

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

Complaint no.	3881 of 2021
Date of filing complaint	22.09.2021
First date of hearing	02.02.2022
Order pronounced on	07.05.2025

1. Satish Kumar Gupta
2. Veena Gupta
3. Rahul Gupta
4. Swejal Gupta

All Residents of: 304, Sector-15, Part 1, Gurugram**Complainants**

Versus

M/s Vatika Limited

Regd. office: 4th Floor, Vatika Triangle, Phase I,
Block A, Sushant Lok, MG Road Gurugram-122002**Respondent****CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Sh. Animesh Goyal, Advocate

Complainants

Sh. Venket Rao, Advocate

Respondent

ORDER

1. The present 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 provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details:

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

Sr. No.	Particulars	Details
1.	Project name and location	"INXT High Street", (Phase I) Sector-83, Gurugram
2.	Project area	14918.258 sq. mtrs.
3.	Nature of the project	Commercial Unit
4.	DTCP License no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Name of the licensee	Browz Technologies Pvt. Ltd. and others
6.	RERA Registered/ not registered	Registered 263 of 2017 dated 03.10.2017 valid upto 02.10.2022
7.	Allotment Letter	19.12.2016 (Page 18 of complaint)
8.	Date of execution of buyer's agreement	Not Executed
9.	Unit no.	68, Ground Floor, tower A (Page 18 of complaint)
10.	Unit area admeasuring	985 sq. ft. (Page 18 of complaint)
11.	Assured return and lease rental clause	Clause 3 "3. The developer shall remit an assured monthly return of Rs. 114.33 Per sq. ft. till completion of the building It is stated that the project is in advance stages of construction and the developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building said commercial unit soon." Clause 4 "4. The Allottee authorizes the developer to lease out the said unit, which is part of the commercial complex (mention name of the project) and agrees that the obligation of the developer shall be to lease the said unit along with the other commercial spaces in the

		<p>commercial complex. The developer shall lease the unit along with the premises (@Rs140/- per sq. ft. However, in the eventuality the achieved lease return being higher or lower than Rs140/- per sq. ft. the following would be applicable.</p> <p>a. If the achieved rental is less then Rs 140/- per sq. ft. then you shall be refunded @ Rs. 133.33/- per sq. ft. for every Rs.1/- by which achieved rental is less then Rs. 140/- per sq. ft.</p> <p>b. If the achieved rental is more then 140/- per Sq. ft. shall be liable to pay additional sales consideration Rs.66.67/- Per Sq. ft. for every rupee of additional rental achieved."</p> <p>(Allotment letter at Page 19 of complaint)</p>
12.	Assured Returns paid by respondent to complainant till September, 2018	<p>Rs. 21,39,704/-</p> <p>(Page 5 of reply)</p>
13.	Possession clause	<p>"As mutually discussed, and agreed, upon completion of construction of the above mentioned unit/complex, the possession of the captioned unit may be handed over to you for self-use or leasing to a third party at your end, subject to the condition that the nature and scope of activity proposed to be conducted from the captioned unit, whether by you or by lessee, is found to be confirming to the nature and scope of work permitted within the premises, at your sole discretion in capacity of the above mentioned commercial complex."</p> <p>(Letter dated 02.02.2017 confirming booking of complainants at page 17 of complaint)</p>
14.	Due date of possession	<p>19.12.2019</p> <p>(Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018- Hon'ble Apex Court observed that although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.)</p> <p>In view of the above-mentioned reasoning, the due date for handing over the possession</p>

		of the unit comes out to be 19.12.2019.
15.	Basic sale consideration	Rs. 1,83,86,995/- (Page 18 of complaint)
16.	Amount paid by the complainants	Rs. 1,34,73,850/- (Agreed to by both parties in pleadings)
17.	Letter sent by respondent to complainant	19.03.2020 (Respondent intimated the complainants that the project would be completed in mid of 2021 and amount of assured return shall be adjusted towards the balance payment due from the complainants at time of handing over of possession.)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That in 2016, the complainants came to know through real estate agent of the respondent about a project called 'INXT HIGH STREET RETAIL', in Sector-83, Gurugram, Haryana. The complainants were enticed by the agent of the respondent and its officials to book a commercial unit in the said project with the assurances that the possession of the said unit would be delivered within a period of 3 years from the date of issuance of allotment letter further assuring that the project would be one of the best in its segment.
- b) That accordingly the respondent allotted a unit no. A-68, ground floor Sector-83, measuring 985 sq. ft. in the aforesaid project known as "INXT High Street Retail", for a basic sale price of Rs. 1,83,86,995/-. The respondent issued allotment letter dated 19.12.2016 bearing reference no.16-09-0273026/68/19122016 in the name of complainants, after receiving a sum of Rs.1,34,73,850/- by way of cheques from the complainants. The respondent and its officials assured to the complainants that the builder buyer agreement would be executed very soon.
- c) That as per the terms of the said allotment letter, the respondent had a liability to remit an assured monthly return to the complainants at the rate

of Rs. 114.33/- per sq. ft., amounting to a monthly return of Rs. 1,12,616/- for a period of 3 years from the date of allotment or till the date when the unit is put on lease, whichever is earlier.

