


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

Complaint no.: 1794 of 2022
Date of filing : 11.05.2022
Date of decision : 24.12.2024

1. Manoj Kumar Dahiya

2. Alka Devi

Both RR/o: Rz-16 Lane No 3 Sita Puri PO Palam New
Delhi

Complainants
Versus

M/S Vatika Limited

Regd. Office: Vatika triangle, 4th floor, sushant lok, ph-
1 block-a, Mehrauli Gurugram road, Gurugram-122002

Respondent**CORAM:**

Shri Arun Kumar

Chairperson

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member**APPEARANCE:**

Sh. Yogesh Goel (Advocate)

Complainants

Sh. Dhruv Dutt (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter-se them.



A. Unit and Project 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.No.	Particulars	Details
1.	Name and location of the project	"Vatika India Next, Sector 82, Gurugram, Haryana
2.	Nature of the project	Group Housing
3.	Project area	489.712 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2009
5.	RERA Registered/ not registered	36 of 2022 dated 16.05.2022 valid up to 31.03.2029
6.	Date of builder buyer agreement	28.04.2011 (Page 36 of complaint)
7.	Unit no.	Plot no. 16, first floor, third street block E admeasuring 1094.21 sq. ft. (Page 39 of complaint)
	New unit no. vide addendum agreement dated 23.08.2017	Plot no. 17, ST.J-1.3, level 2 Admeasuring 1305 sq. ft. (page 116 of complaint)
8.	Possession clause	10.1 Schedule for possession of the said unit <i>The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of three years from the date of execution of this agreement. However, in case of the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be</i>



		<i>failure due to reasons mentioned in clause (12.1),(12.2),(12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in annexure iii or as per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement.</i> (Emphasis supplied)
9.	Due date of possession	28.04.2014
10.	Total sale consideration	Rs. 37,29,545/- as per statement of account dated 23.08.2017 (annexure P5, page 94 of complaint)
11.	Total amount paid by the complainants	Rs. 13,15,340/- as per statement of account dated 23.08.2017 (annexure P5, page 94 of complaint)
12.	Notice for termination	31.07.2021 (page 119 of complaint) Due to GAIL pipeline and unavoidable reasons like non- acquisition of sector road by HUDA
12.	Offer of possession	Not offered
13.	Completion certificate	Not obtained

B. Facts of the complaint

3. The complainants have made the following submissions: -

- a. That the complainants had applied for allotment of a residential apartment having area of 1094.21 Sq. Ft. vide an application for booking dated 27.10.2009 in "Primrose Floors" of the project "Vatika India Next" in Sector 83, Village Sihi, Shikohpur, Sikanderpur Badha, Gurugram, Haryana 121009 of the respondents.



- b. That as per the application the total consideration to be paid for the floor was Rs. 31,54,346/-. The respondent had allotted a unit no. plot no. 16, primrose, FF, 3rd St., Sector 83E, VIN having super area 1094.21 sq. ft. approx. vide letter dated 21.11.2009.
- c. That the floor buyer agreement was executed between the complainants and the respondent on 28.04.2011 for the abovesaid allotted unit. As per this agreement the respondent was under obligation to hand over the possession of the property by April, 2014 in normal conditions, i.e. 3 years from the date of builder buyers agreement as the same is as per the clause no. 10.1 of floor buyers agreement on page no. 17 of that agreement. The possession was required to be given till July, 2014.
- d. That the respondent had changed the numeric of the address and increased the area of the floor. Earlier the address of the floor was plot no. 16, primrose, FF, 3rd st.83E, sector 83, vin and now the address was changed to plot no. 16, primrose, FF, st. 83E-3, sec-83, vin vide letter dated 11.01.2012. However, both the address were same. The respondent had increase the area of the apartment from 1094.21 to 1263.16 sq. ft. i.e. an increase in the size of the unit by 168.95 sq. ft.
- e. That the complainants were not in a position to object the increase size of the apartment as hefty amount was already collected by the respondent. The total consideration of the floor was increased by Rs.1,77,631/- including tax. The respondent had forced the complainants to pay such amount immediately within 14 days and such amount was paid by the complainants to the respondent on 23.01.2012.

