primorse, SF, ST. 82F-15, Sec-82F, to the original allottee in the said project and, on 12.05.2011, a dwelling unit buyer agreement was executed between the original allottee and the respondent for a total sale consideration of Rs. 26,40,709/-.
- v. That the respondent vide letter dated 11.01.2012, intimated the original allottee that the area of the allotted unit has been revised to 1056.33 sq. ft. and as per the agreed terms and conditions under the agreement, the original allottee had to remit an amount of Rs.2,16,118/- for the revised area, which was accepted by the original allottee without any protest or demur and as per the same the total sale consideration of the unit after revised area was Rs.32,51,436/-.
- vi. That on 05.01.2018, an addendum was executed between the original allottee and the respondent, wherein the unit number of allotted unit was changed from plot no. 7, Primorse, SF, ST. 82F-15, Sec-82F to Plot no.7/ST.82F-15/240/SF/82F/Vatika India Next. The reason for re-allotment were explained and made understood to the original allottee and the same was duly accepted by the original allottee.
- vii. Subsequently, an addendum dated 11.01.2018, was executed between the original allottee and the complainant by which the original allottee was re-allotted a second floor, 7, G-1, Vatika India Next, Gurgaon, in place of plot no.7/ST.82F-15/240/SF/82F/Vatika India Next.
- viii. That the original allottee has only paid partial payment of Rs.19,24,010/- against the total sale consideration of unit and still a substantial amount is due and payable.

- ix. That on May, 2018, the original allottee requested the respondent to assign rights, interest and obligation under application form/allotment letter/agreement/ for unit in favour of the complainant vide letter dated 14.05.2018. Thereafter, the respondent vide endorsement dated 22.05.2018, transferred the unit to the complainant, subject to payment of administrative charges of Rs.1,86,970/- and fulfillment of all terms and conditions of the agreement.
- x. That the complainant was aware of the exact status of the project and agreed to purchase the said unit upon their own judgment and investigation. The complainant stepped in as an allottee based upon their understanding with the original allottee.
- That the complainants have stepped in the project vide endorsement letter dated 22.05.2018 i.e. after the lapse of due date of possession. Therefore, the complainant is not entitled for interest as the complainant happen to be subsequent allottees who entered into the shoes of the original allottee after the lapse of due date of possession.
 - That the present complaint is filed by complainant on baseless and absurd grounds. It is clearly mentioned under clause 11.1 of the agreement, that in case of any unforeseen circumstances faced by the respondent in mid-way of development of the subject project, then extension time would be granted for the completion of the project.
- xi. That the project was hindered due to the reasons beyond the control of the respondent.
- That in the agreement, the respondent had inter alia represented that the performance by the respondent of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana,

Chandigarh and any subsequent amendments/ modifications in the unit plans as may be made from time to time by the respondent and approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.

- Subsequent to the booking and the signing of the agreement, the respondent was facing umpteen roadblocks in construction and development works in projects in its licensed land comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the plotted /Group Housing/Commercial/Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
- That based on our representation, a letter no (GAIL/ND/Projects/CJPL) dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa-Gurugram-Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram.
- A meeting was held between Gail and the administrator Huda on 07.07.2009 to discuss feasibility which was approved. GAIL requested the Administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana.
- That on 05.08.2009, by District Town Planner to Gail India, proposed re-routing of gas pipe line should be through green belt/corridor proposed master plan.

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- Further a Civil Writ Petition No 16532 of 2009 (O&M) date of decision 21.12.2009 - Petitioner Shivam Infratech Pvt. Ltd Versus Union of India & Ors., was also filed by respondent. GAIL has denied for the re-routing alterative proposal.
- Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approx 90-100 plots and Villas effect due to this layout of GAIL Pipeline.
- Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, respondent applied for license pertaining to the said project. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs to 20 mtrs., vide its letter dated 04.03.2011 that passes through the project Land.
- Although GAIL had reduced the ROW by 10 mtrs, but since they had denied the re-routing of the GAIL corridor, respondent not only lost number of plots, units and Villas but had to re-design the project land that consumed money and time and hence the construction of project get delayed.
- The government of Haryana had notified Gurgaon Manesar Urban Complex 2021, vide their notification dated 05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. of Haryana accordingly. The acquisition process of sector roads was initiated by the Govt. of Haryana in the year 2010.
 - Sector dividing road 81/82, 82A/82, 82/83, 83/84, 84/85;
 - Section 4 of Land Acquisition Act-11-02-2010