- d) That however the respondent miserably failed to make payment of the amount of assured monthly return after September 2018. Though prior to this the respondent had cleared the monthly assured return as agreed by it. The respondent never assigned any reason for non-payment of the assured return, nor intimated the complainants in any manner in this behalf.
- e) That the respondent initially sent a draft of the builder buyer agreement in the year 2018 which was sent to the respondent after signing by the complainants, however the respondent never sent the duly signed copy of the same to the complainants. Rather, in the month of March 2020 the respondent sent another draft of the builder buyer agreement asking the complainants to send the same after signing. However after receiving the draft copy of the said builder buyer agreement the complainants met with the officials of respondent Mr. R.K. Sahni on 16.03.2020, apprised them about all the facts and requested the said officials that the issue of assured return should be decided first and only thereafter the said builder buyer agreement would be signed as the same was not acceptable to the complainants being totally one sided and against the norms prescribed under the Real Estate (Regulation & Development) Act, 2016. Even the said agreement was totally silent regarding the payment of monthly assured return and the date and time of handing over the possession of the allotted unit.
- f) That the allotment letter clearly speaks about applicability of the provisions of builder buyer agreement. The officials of the respondent assured to do the needful but failed to do so. In this way in fact no builder

buyer agreement has been signed between the parties till date, but the fact remains that the respondent has miserably failed to pay the monthly assured return and even the possession of the unit allotted to the complainants have not yet been offered.

- g) That the complainants also tried to know about the exact status of the project and the unit allotted to the complainants i.e. whether the building is complete or not whether the respondent have obtained occupation certificate and completion certificate, whether the building is registered under HARERA enabling the respondent to offer the possession of the unit to the complainants which has not been offered so far till date.
- h) That since September 2018 the respondent has not been cooperating with the complainants in any manner, nor they are responding to the just and proper request of the complainants and the complainants have been deprived of their valuable money and the property which is totally illegal and even against the provisions of the Real Estate (Regulation & Development) Act, 2016. Hence the respondent is liable to pay the delay possession charges upon the total amount of Rs.1,34,73,850/- from October 2018 till handing over the actual physical and peaceful possession of the unit allotted to the complainants.
- i) That the act of the respondent in deliberately inducing the complainants to part way with their life's saving and cheat them based upon false documents amounts to an act of fraud and cheating for which the present complaint is being filed.
- j) That the modus operandi of the respondent has caused tremendous financial pressure upon the complainants herein for which the complainants are entitled to be reimbursed forthwith as well as for the mental agony caused to the complainants by the acts, omissions and mala fide conduct on the part of the respondent.

D. Relief sought by the complainants:

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

- I. Direct the respondent to hand over the actual, physical and vacant possession of the said unit to the complainants as per allotment along with penalty for delayed possession @18% per annum.
- II. Direct the respondent to pay interest at the rate of 18% per annum on the entire payments made by the complainants to the respondent from the date of handing over possession till the unit is transferred in the name of 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.

E. Reply by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -

- a) That the complainants are simply investors who approached the respondent for some investment opportunities and steady rental income.
- b) That around January 2016, the complainants herein learned about the project launched by the respondent titled as "INXT High Street" situated at Sector 83, Gurugram, Haryana and approached the respondent repeatedly to know the details of the project.
- c) That after having keen interest in the project constructed by the respondent, the complainants desired to invest and booked unit in the year 2016 for a total sale consideration of Rs.1,83,86,995/- in the said project.
- d) That on 19.12.2016, the complainants at their own will and consent further made a payment of Rs.1,34,73,850/- towards the agreed sale consideration of the unit.
- e) That the respondent vide allotment letter dated 19.12.2016, allotted a unit no. A68, Ground floor, sector 83 admeasuring 895 sq. ft. in the said project. The complainants were well aware that the commercial unit in question

was subject to be leased out post its completion and same was evidently mentioned and agreed by the complainants in allotment letter dated 09.12.2016.

