

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

**Complaint no.:** 1470 of 2023  
**Order reserved on:** 24.09.2024  
**Order pronounced on:** 29.10.2024

1. Sanjeev Kumar Garg  
2. Preeti Garg  
**R/o:** - 703, Tower-C2, Puri Diplomatic Greens,  
Sector-110A and 111.

**Complainants**

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 Tushar Behmani (Advocate)  
Shri Gunjan Kumar (Advocate)

Complainants  
Respondent

**ORDER**

1. This 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 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.**

- 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. No.	Heads	Information
1.	Name and location of the project	Signature Villa (formerly known as Bellevue Villa) in Vatika India Next "at Sector 83, Gurugram, Haryana
2.	Nature of the project	Residential
3.	Villa no.	23, Simplex, Bellevue villa (page no. 21 of complaint)
4.	Villa area	1920 sq. ft. 360 sq. yds. (page no. 21 of complaint)
5.	Application Form	17.05.2008 (Page no 13 annexure C/1 of complaint)
6.	Welcome letter	19.05.2008 (Page no 15 annexure C/2 of complaint)
7.	Allotment Letter for Bellevue residences	02.05.2009 (Page no. 17 of Complaint)
8.	Buyer's agreement for Bellevue residences	<b>01.06.2011</b> (page no. 18 of complaint)

9.	Possession Clause	<b>11.1 Clause</b> , the company based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said unit <b>within a period of three years from the date of execution of agreement.</b>
10.	Due date of possession	01.06.2014 (Calculated 3 years from the date of execution of BBA)
11.	Change in name of project	Bellevue Villa to Signature 2 Villas as per letter dated 20.01.2012.  (page no. 63 of complaint)
12.	Villa shifted to	Plot no. 1/simplex, ST-82D1-7 (Page no.65 of complaint)
13.	Unit area	2161 sq. ft. (page no. 66 of complaint)
14.	Date of addendum agreement to change the villa	29.06.2012 (Page no. 66 of complaint)
15.	Allotment letter w.r.t. new unit	16.05.2012 (Page no 65 of complaint)
16.	Total consideration	Rs. 1,22,08,000/- (as per BBA on page no. 21 of complaint)  Rs. 1,22,07,858/- (as per termination letter dated 08.12.2021 on page no. 76 of complaint)
17.	Total amount paid by the complainant	Rs. 36,69,501/-

		(as per letter dated 18.05.2009 and receipt on page no. 86 and 88 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Notice of termination issued by respondent	08.12.2021 (Page no. 76 of complaint)

**B. Facts of the complaint.**

3. The complainants have made the following submissions in the complaint:
- That on 19.05.2008, the respondent issued a welcome letter in favour of the complainants which mentioned the receipt of Rs. 5,00,000/- as booking amount taken from the complainants.
  - That the respondent after one year of the issuance of the 'welcome letter' issued 'allotment letter' dt.02.05.2009 vide which it allotted unit/villa no. 23/360/simplex/br. The said villa was allotted along with plc being a corner villa in the said residential township. the complainants at the time of allotment had paid Rs.12,73,000/- (PLC) as mentioned in the said allotment letter dt.02.05.2009.
  - That the complainants after they were approached by the respondent through there lucrative advertisement promising world class amenities and safe residential township in their residential project named 'Bellevue residences' located in sector - 82, in the revenue estate of village Shikhopur, district Gurugram, executed a builder buyer agreement of a villa admeasuring 360 sq. yds. on 01.06. 2011.

- d. That the complainants got allotted villa No. 23/360/Simplex admeasuring 360 sq. yds. (1920 sq. mts) having basic sale price of Rs.1,10,20,000/-, PLC (Corner Villa) of Rs.10,80,000/-, IBMS of Rs.10,80,000/-, having total value Rs.1,22,08,000/- as mentioned in the *clause 1.1* of the BBA dt.01.06.2011 which was duly executed between the parties to the present complaint.
- e. That clause 12.5 of the said BBA dt.01.06.2011 envisages the terms and conditions of the failure to deliver possession by the company. The company's liability shall be limited to the refund of the amounts paid by the applicant with simple interest @ 6% per annum for the period such amounts were lying with the company and to pay no other compensation whatsoever.
- f. That on 06.08.2013, the Respondent re-allotted another Villa bearing no. 21/ST/83D1-7/360 as the previously allotted Villa was not constructed and there was no sign of construction on the site of the originally allotted Villa.
- g. That after almost two years of the above allotted Villa, the respondent issued a letter dt. 20.01.2012, through which the respondent re-allotted the unit to 'signature 2 villas' which was formerly known as Bellevue Villa. The re-allotment was done by the respondent due to the reasons best known to them. The complainants were hopeful that the possession of the allotted villa will be delivered well in time and as per the terms and conditions of the BBA.
- h. That the respondent issued vide letter dt.16.05.2012 an 'allotment letter' through which villa was re-allotted and the new allotted was

Plot No.1/360/Simplex/ST.82D1-7/Signature 2 Villa (corner) having PLC of Rs.10,80,000/-.

- i. That the respondent executed an 'addendum' to the signature 2 villa builder buyer agreement on 29.06.2012 with the complainants which mentioned the re-allotment and change of villas from 23/360/Simplex/BR to Plot No.1/360/Simplex/ST.82D1-7. That on 06.08.2013, the respondent again to add to the hardship of the complainants and extend the wait of possession on the villa, issued a 're-allotment letter' and changed the villa which was already re-allotted to the complainants unilaterally. That after 5 years of re-allotment, the respondent once again informed the complainants that due to some acquisition of land, the allotment has to be changed and this time it was changed from villa to plot and that too of smaller size as 240 sq. yds. Thereafter numerous emails were exchanged between the complainants and the respondent wherein it was clearly mentioned that the complainants have been harassed by the respondent by multiple change in allotments on the pretext of one reason or the other and that for 14 years since applied for allotment, the respondent has failed to handover the possession of the unit till date.
- j. That the respondent vide email dt.31.05.2018, informed the complainants that they have tentatively been allotted plot no.28 of 360 sq. yds. but to add to the miseries and pain of the complainants, the respondent again changed the allotment and vide email dt.13.06.2018 changed the Plot No.28 to Plot no. S-8/52.

- k. That the complainants wrote an email dt.05.10.2020 after two years of allotment of plot no. s8/52. in the said email the complainants have complained the director of the respondent Mr. Anil Bhalla to address the issues but all in vain. The complainants have not received possession of the said Plot even after being allotted 2 years before this email. Further, on 22.02.2021 another email citing similar grievance to the director was sent but no response was received from the respondent despite follow-ups.
- l. That to the shock and dismay, the complainants received an email dt.08.12.2021 finally from the respondent vide which the Respondent sent a 'Notice of Termination' of Villa/Plot No. 1/ST,82D1-7/360/Simplex admeasuring 2161 sq. ft.. It is pertinent to mention here that the complainants were already re-allotted the plot bearing no. s8/52 in the year 2018 and on the pretext the earlier allotments were cancelled due to the reasons best known to the respondent then why such termination notice was sent on 08.12.2021. That despite paying Rs.36,69,501/- which is 30% of the total sale consideration, the change of allotment of the plot time and again created a fear in the complainants that the respondent is only trying to misrepresent and misguide and want to extract money on one pretext or the other. It is pertinent to mention here that the respondent very mischievously kept of changing the allotment of the plot/unit of the complainants due to which the complainant never received any demand letter of further due instalments for which the complainant was always ready to pay.

- m. That the complainants from 14.12.2021 till 07.09.2022, chased the respondent through its director Mr. Anil Bhalla for looking into the issues and for unwarranted harassment and hardships caused to the complainant by the respondent and written numerous emails during this period to the respondent but none were addressed and responded cause great stress, mental agony, loss of money and most importantly, the respondent kept the complainants away from their home for almost 15 years now despite taking all payments till date.
- n. That after getting zero response from the respondents, the complainants visited the construction site but were shocked and appalled to see that construction held had not been completed. Despite respondents promise wide world class project with impeccable facilities to the complainants the complainants were shocked to see that the construction site is still under construction and is not at all near completion in near future. That it is pertinent to mention here that the Respondents has illegally raised falls and fictitious maintenance bills without handing over of the actual position of the said unit to the complaint end. It is further stated that demands raised in maintenance bills is false and has been made without application of mind to extort money from the innocent complainants.
- o. That it is unambiguously lucid that no force measure was involved, and project has been at standstill since several years precisely in the end of 2008 and it has been more than fourteen years till the present date therefore the Respondent cannot take a plea of the



construction was halted due to COVID-19 pandemic. It is submitted that the Complainants has already made the full payment to the respondent towards the residential unit booked by them. That despite paying such a huge amount towards the residential unit the respondent has failed to standby its terms and conditions of the builder buyer agreement and the promises assurances and representations etc which they made to the complainants at the time of booking of the above said unit.

- p. That the is not only guilty of deficiency of services and for unfair trade practice but also with breach of contractual obligations mental torture harassment of the complainants by misguiding them keeping them in dark in putting their future at risk by rendering them incomeless. That it is pertinent to mention here that the respondents have committed grave violation of the terms and conditions of the apartment buyer's agreement dt.01.06.2011 and had miserably failed to hand over the possession of the apartment in dispute as and when promised i.e. on or before 01.06.2014. Hence, the complainants are before this hon'ble authority and prays for the rightful relief in terms of interest on delayed possession on the deposited amount till actual handing over of the possession of the unit/villa/plot on account of default made by the respondent.

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

4. The complainants have sought following relief(s):

- a. Direct the respondent to pay interest on delayed possession on the entire deposited amount from each date of payments till actual date of handing over of the possession.
  - b. Direct the Respondent to handover the possession of the Unit/Plot/Villa to the Complainants.
  - c. Direct the Respondents not to create any third-party rights until the present complaint is disposed of.
  - d. Direct the Respondents not to charge holding charges.
  - e. Direct the Respondents not to charge maintenance bill until the peaceful actual physical possession of the Unit is not handed over to the Complainants.
  - f. Any other charges which is not the part of the Builder Buyer's Agreement dt. 01.06.2011.
  - g. Direct the Respondents to pay litigation cost of Rs.2,00,000/- to the Complainants.
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. At the outset, the Complainants learned about the project launched by the Respondent, titled as 'Bellevue Residences' (hereinafter referred to as 'Erstwhile Project') situated at Sector 82, Gurgaon and approached the Respondent repeatedly to know the details of the said project. The Complainants further inquired about the

- specification and veracity of the project and after being satisfied with every proposal deemed necessary for the development of the project the Complainants decided to invest.
- b. That after having keen interest in the project constructed by the Respondent the Complainants herein decided to book one villa vide Application Form dated 17.05.2008, upon his own judgement and investigation and paid an amount of Rs. 5,00,000/- (Rupees Five Lakhs Only), for further registration.
- c. That the Respondent vide Welcome Letter dated 19.05.2008, acknowledged the payment of Rs. 5,00,000/- (Rupees Five Lakhs Only), received from the Complainants towards the booking. Furthermore, the Respondent vide Allotment Letter dated 02.05.2009, allotted the Unit bearing no. 23/360/Simplex/BR (*hereinafter referred to as 'Erstwhile Villa'*) to the Complainants in the aforesaid Project.
- d. That on 01.04.2010, the Respondent vide letter requested the Complainants to return the signed copies of Builder Buyer Agreement (*hereinafter referred to 'Agreement'*), served upon them by 07.04.2010, which the Complainants failed to provide. The Complainants did not pay any heed to the Respondent request of sending the Agreement by 07.04.2010. So, the Respondent, was forced to send another reminder letter dated 17.09.2010, to remind the Complainants that the Respondent had not yet received the signed copies of Agreement, and again requested them to send the same within next 7 days from the date of this letter for further execution.

- e. Then the Respondent, on the start of the developmental work, sent a letter dated 31.12.2010, for payment of the instalment of Rs.12,49,501/- including service tax, by 15.01.2011, but the Complainants failed to do so. The Respondent then sent reminder letter dated 25.01.2011, for the payment of the aforesaid instalment and requested the Complainants to pay the same by 02.02.2011, which the Complainants again failed to do so. The Respondent upon non-receipt of the amount, requested the Complainants to pay the same as timely payments are crucial for the timely completion of the Project. The complainants then after numerous requests from the complainants, paid the aforesaid amount on 15.03.2011. It is submitted that the complainants paid the amount after the delay of 2 whole months from the due date.
- f. That after lapse of more than one year, bothered to return the signed copies of the Agreement to the Respondent and after much pursuance the Agreement was executed on 01.06.2011, for the Villa bearing no.23/360/simplex/ admeasuring to 1920 sq. ft., having Total Sale Consideration of Rs. 1,22,08,000/- in the erstwhile project. It is submitted that the Complainants were well aware and satisfied with every proposal deemed necessary for the development of the erstwhile project in question. Further, on 29.06.2012, an Addendum was executed between the Complainants and the Respondent in respect to the Erstwhile Villa and the Complainants were re-allotted a new Villa bearing no.1/ST.82D1-7/360/Simplex (*hereinafter referred to 'Villa'*), admeasuring 2161 sq. ft. in the Project '*Signature Villa 2'*

- (hereinafter referred to '**Project**') due to the reasons which were made understood and known to the Complainants.
- g. It is pertinent to bring into the attention of the Ld. Authority that as on date only partial payment of ₹26,37,670/- has been received from the complainants towards the agreed total sale consideration and still a substantial amount of money was due and payable on account of the Complainants.
- h. It is submitted that the present complaint is filed by Complainants on baseless and absurd grounds. It is clearly mentioned under **Clause 12.1** 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. The relevant clause is mentioned below for ready reference:
- "CLAUSE 12.1: DELAY DUE TO REASON BEYOND THE CONTROL OF THE COMPANY,  
.....if non delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the government and/or any other public or competent Authority or due to delay in sanction of building/ zoning plans/ grant of completion/ occupation certificate by any Competent Authority or for any other reason beyond the control of the Developer then the Allottees agree that the company shall be automatically entitled for extension of time for the for delivery of possession of the said Unit"***
- i. It is pertinent to mention that the Complainants in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the Government or Public or Competent Authority.

- j. It is submitted that as per the Agreement executed for the said Villa, the Complainants were well aware that the respondent shall not be liable for not fulfilling the obligation under the Agreement if such obligations are delayed due to any reasons mentioned under the category of Force Majeure. The relevant clause is mentioned below for ready reference:

**"CLAUSE 38: FORCE MAJEURE**

*That Company shall not be held responsible or liable for not performing any its obligations or undertakings provided for in this Agreement if such performances is prevented, delayed or hindered by any act of God, fire, flood, explosion, war, riot, terrorist act, sabotage, inability to procure or general shortage of energy, labour equipment, facilities, material or supplies, failure of transportation, strikes lock out, action of labour union courtcase/decreed/stay or any other cause(s) (whether similar or dissimilar to the forgoing) not within the reasonable control of the Company"*

- k. It is to note, that since starting the Respondent was committed to complete the project and has invested each and every amount so received from the Complainants towards the agreed total sale consideration. It is submitted that the project was hindered due to the reasons beyond the control of the Respondent and the same are now being reproduced as under.
- l. It is submitted 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 & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- m. 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.
- n. That the Respondent had planned the whole township prior to GAIL Notification which came during the year 2009 and after this notification, Respondent submitted a detailed representation to the Gail authorities and HUDA administration for re-routing of the GAIL pipeline since the Respondent had received the licenses in the township and had sold the villas to third parties based on approved layout plan.
- o. 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.

- p. 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 pipeline should be through green belt/corridor proposed master plan. 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 alternative proposal.
- q. 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 Villa's 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.
- r. 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 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.
- s. 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.
- t. 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.
- u. 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 landowners 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.

- v. Due to the above-mentioned reasons, the Respondent issued the Letter dated 06.08.2013 and 15.12.2017, to the Complainants, inviting them for Re-allotment of the Villa. It is pertinent to note that the Respondent despite the construction was trying to accommodate the Complainants by allotting them a new Villa.
- w. That as per the **Clause 12.5 of the Agreement**, it has been agreed and undertook by the parties that in case the Respondent is not in a position to deliver or handover the possession of the project then in that case the liability of the Respondent shall be limited and restricted to the refund of the amount paid by the Complainants

along with simple interest of 6%. The relevant clause 12.5 of the Agreement is mentioned herein below for ready reference:

*"...12.5 The Applicant agrees that in consequences of the Company abandoning the project or becoming unable to give possession of the said Unit within three years from the date of execution of this agreement or such extended periods as permitted under this Agreement, the Company shall be entitled to terminate this Agreement whereupon the Company's liability shall be limited to the refund of the amounts paid by the Applicant with simple interest @ 6% per annum for the period such amounts were lying with the Company and pay no other compensation whatsoever"*

- x. Despite the efforts of the Respondent, the Complainants Villa could not be a part of the Project, and the Respondent had to cancel the allotment of the Complainants, involuntary, due to reasons beyond the control of Respondent. Thus, the Respondent issued termination letter of the said Villa on 08.12.2021 and offered refund of principal amount along with 6% simple interest per annum to Complainants.
- y. It is submitted that the Respondent was committed to complete the project and has invested each and every amount towards the construction of the same. However, due to the reasons beyond the control which are explained hereinabove and not repeated herein for the sake of brevity, it has become impossible for the Respondent to fulfil the contractual obligations as promised under the Agreement and the said Agreement has become void in nature. That the Agreement between the Complainants and the Respondent has been frustrated as it is impossible for the Respondent to provide the possession of the villa in question which is valid and approved by the DTCP. It is submitted that the Doctrine of Frustration as

enshrined in **Section 56 of the Indian Contract Act 1872**, which deals with cases where the performance of it has become impossible to perform due to any unavoidable reason or condition.

- z. That in spite after suffering huge loss due to various hindrances in construction of the Project, the Respondent herein offered to refund the amount paid by the Complainants along with interest as prescribed in the Agreement, duly executed between the parties. That the Complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the Complainants are sustainable before this Ld. Authority and in the interest of justice.

7. Copies of all 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 pay interest on delayed possession on the entire deposited amount from each date of payments till actual date of handing over of the possession.**

**F.II. Direct the Respondent to handover the possession of the Unit/Plot/Villa to the Complainants.**

**F.III. Direct the Respondents not to create any third-party rights until the present complaint is disposed of.**

12. In the present matter the complainant was allotted a villa bearing no. 23, Simplex, Bellevue villa admeasuring 1920 sq. ft. at sector 83, Gurugram vide allotment letter dated 02.05.2009. Thereafter a builder buyers' agreement was executed between the parties on 01.06.2011 for a total sale consideration of ₹1,22,08,000/-. As per clause 11.1 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 01.06.2014. The respondent re-allotted the above said unit of the complainant without his consent vide allotment letter dated 16.05.2012 and finally was allotted villa no. 1, Simplex, ST-82D1-7 admeasuring 2161 sq. ft. super area in the project "Signature Villa in Vatika India Next" situated in sector 83, Gurugram vide addendum agreement dated 29.06.2012. That the addendum agreement states that '*all other terms and conditions of the builder buyer's agreement dated 01.06.2011 shall remain unaltered and effective*'. The complainant has filed the present complaint on 19.04.2023 seeking possession of allotted villa 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 08.12.2021 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 12.5 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' agreement. 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. 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 re instate the allotted unit or if the same is not available then allot an alternative unit of same size, similar location and 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., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.10.2024 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 bearing villa no. 1, Simplex, ST-82D1-7 admeasuring 2161 sq. ft. super area in the project "Signature Villa in Vatika India Next" situated in sector 83, Gurugram vide allotment letter dated 16.05.2012. The complainant has paid an amount of ₹ 36,69,501/- towards the total sale consideration of the villa till date. As per the addendum agreement the area was revised from 1920 sq. ft. to 2161 sq. ft. That the said addendum agreement states that '*all other terms and conditions of the builder buyer's agreement dated 01.06.2011 shall remain unaltered and effective*' By virtue of clause 11.1 of the buyer's agreement executed between the parties on 01.06.2011 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 01.06.2014. 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 01.06.2011 executed between the parties.

22. Accordingly, the respondent is liable to re instate the allotted unit or if the same is not available then allot an alternative unit of same size, similar location and at the same rate as per the agreed terms of the subject agreement and addendum to the agreement. The rationale behind the same is that the allottee purchased the subject unit way back in 2009 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., 01.06.2014 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.
24. 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.IV. Direct the Respondents not to charge maintenance bill until the peaceful actual physical possession of the Unit is not handed over to the Complainants.**

25. The Act mandates under section 11(4)(d), that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Section 19(6) of the Act also states that every allottee, who has entered into an agreement for sale, to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.
26. Clause 15.4 clearly specifies that the maintenance charges shall be levied from the date of issuance of occupation certificate. The relevant clause is placed below for ready reference:

*"The total maintenance charges as more elaborately described in the Maintenance Agreement (draft given in Annexure-V) will be fixed by the Maintenance Agency/ Company taking into consideration various inputs/ overheads/ charges in its sole discretion. Maintenance charges would be levied from the date of issue of occupation certificate and the Applicant undertakes to pay the same promptly. The estimates/ calculations of monthly maintenance charges by the Maintenance Agency/ Company shall be final and binding on the Applicant. The maintenance charges along with taxes, if any, shall be recovered on monthly intervals or as may be decided by the maintenance agency/ company. The Applicant agrees and undertakes to pay the maintenance bills on or before due date as intimated by the maintenance agency/ company"*

27. Accordingly, the authority observes that maintenance charges are applicable from the date of lapse of 2 months after the possession of the

subject unit is offered by the respondent after obtaining OC from the competent authority.

**F.V. Direct the Respondents not to charge holding charges**

**F.VI. Any other charges which is not the part of the Builder Buyer's Agreement dt. 01.06.2011.**

28. The authority is of the view that the respondent is directed not to charge anything which is not the part of BBA dated 01.06.2011.

**F.VII. Direct the Respondents to pay litigation cost of Rs.2,00,000/- to the Complainants.**

29. The complainants are also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

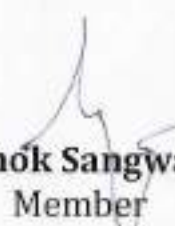
**G. Directions of the authority**

30. 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 re-instate the allotted unit or if the same is not available then allot an alternative unit of same size &

- specifications having similar location and at the same rate at which the unit was earlier purchased within 2 months from the date of this order.
- b. 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., 01.06.2014 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.
- c. The respondent is further directed to issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest i.e., 11.10% p.a. on the outstanding amount towards complainant/allottee after adjustment of delayed possession charges as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- d. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. Thereafter, the respondent shall handover the possession of the unit 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 from the date of obtaining the occupation certificate from the competent Authority and thereafter, the complainants are obligated to take the physical possession within

2 months from the date of offer of possession as per Section 19 (10) of the Act, 2016.

- e. The arrears of such interest accrued from due date of possession 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.
- f. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
31. Complaint stands disposed of.
32. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.10.2024