- Section 6 of Land Acquisition Act - 19-02-2010
- Award/Compensation - 14-06-2010
- However, the acquisition of sector dividing road 84/85 was de-notified by the government in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr roads has resulted in massive delay in laying of services, thus impacting development.
- After de-notification of Sector Road as mentioned in sub para (a) of (iii) above, the government had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The Department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure "Integrated Infrastructure Development, Including Roads, Water Supply, Drainage, Electricity, Telecom etc. By virtue of said policy, the farmers have to surrender their land (falling under acquisition) to the Govt. and have to obtain TDR certificate there from in lieu of his/her land. Thereafter, the Farmers have to sale the TDR certificate to the Developers.
- Director Town & Country Planning, Haryana, in a joint meeting held at Gurgaon, had directed to developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers, Munadi and Public notice were published in leading newspapers on 29.11.2013 but it was very difficult to buy the land falling exactly within the proposed road section. Respondent had faced issues in purchasing land under TDR policy due to the reasons such as;

(i) Farmers, whosoever is interested in selling his land would like to sell his/her entire land/ownership irrespective of the thing that Developer want the entire land parcel or a piece of the same, (ii) There is no recourse or timeline for farmers who do not agree to sell their lands falling within roads result delay in acquisition by developer, (iii) Farmers do not wish to follow the lengthy acquisition process as same involves surrender of land to govt., obtaining of TDR certificate, negotiation with Developers, Selling of land in full or part to Developers etc, and (iv) Farmer is not satisfied with the amount of sale consideration offered by the Developers and demanding huge amount which is much higher than the market rate.

- Since the 24m road/sectoral plan roads function as sub-arterial roads of the development and also serve as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e water supply, Sewerage, Drainage, Electricity, Telecom etc., it is important for us to have the same in our township/project land. Two sector roads (24 mtr) are falling in the project land and due to non-acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc to the project land has become big challenge for us.
- Some of the local land owners including a collaborator such as Janakraj, Dhani Mamchand etc. had entered into litigation in respect of their respective land parcel against respondent/Govt. and obtained stay orders. The said litigations have resulted in delay in construction of sector road and further delay in the construction activity in the project.
- The inability of HSVP to resolve this issue of 100 square yards is affecting the entire development of the 84 mtr. sector road which is the

main access point into this GH society. Please mark the access on a mark along with photos of the current status of the road.

- xii. That due to the above reasons, the respondent had to cancel the allotment of the complainant. Thus, the respondent issued notice of cancellation letter of the said unit on 31.07.2021 and offered to refund the principal amount along with 6% simple interest per annum to complainants.
- xiii. All other averments made in the complaint were denied in toto.
7. 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 submissions made by the parties.

E. Written submission made by the complainant:

8. The counsel for the complainant has filed written submission on 04.10.2024 and no additional facts apart from the complaint or reply have been stated in the written submissions.

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.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

F.II Subject-matter jurisdiction

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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) The promoter shall-

- (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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Objections raised by the respondent:

G.1. Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act:

13. There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent. It was argued by the promoter that in cases where the subsequent allottee came into picture after the registration of the project under the provisions of the Act with the authority, then the date of completion of the project and handing over the possession shall be the date declared by the promoter under section 4(2)(I)(C) of the Act. The counsel of the respondent further argued that the

while purchasing the unit, it is presumed that the allottee very well knew that the project would be completed by that specific declared date, therefore, the delayed possession charges shall not be allowed.

14. The authority is of the view that the time period for handing over the possession as committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as **Neelkamal Realtors Suburban Pvt. Ltd.** (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

15. However, complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. Further,

they still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 22.05.2018 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of endorsement dated 22.05.2018 i.e., date on which the complainant stepped into the shoes of the original allottee.

