

# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:

624 of 2022

Date of filing:

21.02.2022

Order pronounced on:

22.10.2024

Neerav Gupta

**R/o:-** Vaishno Apartment, 705, A1/2, Ward No. 6, Mehrauli, New Delhi-110030

Complainant

Versus

M/s Vatika Limited

**Regd. Office at: -** Unit no. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram

Respondent

#### CORAM:

Shri Arun Kumar Shri Vijay Kumar Goyal Shri Ashok Sangwan Chairperson Member Member

#### APPEARANCE:

Shri KK Kohli (Advocate) Shri Dhruv Dutt Sharma (Advocate) Complainant Respondent

#### **ORDER**

1. This complaint has been filed by the complainant/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 provision 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 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:

S.N.	Particulars	Details
1.	Name of the project	"Vatika India Next", Sector 82A, Gurugram.
2.	Project area	182 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Name of Licensee	Browz Technologies Pvt. Ltd. and 3 others
6.	Rera Registered or not and validity status	Registered vide no. 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
7.	Allotment letter issued in favor of the complainant	07.08.2009 [pg. 31 of complaint]
8.	Plot no.	89, 2 <sup>nd</sup> floor, Sector 84 [pg. 33 of complaint]
	Re-allotment of plot vide letter dated 27.10.2010	11, SF, ST. 83-E-11 [pg. 91 of complaint]
	Re-allotment of plot vide letter dated 29.05.2012	1/SF/ST. 83E-11/VIN [page no. 86 of complaint]
	Re-allotment of plot vide letter dated 04.10.2017	1/ST, 83E-11/240/SF/83E [pg. 94 of complaint]



	Plot no. changed vide addendum to the agreement undated	
9.	Date of execution of plot buyer's agreement	04.06.2010 [pg. 40 of complaint]
10.	Possession clause	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.
	12/6	[pg. 51 of complaint]
11.	Due date of possession	04.06.2013
12.	Total sale consideration as per SOA dated 11.08.2014	Rs. 32,92,121/- [pg. 96 of complaint]
13.	Paid up amount as per SOA dated 11.08.2014	Rs. 11,90,800/- [pg. 96 of complaint]
14.	Notice for termination	31.07.2021 (Pg. 98 of complaint) Due to GAIL pipeline
15.	Occupation certificate	Not received
16.	Offer of Possession	Not offered
17.	Third party rights created in favour of Sarita Yadav	As per documents submitted by the complainant during the course of hearing dated 21.05.2024

# B. Facts of the complaint.

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



- a. That the respondent provided false and incorrect information in respect of said unit and said project and the complainant has thereby lost his hard earned money facing humiliation and harassment, physical as well as mental in the hands of respondents and therefore the respondent is liable to compensate the losses caused to the complainant due to the fraudulent and unfair trade practice on the part of respondent as per Section 12 of the Real Estate (Regulation and Development) Act, 2016 and rules thereunder.
- b. That the respondent company by citing false reasons terminated the agreement unilaterally without taking into consideration that the complainant had borne the effect of changes in allotment and in the hope of possession of the said unit continued investing in the said project for the past 10 years and more. Further, the company terminated the allotment in view of its inability to complete construction while it has actually under construction as is evidenced from the pictures annexed to the present complaint.
- c. That the agreement is unfair and one-sided and loaded with terms such as clauses 11.2, 11.5 and many others which involve unilateral termination of the agreement and entitle the respondent to gain undue advantage over the complainant and indirectly penalising the consumers. There is no parity in the remedies available to the complainant and the respondent showing biased and unfair trade practices of the respondent.
- d. That the complainant had no option but to accept the terms of the sba without any negotiation because of the assurance given by the



respondent that they will stick to their assurances and promises. However, evidently, the respondent has miserably failed in keeping their promises and assurances causing irreparable losses and injury to the complainant.

- e. That if the builder creates an agreement which is not ethically correct or entraps the complainant in feeble situation can't be held valid. Such one-sided agreements have consistently been held to be unfair not only by this Hon'ble authority but also by the Hon'ble Supreme Court.
- f. That the respondent is well aware that the project is over delayed and hence are liable to pay interest as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. Due to non-compliance of the mandate under Section 11(4)(a) of the Act, the respondent is liable to pay the allottee interest for delaying the possession in violation of the terms of the buyer's agreement according to section 19(7) of the Act read with Rule 15.

## C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
  - a. Direct the respondent to withdraw the cancellation of allotment vide letter dated 31.07.2021 and restore the unit.
  - b. Restrain the respondent from creating any third-party rights in the complainant's unit.
  - c. Kindly appoint the LC to ascertain the exact status of the unit allocate to complainant.



- d. Direct the respondent to pay interest at prescribed rate for every month of delay from the due date of possession till the date of actual possession.
- e. Direct the respondent to ensure no further demand is raised on the complainant till the time the entire interest due to the complainant has been adjusted against the additional demands.
- f. Direct the respondent not to ask anything which has not been agreed between the parties in the buyer's agreement.
- 5. 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.
- D. Reply by the respondent.
- 6. The respondent has contested the complaint on the following grounds:
  - a. That the complaint filed by the complainant before the Ld. Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this ld. authority as the relief being claimed by the complainant, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Ld. Authority.
  - b. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.



- c. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- d. That it has been categorically agreed between the parties that subject to the allottees having complied with all the terms and conditions of the floor buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 3 years from the date of execution of the agreement. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure iii of the floor buyer's agreement, the date of handing over of the possession shall be extended accordingly.
- e. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer then the developer shall be automatically entitled to the extension of time for delivery of possession. further the company may also suspend the project for such period as it may consider expedient.
- f. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below: -
  - 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.

- 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 land-owners.
- 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.
- The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November,2016 to December,2019.
- Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labourers regularly travelling away from Delhi-NCR to avail benefits of the



scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain labourers for longer and stable periods of time and complete construction in a smooth flow.

- Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- Disruptions caused by unusually heavy rains in Gurgaon every year.
- Due to the slum in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- g. Additionally, imposition of several partial restrictions from time to time prevented the respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:



- Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
- The usage of Diesel Generator Sets was prohibited for 128 days.
- The entries of truck traffic into Delhi were restricted.
- Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
- Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- h. The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.
- i. That the respondent had already terminated the floor buyer agreement dated 04.06.2010 vide termination letter dated 31.07.2021 due to various reasons but not limited to change in the layout plan due to initiation of the GAIL Corridor, non-removal or



shifting of the defunct High Tension lines and non-acquisition of sector roads by HUDA. It is submitted that 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. It is pertinent to mention here that the respondent also offered to refund the amount to the complainant along with 6% interest p.a. However, it was the complainant who did not come forward to collect the money.

- j. All other averments made in the complaint were denied in toto.
- 7. Copies of all the relevant documents have been filed and placed on the 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. Jurisdiction of the Authority:

8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### E.I Territorial Jurisdiction:

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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:

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

- 11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
- F. Findings on the relief sought by the complainants.
  - F.I. Direct the respondent to withdraw the cancellation of allotment vide letter dated 31.07.2021 and restore the unit.
  - F.II. Direct the respondent to pay interest at prescribed rate for every month of delay from the due date of possession till the date of actual possession
- 12. In the present matter the complainant was allotted the unit PRIMROSE on second floor, Plot no. 89 at sector 84, Gurugram in the project Vatika India Next vide allotment letter dated 07.08.2009. Thereafter a builder buyers' agreement was executed between the parties on 04.06.2010 for



a total sale consideration of ₹ 24,46,586.5/-. 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 04.06.2013. The respondent re-allotted the above said unit of the complainant three times without his consent vide letters dated 27.10.2010, 01.06.2012, 04.10.2017 and finally was allotted floor no. Plot no. 8, Street J-1.4, LEVEL-4 admeasuring 1115 sq. ft. super area in the project "Vatika India Next" situated in sector 83, Gurugram vide addendum agreement but the same is undated. That the addendum agreement states that 'all other terms and conditions of the builder buyer's agreement dated 04.06.2010 shall remain unaltered and effective'. The complainant has filed the present complaint on 21.02.2022 seeking possession of Independent Floor bearing no. Plot no. 8, Street J-1.4, LEVEL-4 admeasuring 1115 sq. ft. super area and delay possession charges as per proviso to section 18 (1) of the Act.

13. The respondent cancelled the subject unit vide cancellation letter dated 31.07.2021 wherein the respondent stated that the said unit is not deliverable due to change in the alignment of the GAIL pipeline and the respondent is ready to refund the amount paid along with simple interest at the rate 6% per annum by invoking clause 11.5 of the BBA. However, the authority observes that 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



addendum to the buyers' agreements. 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. Moreover, the complainant has submitted the documents during the course of hearing wherein the complainant attached SOA dated 20.04.2022 in name of Sarita Yadav for the same unit. Also, as per the SOA dated 20.04.2022 the first payment amounting ₹18,31,500/- was made to the respondent on 12.03.2020 and as per the details available on MCG website the property ID has been issued by the MCG w.r.t. the subject unit. This inconsistency casts doubt on the respondent reasoning for cancelling the unit. Therefore, the said cancellation is bad in eyes of law and is hereby set aside.