- f. That the complainants has paid a total of Rs. 13,15,340/- towards the instalments of the said floor against the demand letters issued by the respondent time to time.
- g. That the respondent had again changed the floor/unit of the complainant and also increased the area of the floor on 23.08.2017. Now the new details of unit was Sector-83, Plot No. 17, ST.J-1.3, Level-2 and area was now 1305 Sq. ft. So now there was increase in the area by 210.79 sq. ft. in total from booking but there was no change in the other clauses of the floor buyer agreement.
- h. That all the activity of the respondent for again changing the unit is a violation of Section 13 of the Rera Act, and full and true disclosures was not given as per agreement to sell rules. The complainants had sent numerous emails to the respondent regarding possession of floor but the respondent had failed to give any satisfactory answer in this regard.
- i. That the respondent issued notice of cancellation of floor dated 31.07.2021 to take refund of amount along with interest @6% in violation to the provisions of Rera Act, 2016. But the complainants want possession of the floor and do not want to cancel the floor.
- j. So, the complainants have filed the present complaint before this Hon'ble Authority for revocation of cancellation of allotment and possession of floor along with interest. As there is grave deficiency of service on the respondent's part so the complainants also want compensation from the respondent also so after the judgment of this Hon'ble authority the complaint

must be transferred before Hon'ble Adjudicating officer for compensation.

C. Relief sought by the complainant:

4. The complainants have sought following relief:

- a. Direct the respondent to give legal and valid possession to the complainants.
- b. Direct the respondent to give monthly interest on deposited principal amount for delayed period.
- c. Direct the directors, chief financial officer and company secretary to pay the amounts mentioned supra in the event of failure by the respondents to pay the amounts within 90 days .
- d. Direct the respondent to file the status report with regard to the status of the project.
- e. Direct the respondent for attachment of the assets of the respondents, directors, chief financial officer and company secretary to secure the payment made by the innocent investors like the complainants.
- f. Impose penalty on the respondents, directors, chief financial officer and company secretary for not following the law and account of various defaults under RERA Act, 2016.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:

- a. That at this stage, it would be just and proper to refer to certain provisions of rule 8 & 15 of the 2017 Haryana Real Estate Regulatory Authority Rules, which may be relevant for the adjudication of the present lis.

- b. That from the conjoint reading of the aforementioned Sections/ Rules, Form and Annexure 'A', it is evident that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure 'A', which is required to be executed inter se the Promoter and the Allottee.
- c. That no such agreement, as referred to under the provisions of 2016 act and 2017 Haryana rules, has been executed between respondent and the complainants. rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the floor buyer's agreement, executed much prior to coming into force of 2016 Act.
- d. That the respondent has already cancelled the booking of the complainants vide cancellation notice dated 31.07.2021 due to various reasons but not limited to change in the layout plan, initiation of the GAIL Corridor, non-removal or shifting of the defunct High-tension lines and non-acquisition of sector roads by HUDA. 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 complainants along with 6% interest p.a. However, it was the complainants who did not come forward to collect the money.
- e. 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.
- f. That it was due to the aforesaid reasons which were beyond the control of the respondent; the unit of the complainants became non-deliverable.
- g. All other averments made in the complaint were denied in toto.
6. 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 complainants.

7. Written submissions filed by both the parties are taken on record and considered by the authority while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee 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 of 2016 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 regarding relief sought by the complainant.

F.I. Direct the respondent to give legal and valid possession to the complainants.

F.II. Direct the respondent to give monthly interest on deposited principal amount for delayed period.

12. In the present matter the complainant purchased a unit on 1st floor block E admeasuring 1094.21 sq. ft. in the project namely Vatika India Next located in sector 82, Gurugram. The complainant paid an amount of ₹13,15,340/- against the total sale consideration of ₹37,29,545/-. A builder buyer's agreement was executed between the complainant and the respondent on 28.04.2011 and according to clause 10.1 of the agreement the respondent was obligated to complete the construction of the unit within 3 years from the date of execution of agreement i.e., by 28.04.2014. Thereafter the respondent vide addendum agreement dated 23.08.2017 changed the complainants unit and increased the area from 1094.21 sq. ft. to 1305 sq. ft. Again on 31.07.2021 the respondent arbitrarily cancelled the unit stating that the project is not deliverable due to initiation of GAIL corridor passing through the project and the company is not in a position to develop the said unit as per the agreement. The respondent also stated that they are ready to refund the amount paid by the complainant along with 6% simple interest from the date of payment received. 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. The complainants in the present matter are seeking delay possession charges along with interest and possession of the unit. To this the authority vide order dated 09.02.2024 directed the respondent to file an affidavit w.r.t. no unit is available in the same project. The respondent on 17.05.2024 during the course of hearing filed the affidavit of authorized representative namely "Nitish" stating that no alternate unit is now available in the project which can be allotted to the complainants. The Authority herein doubts the veracity of the said affidavit as there is no board of resolution passed by the respondent company authorizing Mr. Nitish as its authorized representative was filed along with the affidavit. Also, the board of resolution dated 25.08.2022 given along with the reply has not authorized any person named as Nitish as an authorized representative in the present matter. 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. Accordingly, the said affidavit is not of much significance as on today and the authority directs the respondent to offer an alternate unit to the complainants similar in nature at the same price and nearby the same location of the said project within a period of 60 days from the date of this order.

13. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation



(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"*

14. The apartment buyer's agreement was executed between the parties. As per clause 10 of the agreement, the possession was to be handed over within a period of forty-eight months from the date of execution of agreement. The clause 10 of the buyer's agreement is reproduced below:

"Possession

10. Subject to the aforesaid (force majeure conditions) and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him as demanded by the developer, the developer contemplates to complete construction of the said commercial unit within 48 months of the execution of the agreement. (Emphasis supplied)"

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and 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 favor of the promoter and against the allottees that even a single default by him 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 time period for handing over possession loses its



meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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."

17. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 24.12.2024 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. On consideration of the documents available on record and submissions made regarding contravention of 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 agreement. By virtue of clause 10.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 3 years from the date of execution of agreement i.e., by 28.04.2014. But despite due date having lapsed about 10 years back, the unit is neither completed nor offered for possession till date.
20. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand

over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession i.e., 28.04.2014 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 11% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.III. Direct the directors, chief financial officer and company secretary to pay the amounts mentioned supra in the event of failure by the respondents to pay the amounts within 90 days.

F.IV. Direct the respondent to file the status report with regard to the status of the project.

F.V. Direct the respondent for attachment of the assets of the respondents, directors, chief financial officer and company secretary to secure the payment made by the innocent investors like the complainants.

F.VI. Impose penalty on the respondents, directors, chief financial officer and company secretary for not following the law and account of various defaults under RERA Act, 2016.

21. The above-mentioned reliefs sought by the complainants were not pressed by the complainant's counsel during the arguments in the passage of hearing. The authority is of the view that the complainants counsel does not intend to pursue the above-mentioned reliefs sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

G. Directions of the Authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The cancellation dated 31.07.2021 is bad in eyes of law and is hereby set aside. The respondent is directed to allot an alternative unit of same size, similar location and at the same rate and specifications at which the unit was earlier purchased, within a period of two months from the date of this order.
- b. The respondent is directed to pay delayed possession charges on the amount paid by the complainant~~4~~, from the due date of possession i.e., 28.04.2014 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- c. 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.
- 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. The respondent/promoter shall handover possession of the physical possession of the allotted unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on

payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.


- e. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.12.2024

HARERA
GURUGRAM