H. Findings on the relief sought by the complainants.

- H.I. Direct the respondent to pay interest at prescribed rate for every month of delay from 22.05.2018 till the date of actual possession.**
- H.II. Direct the respondent to handover the possession of complainant unit which was allotted by respondent or to handover some alternate unit to the complainant on similar/existing place in same project on same price.**
- H.III. Pass an order to cancelled the frivolous termination letter dated 31.07.2021.**
- H.VI. Any other relief which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.**

16. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

17. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 21.04.2011 and thereafter on 07.01.2018 vide agreement to sell, the original allottee sold the subject unit to the first subsequent allottee being the complainant and the same was endorsed in favour of the complainant vide endorsement dated 22.05.2018. Therefore, the complainant stepped into the shoes of original allottee on 22.05.2018.

18. The complainant herein intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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"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."

19. Clause 10.1 of the buyer's agreement dated 12.05.2011 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 Clauses (11.1)....

(Emphasis Supplied)

20. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.

21. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc.

between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.

22. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the buyer agreement. In the present complaint, the buyer agreement was executed on 12.05.2011. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 12.05.2014.
23. The Authority observes that, the Original allottee i.e., Mr. Amit Narula booked a unit in the project Vatika India Next and was allotted a unit bearing no. Plot no.4, Primrose, SF, ST, 82F-15, Sec-82F, VIN having admeasuring super area 881.41 sq. ft. vide allotment letter dated 21.04.2011. Thereafter, a builder buyer's agreement was executed on 12.05.2011 between the respondent and original allottee for a total sale consideration of Rs.26,40,709/- plus other charges out of which original allottee made a payment of Rs.19,12,573/- till 07.01.2018. As per clause 10.1 of the said agreement the respondent was obligated to deliver the possession of the unit within 3 years from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 12.05.2014. Further, on 11.01.2012, the respondent issued a letter for change in the unit number and increase in super area from 881.41 sq. ft. to 1056.33 sq. ft., considering to which a revised payment plan dated 11.01.2012 was issued as per that the total sale consideration comes to Rs.32,51,436/-. The respondent re-allotted the above said unit of the complainant three times

without his consent vide letters dated 11.01.2012, 05.01.2018, 11.01.2018 and finally was allotted floor no. Second Floor, 7, G-1 admeasuring 1056.33 sq. ft. super area in the project "Vatika India Next" situated in sector 83, Gurugram vide addendum agreement 11.01.2018. That the addendum agreement states that 'all other terms and conditions of the builder buyer's agreement dated 12.05.2011 shall remain unaltered and effective'. Thereafter, on 07.01.2018, the Original allottee i.e., Mr. Amit Narula sold the unit to the complainant (i.e., Ms. Priyanka Lohia) and entered into an agreement to sell and on 22.05.2018, the unit was endorsed in favor of complainant-allottee (i.e., Ms. Priyanka Lohia) and the same was acknowledged by the respondent on 22.05.2018 Therefore, the complainant stepped into the shoes of original allottee on 22.05.2018. Thereafter, a tripartite agreement was executed between complainant, respondent and Indiabulls Housing Private Limited on 07.06.2018 for loan sanctioned amount of Rs.44,00,000/- and a cheque bearing no.99996 dated 04.05.2018 of Rs.44,00,000/- was issued in the name of Original allottee i.e., Mr. Amit Narula. The complainant has filed the present complaint on 16.05.2023 seeking possession of Independent Floor bearing no. Second Floor, 7, G-1 admeasuring 1056.33 sq. ft. super area and delay possession charges as per proviso to section 18 (1) of the Act.