- 14. In light of these observations, the respondent is directed to offer an alternative unit at similar location 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.
- 15. 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.
- 16. 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.
- 17. Consequently, as per website of the State Bank of India i.e., <a href="https://sbi.co.in">https://sbi.co.in</a>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
- 18. 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;"
- 19. 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.
- 20. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the buyer's agreement. Buyer's agreement dated 04.06.2010 was executed between complainant and respondent in respect of the floor on Plot no. 89, Second Floor, Sector-84 in the project namely "Primrose by Vatika India Next" vide allotment letter dated 07.08.2009 for the total sale consideration of Rs.24,02,516/- plus IFMS of Rs.44,070.50/- (including of EDC, IDC and other government charges as applicable on the date of application have been included in the price of dwelling unit) out of which the complainant has paid Rs. 11,90,800/-. Thereafter, the complainant's unit was re-allotted vide re-allotment letters dated 27.10.2010, 29.05.2012, 04.10.2017 and finally vide



addendum agreement an independent floor was allotted bearing no. plot no. 8, Street J-1.4, LEVEL-4 and area was revised from 881.41 sq. ft. to 1115 sq. ft. That the said addendum agreement states that 'all other terms and conditions of the builder buyer's agreement dated 04.06.2010 shall remain unaltered and effective' By virtue of clause 10.1 of the buyer's agreement executed between the parties on 04.06.2010 the possession of the said unit was to be delivered within a period of 3 years from the date of execution of the builder buyer agreement. Therefore, the due date of handing over possession comes out to be 04.06.2013. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

- 21. 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 04.06.2010 executed between the parties. And as per the reasonings as stated above the authority has set aside the termination letter dated 31.07.2021.
- 22. Accordingly, the respondent is liable to offer alternative unit to the complainants at the same rate as per the agreed terms of subject agreement dated 04.06.2010 and addendum to the agreement on account of its inability to deliver the subject unit. The rationale behind the same is that the allottee purchased the subject unit way back in 2010



and paid the demanded amount in hope to get possession of the allotted unit.

- 23. 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. due date of possession i.e., 04.06.2013 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.
  - F.III. Restrain the respondent from creating any third-party rights in the complainant's unit.
  - F.IV. Kindly appoint the LC to ascertain the exact status of the unit allocate to complainant.
- 24. As per the documents submitted by the complainant on hearing dated 05.03.2024 the subject unit has already been allotted to third party (Ms. Sarita Yadav) Therefore, no directions w.r.t. the abovesaid reliefs can be granted by the authority.
  - F.V. Direct the respondent to ensure no further demand is raised on the complainant till the time the entire interest due to the complainant has been adjusted against the additional demands.
- 25. Since delay on part of the respondent has been established and the complainant is entitled to delay possession charges from the due date of possession i.e., 04.06.2013 till the valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier at prescribed rate of the interest @ 11.10 % p.a. Therefore, the respondent is directed to



adjust the delay possession charges and thereafter issue a demand letter of the amount due, if any.

F.VI. Direct the respondent not to ask anything which has not been agreed between the parties in the buyer's agreement.

26. The authority is of the view that the respondent is directed not to charge anything which is not the part of BBA dated 04.06.2010.

## G. Directions of the authority

- 27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
  - a. The respondent is directed to handover the possession of an alternative unit of same size, similar location and at the same rate and specifications at which the unit was earlier purchased, 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 within two months form the date of this order and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
  - b. The respondent is directed to pay the penalty of ₹ 5 lakhs imposed by the authority under section 63 of the Act, 2016 for non-compliance of the directions of the authority vide order dated 21.05.2024 within a period of 30 days from the date of this order.
  - c. 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. due date of possession i.e., 04.06.2013 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.

- The arrears of such interest accrued from due date of possession d. 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 respondentpromoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- The respondent shall not charge anything from the complainant e. which is not the part of the builder buyer agreement.
- The complainant is directed to pay outstanding dues, if any, after f. adjustment of delay possession charges/interest for the period the possession is delayed.

E REGUI

29. Complaint stands disposed of.

30. File be consigned to registry.

(Ashok Sangwan)

Member

Member

Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.10.2024