- f) That the commercial unit was deemed to be leased out upon completion and the same was intimated by the respondent vide letter dated 02.02.2017, wherein the complainants have mutually agreed and acknowledged that upon completion of the said unit, the same shall be leased out.
- g) That the complainants were entitled for assured return for 3 years from the date of allotment or till the date the unit is put on lease, whichever is earlier. As of September, 2018 the respondent had duly paid the assured return of Rs.1,12,616/- every month as agreed to the complainants for the investment made without any delay. The complainants have received an amount of Rs.21,39,704/- as assured returns under the said agreement.
- h) That the respondent vide letter dated 19.03.2020 has assured the complainants that the amount of assured return shall be adjusted towards the balance payment due from complainants at the time of possession.
- i) That the possession of the unit was subject to major hindrances which were beyond the control of the respondent. As such the construction was delayed due to such "force majeure" conditions, the respondent was entitled for extension of time period in handing over the possession.
- j) That the development work was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Goods and services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

k) That the construction activities have also been hit by repeated bans by the courts/tribunals/authorities to curb pollution in Delhi-NCR region. Even before the normalcy could resume, the world was hit by the Covid-19 pandemic. The current covid pandemic resulted in serious challenges to the project with no available labourers, contractors, etc. for the construction of the project, etc.

l) That the agreement executed between the parties was in nature of an investment agreement and does not stipulate about possession. The respondent vide communication dated 19.03.2020 duly intimated the complainants regarding the exact status and assured that the project shall be completed in the mid of 2021. It was further agreed that the amount of assured return as agreed under the agreement shall be adjusted towards the balance payment due on account of complainants at the time of handing over the possession.

7. All other averments made by the complainant were denied in toto.

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

F. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

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

Section 11.

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on objections raised by the respondent

G.I Objection regarding the complainants being investors.

13. The respondent took a stand that the complainants are investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyers, and he has paid a sum of Rs.1,34,73,850/- to the promoter towards

purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottees being investor are not entitled to protection of this Act also stands rejected.

G.II Objections regarding force majeure.

15. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees have not paid instalments regularly but all the allottees cannot be expected to suffer because of a few allottees. Thus, the promoter respondent cannot be given any

leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G.III Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

16. The Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020*** dated 29.05.2020 has observed as under:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

17. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 19.12.2019. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

H. Findings on the relief sought by the complainant.

H.I Direct the respondent to hand over the actual, physical and vacant possession of the said unit to the complainants as per allotment along with penalty for delayed possession @18% per annum.

H.II Direct the respondent to pay interest at the rate of 18% per annum on the entire payments made by the complainants to the respondent from the date of handing over possession till the unit is transferred in the name of the complainants.

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

19. The factual matrix of the case reveals that the complainants were allotted unit no. 68, ground floor, tower A in the respondent's project "Vatika INXT High Street" vide allotment letter dated 19.12.2016. The complainants paid an amount of Rs.1,34,73,850/- against the total sale consideration of Rs.1,83,86,995/-. The builder buyer agreement was not executed between the parties. Therefore, the due date of possession is to be calculated from the date of allotment in view of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018.**" Accordingly, the due date of possession comes out to be 19.12.2019.
20. Herein, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under: -
- "Section 18: - Return of amount and compensation***
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
-
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."
21. The interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottees for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of Section 2(za) of the Act. The complainants cannot be made suffer due to fault of the respondent and to pay for the unit as per today's rate.
22. **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 does not intend to withdraw from

the project, he shall be paid, by the promoters, 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, *ibid*. 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.

23. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
24. 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., 07.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "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;"

26. 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.

27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 19.12.2019. Occupation certificate has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities to handover the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 19.12.2019 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

28. Further, the respondent is obligated to handover the possession of the unit to the complainants in terms of the allotment letter dated 19.12.2016 read with letter dated 02.02.2017, after obtaining of occupation certificate from the competent authority under Section 11(4)(b) read with Section 17 of the Act, 2016.

H. Directions of the Authority:

29. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast

upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to pay delay possession charges at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 19.12.2019 till the date of offer of possession plus two months or actual handing over of possession, whichever is earlier, as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
 - II. The respondent is directed to handover the possession of the unit to the complainants in terms of the allotment letter dated 19.12.2016 read with letter dated 02.02.2017, after obtaining of occupation certificate from the competent authority under Section 11(4)(b) read with Section 17 of the Act, 2016.
 - III. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
 - IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
 - V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
30. Complaint stands disposed of.
31. File be consigned to the registry.

Dated: 07.05.2025

Ashok Sangwan
(Member)
Haryana Real Estate Regulatory
Authority, Gurugram