24. The case of the respondent is that due to change in the alignment of the GAIL pipeline, the plot/unit in question is not available. However, the GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide letter dated 04.03.2011 as submitted by respondent in his reply. GAIL notification and permission letter was prior to the execution of buyer's agreement dated 12.05.2011 and addendum to the agreement dated 05.01.2018 and 11.01.2018. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same

to the complainant. This, inconsistency casts doubt on the respondent reasoning for cancelling the unit. The respondent/promoter has failed to develop the unit and cancelled the unit on account of its own fault/omission. Accordingly, the respondent is liable to offer alternative unit to the complainant at the same rate as per the agreed terms of subject agreement dated 12.05.2011 and addendum to the agreement dated 05.01.2018 and 11.01.2018 on account of its inability to develop the subject unit. The rationale behind the same is that the allottee purchased the subject unit way back in 2011 and paid the demanded amount in hope to get possession of the allotted unit.

25. Subsequently, during proceedings dated 19.09.2024 the respondent offered to refund the paid-up amount in case of non-availability of unit but the complainant refused to accept the same.
26. It is noteworthy that the respondent despite expressing readiness to offer an alternative unit to the complainant in his reply as well as proceedings dated 04.01.2024 has failed to offer the same. In light of these observations, the respondent is directed to offer an alternative unit to the complainant at the same rate as per the agreed terms of the subject agreement and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.
27. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of section 2(za) of the Act. The complainant cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.

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

29. 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.

30. 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., 21.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

31. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. 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;"*

32. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

33. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 21.04.2011 and thereafter on 07.01.2018 vide agreement to sell, the original allottee sold the subject unit to the first subsequent allottee being the complainant and the same was endorsed in favour of the complainant vide endorsement dated 22.05.2018. Therefore, the complainant stepped into the shoes of original allottee on 22.05.2018 i.e., after the due date. It simply means that the complainant was well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. However, she still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainant herein came into picture only on 22.05.2018 when the subject unit was endorsed in her favour. Hence in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of endorsement date 22.05.2018 i.e., date on which the complainant stepped into the shoes of the original allottee. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit to

the complainant as per the terms and conditions of the buyer's agreement dated 12.05.2011. Accordingly, it is failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period.

34. The complainant is also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession after receipt of the occupation certificate from the competent authority of the allotted unit to the complainant as per the terms and conditions of the builder buyer agreement dated 12.05.2011 executed between the parties.
35. Accordingly, the respondent is liable to offer alternative similar situated unit to the complainant as per specifications, at the same rate at which the unit was earlier purchased and on a similar location of original BBA dated 12.05.2011 and addendum to the buyer's agreement dated 05.01.2018 and 11.01.2018 on account of its inability to deliver the said unit. The rationale behind the same that the allottee booked the unit in the project way back in 2011 and paid the demanded amount in a hope to get the possession of allotted unit.
36. 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 prescribed rate of the interest @ 11.10% p.a. w.e.f. date of endorsement i.e., 22.05.2018 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

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H.V. Pass an order to directing the respondent to pay the interest on sanctioned loan of Rs.44,00,000/- and an amount of Rs.5,40,000/- were paid by complainant to Mr. Amit Narula at the time of execution of agreement to sell) in lieu of the said unit of the complainant which was disbursed by the IFHL to the complainant and the same was also mentioned in tripartite agreement executed between the complainant, respondent and IHFL.

37. The complainant is hereby seeking direction to the respondent to pay the interest on the sanctioned loan amount of Rs.44,00,000/- and Rs.5,40,000/- paid to the original allottee (i.e., Amit Narula). The Authority observes that in the present matter neither the original allottee is a party and nor the respondent promoter has received the said amount of Rs.44,00,000/- and Rs.5,40,000/- respectively and hence no direction for the said relief.

I. Directions of the Authority

38. 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 is directed to handover the possession of allotted unit or if the same is not available, an alternative and similar unit to the complainant, at the same rate and specifications at which the unit was earlier purchased within two months from the date of this order and handover the possession of the alternative unit to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- ii. The respondent is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% p.a. w.e.f.

date of endorsement i.e., 22.05.2018 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- iii. The arrears of such interest accrued from date of endorsement i.e., 22.05.2018 till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent-promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(z a) of the Act.

39. Complaint stands disposed of.

40. File be consigned to registry.

Dated: 21.11.2024


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram