

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

Complaint no.	3673 of 2019
Date of filing	13.09.2019
Date of first hearing	13.11.2019
Order Pronounced on	02.07.2025

Late Sh. Rama Nand through his legal heirs

1. Ms. Maya Devi (Wife)
2. Mr. Dharmendra Yadav (Son)
3. Ms. Rajesh Yadav (Daughter)
4. Ms. Mukesh Yadav (Daughter)

All R/o :- House no. 1A, Block 25, Rail Vihar,
Sector 56, Gurugram, Haryana

Complainants

Versus

**M/s Vatika Sovereign Park Private
Limited**

Regd. Office at:- Flat no. 621A, 6th floor,
Devika Towers 6, Nehru Place, New Delhi

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Animesh Goyal (Advocate)

Ms. Ankur Berry (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

Sr. No.	Particulars	Details
1.	Name of the project	"Sovereign Park", Sector- 99, Gurugram
2.	Registered/Unregistered	Registered Registration no. 285 of 2017 dated 10.10.2017 valid upto 09.10.2022 (Further extended upto 31.03.2025)
3.	DTCP License No.	119 of dated 06.12.2012 valid upto 05.12.2016 65 of 2013 dated 20.07.2013 valid upto 19.07.2017
4.	Unit no.	301, 3 rd Floor, Building A (Page no. 19 of complaint)
5.	Unit admeasuring	2600 Sq. ft. (Super Area) (Page no. 19 of complaint)
6.	Date of execution of flat buyer agreement between original allottee and the respondent	23.03.2015 (Page no. 16 of complaint)
7.	Addendum to BBA	15.04.2015 Clause 2- Earnest money- Forfeiture of 10% of BSP and PLC (Page 72 of complaint)
8.	Possession clause	Clause 13. <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said residential floor within a period of 48 months from date of execution of this BBA unless there shall be delay or there shall be failure due to reasons mentioned in clauses 14 to 17 & 37 herein or</i>

		due to failure of allottees to pay in time the price of the said apartment along with all the other charges and dues in accordance with the schedule of payments given in annexure-I or as per the demands raised by developer from time to time or any failure on part of the allottees to abide by any terms or conditions of the agreement." (BBA at page no. 27 of complaint)
9.	Due date of offer of possession	23.03.2019 (Calculated to be 48 months from the date of agreement)
10.	Total sale consideration	Rs. 2,30,57,000 (SOA dated 20.05.2021 at page no. 44 of reply)
11.	Total amount paid by the complainant	Rs. 61,66,070/- (SOA dated 20.05.2021 at page no. 44 of reply excluding the credit notes issued by respondent)
12.	Occupation Certificate	Not Obtained
13.	Offer of possession	Not offered
14.	Payment reminder	23.10.2015, 22.12.2015, 02.03.2016, 06.05.2016, 28.06.2016, 16.09.2016, 08.08.2017, 24.06.2019 (Page no. 32 to 43 of reply)
15.	First Notice of termination owing to non-payment of instalments	14.12.2016 (Page no. 49 of reply)
16.	Complainant withdrew complaint filed before PLA with liberty to file fresh suit	03.07.2019 (Page no. 71 of complaint)
17.	Notice of termination owing to non-payment of instalments	03.09.2020 (Page no, 48 of reply)

B. Facts of the complaint

- An application dated 07.02.2023 had been filed by the counsel for the complainant for impleading legal representatives of the deceased complainant-allottee (left for heavenly abode during the pendency of complaint on 26.12.2022), i.e., Ms. Maya Devi (Wife), Mr. Dharmendra Yadav

(Son), Ms. Rajesh Yadav (Daughter) and Ms. Mukesh Yadav (Daughter), further placing on record affidavit dated 25.04.2023. Same is taken on record.

4. The complainants have made the following submissions in the complaint:
- a) That in the year 2013, the complainants came to know through real estate agent of the respondent that the respondent had proposed their project 'Sovereign Park', situated at Sector- 99, Gurugram, Haryana. The complainants were enticed by the agent of the respondent and its officials to book a unit in the said project with the assurance 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 the complainants booked a unit no. 301, 3rd floor, tower- A, measuring 2600 sq. ft. in the aforesaid project. The respondent issued allotment letter dated 07.06.2013 in the name of complainants bearing reference no. 07062013 after receiving a sum of Rs.10 lacs by way of cheque from the complainant.
 - c) That the complainants paid Rs.61,66,070/- up to 29.02.2016. A sum of Rs.46,66,070/- was paid by the complainants to the respondent up to 22.12.2014, but despite various request the respondent never came forward to execute the builder buyer agreement in favour of complainants with respect to the allotted unit. Subsequently, the respondent through its duly authorised person got signature of the complainants on a pre-typed one-sided builder buyer agreement without disclosing the terms and conditions stated therein. The complainants were under a compulsion to sign the builder buyer agreement on dotted lines as a huge amount of Rs.46,66,070/- was paid by them even prior to

execution of the buyer's agreement. The complainants received a copy of the same wherein the date of execution was mentioned as 23.03.2015 and name of the complainants and other particulars were filled in the handwriting subsequently without any notice or knowledge of the complainants.

- d) That the complainants thereafter paid a sum of Rs.10 lacs on 12.08.2015 and Rs.5 lacs on 29.02.2016 and enquired about the progress of the construction from the officials of the respondent but were shocked to note that no construction of any sought and in any manner was raised by the respondent.
- e) That the payment of further instalments was linked with the stage of construction and the respondent were entitled to remaining instalments only after raising the construction as per the plan. However, the construction of the project and building was not raised in any manner according to the construction plan and the respondent was not entitled for ask for payment of any instalments.
- f) That the complainants were further shocked to receive an illegal and unauthorised letter dated 14.12.2016 wherein the respondent threatened to terminate the allotment of the complainants on account of non- payment of alleged outstanding balance of Rs.1,10,71,733.75/- attaching the statement of accounts. The complainants in consultation with his son sent a reply dated 22.12.2016 to the respondent apprising them about illegal and unauthorised issuance of letter dated 14.12.2016. The said reply was sent requesting the respondent to furnish complete details of status of construction, date of completion and handing over the possession of the apartment to the complainants, further requesting them to withdraw the notice dated 14.12.2016.

- g) That the respondent after receiving the said reply, though refrained themselves from cancellation of the allotment of the complainants, but they never came forward to furnish any details about the project.
- h) That the complainants served a legal notice to the respondent through their counsel Sh. Mahender Singh, Advocate, Gurugram requesting the respondent to refund the total amount of Rs.61,66,070/- along with interest @24% per annum from the date of deposit.
- i) That the respondent illegally and unauthorisedly did not sent a reply to the said legal notice-dated 09.08.2017, nor complied with the request made by the complainant same and the complainant in order to save and recover his hard earned precious amount filed an application U/S 22-C of the Legal Services Authority Act, before the Chairman Permanent Lok Adalat, Public Utility Services Gurugram for refund of amount of Rs.61,66,070/- along with interest @24%.
- j) That during the pendency of the said application the complainants came to know about coming into existence of the Real estate Regularity Authority and formation of the Hon'ble Forum at Gurugram and the complainants withdrew their complaint from the Permanent Lok Adalat dated 03.07.2019 to file the present complaint before this Hon'ble Authority.
- k) That bare perusal of documents would clearly reveal that the buyer's agreement was got signed by the officials of the respondent from the complainants not on the actual dates stated therein but much prior to the same and subsequently the date of execution as 23.03.2015 has been inserted along with filling of blank columns in handwriting at his back without any notice or knowledge of the complainants illegally and unauthorisedly.

- l) That since the respondent has been miserably failed to perform its parts of obligations and to handover the actual, physical and vacant possession of the allotted unit as per the agreement, which is not even complete in any manner till date, therefore the respondent is liable to refund of the amount of Rs.61,66,070/- along with the prescribed rate of interest.
- m) That even the project has not been registered by the respondent with the HARERA as required under the Act. The conduct of the respondent has resulted in wrongful loss to the complainants and wrongful gain to the respondent herein, for which the respondent is liable to be prosecuted under Indian Penal Code.

C. Relief sought by the complainants:

5. The complainants have sought following relief(s):
- I. Direct the respondent to refund the amount of Rs.61,66,070/- with interest @ 18% p.a. which has been paid by the complainants to the respondent till date.
 - II. Direct the respondent to pay a sum of Rs.5,00,000/- on account of mental agony and harassment.
 - III. The cost of the proceedings may also be awarded.
6. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

7. An application dated 18.07.2024 has been filed by the counsel for the complainants for adding "M/s Vatika Sovereign Private Limited" as respondent no.2 on the ground that during the course of final arguments, it was found by the complainants that by virtue of addendum to builder buyer agreement dated 15.04.2015, respondent no. 1 "M/s Vatika Limited" has transferred all the rights in favour of "M/s Vatika Sovereign Private Limited" vide project account transaction arrangement, so accordingly "M/s Vatika

Sovereign Private Limited" has acquired all the rights inter alia to receive all the payments from the allottees, raise demands from the allottees and issue letters, receipts, etc. to the allottees. Thus, "M/s Vatika Sovereign Private Limited" is the necessary and essential party in the present case.

8. The said application impleading "M/s Vatika Sovereign Private Limited" was allowed by the Authority during the course of its proceedings dated 30.10.2024. Further, the counsel for respondent prayed for deletion of name of "M/s Vatika Limited" from the array of parties as no relief lies against "M/s Vatika Limited." The counsel for the complainants had no objection to the said request of the respondent and therefore, the name of "M/s Vatika Limited" was deleted from the array of the parties vide same proceedings dated 30.10.2024. Herein the complaint lies only against the respondent "M/s Vatika Sovereign Private Limited."
9. During the course of proceedings dated 23.04.2025, the counsel for the respondent stated that the respondent wishes to adopt the same reply as filed by M/s Vatika Limited. Herein the respondent is contesting the complaint on following grounds vide its reply dated 16.11.2022:
 - a) That the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as incorrect understanding of the terms and conditions of the BBA dated 23.03.2015.
 - b) That the complainants have violated the obligations set within Section 19 of the RERA Act and has further breached the terms of BBA dated 23.03.2015.
 - c) That the complainants failed to make the payments as per the agreed payment plan and out of the total sale price of Rs.2,30,57,000/-, an amount of Rs.1,84,29,547/- is still outstanding to be paid. Despite

numerous opportunities, reminders, notice of termination and further chances, the complainants ignored to fulfil their promise of paying the consideration amount as mutually decided and hence, there being no fault on part of the respondent, the respondent is entitled to cancel the booking. The timeline of the case is as under:

Date	Particulars
07.06.2013	Invitation for offer of allotment
24.06.2013	Allotment letter issued
08.07.2013	Payment plan is shared and agreed by the parties
13.09.2013	Payment reminder is sent to the complainant
07.11.2013	Payment reminder is sent to the complainant
08.07.2014	BBA is sent to the complainant for signing
22.08.2014	First reminder is sent to return the signed BBA
10.10.2014	Second reminder is sent to return the signed BBA
09.01.2015	Third reminder is sent to return the signed BBA
05.02.2015	Payment reminder is sent to the complainant
18.03.2015	Payment reminder is sent to the complainant
22.03.2015	BBA is finally signed and executed between the parties
23.10.2015	Payment reminder is sent to the complainant
22.12.2015	Payment reminder is sent to the complainant
13.03.2015	Addendum to the BBA s sent
02.03.2016	Payment reminder is sent to the complainant
06.05.2016	Payment reminder is sent to the complainant
28.06.2016	Payment reminder is sent to the complainant
16.09.2016	Payment reminder is sent to the complainant
14.12.2016	Notice of termination
22.12.2016	Reply sent by complainant to notice of termination, along with a payment of Rs.15,00,000/- to cancel/withdraw termination
11.06.2017	Payment reminder is sent to the complainant
08.08.2017	Final opportunity given to complainant for making payments as per the payment plan
09.08.2017	Complainant filed complaint under section 22C of Legal Services Authorities Act in Permanent Lok Adalat
14.12.2016	Letter of termination issued by the respondent since the complainant refuse o make any payment even after various reminders
29.01.2019	Notice of termination sent to complainant
24.06.2019	Payment reminder is sent to the complainant
03.07.2019	Complainant withdrew the complaint filed before Permanent Lok Adalat
03.09.2020	Notice for termination is finally sent to the complainant

- d) That the respondent had issued letter of termination on 14.12.2016 being tired of waiting for due payments from the complainants however the complainant and his son approached the respondent and requested for time to make the payments. A final opportunity was given to the complainants vide letter dated 08.08.2017.
- e) That the respondent was legally entitled to cancel the allotment on account of non-payment of due instalments and to forfeit the earnest money, however as a gesture of goodwill, instead of forfeiting the earnest money paid by the complainants, the respondent agreed to grant some time to the complainants to make due payments. The continued failure of the complainants to fulfil their obligations under BBA dated 23.03.2015 and also under Section 19 of the RERA Act resulted in issuance of second notice of termination on 03.09.2020 and thus, the booking and allotment of the complainants had been terminated and accordingly cancelled vide termination letter dated 03.09.2020.
- f) That the respondent sent BBA to the complainants for signing on 08.07.2014 however the complainants delayed the complete process by failing to provide the signed copy for execution. The respondent sent reminder notices to the complainants dated 22.08.2014, 10.10.2014 and 09.01.2015 and thereafter, the BBA got signed and executed on 23.03.2015.
- g) That for fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with cases requiring detailed evidence for proper and fair adjudication.
- h) That the complainants respondent promised to deliver possession of the residential unit within the time frame as defined under clause 13 of the

BBA. As per the agreed terms the respondent intended to deliver possession within 48 months, however this period of 48 months was tentative and heavily relied on external factors defined under:

- (a) Clause 7- Time being essence for payments of sums due by the allottee.
 - (b) Clause 16- Delay due to reasons beyond the control of the developer.
 - (c) Clause 17- Failure to deliver possession due to govt. rules, orders, notifications, etc.
 - (d) Clause 36- Force Majeure.
- i) That the present complaint has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. While Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the Allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.
- j) That the respondent was facing umpteen roadblocks in construction and development work in its projects which have been beyond the control of the respondent such as the follows:
- (a) Construction, laying down and/or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete layout of the township, including that of independent floors.

- (b) Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 metre and 60 metre wide and the consequent litigation for the same, the issue is even yet not settled completely;
- (c) Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water,
- (d) Delay in removal/ re-routing of defunct High-Tension Line of 66KVA in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
- (e) Total and Partial Ban on Construction due to the directives issued by the National Green Tribunal during various times since 2015.
- (f) The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- (g) Additionally, NGT imposed a set of partial restrictions, some of which are:
 - (i) No construction activities between 6 pm till 6 am (174 days)
 - (ii) Stop the usage of Diesel Generator Sets (128 days).
 - (iii) Stop entry of Truck Traffic into Delhi.
 - (iv) Close brick kilns, Hot Mix plants and Stone Crushers.
 - (v) Stringently enforced rules for dust control in construction activities and close non-compliant sites.

- (vi) In the year 2019, partial restrictions continued to be in place in NCR region.
- (vii) The year 2020, a complete stoppage of all construction and allied activities due to the Covid-19 pandemic, resulting in massive timeline alterations.
- (h) The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- (i) That the Respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide External Development Works and Infrastructure Development Works.
- k) That upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government authorities. The incompleteness of such development works resulted in minor alterations in timelines of the project. It is pertinent to mention that in the matter titled "Credai-NCR vs. Department of Town and Country Planning, Government of Haryana & Anr." before the Competition Commission of India Case No. 40 of 2017 it has been opined and well conveyed by the Hon'ble Commission that there is a dependency

of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines.

- 1) That the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Authority. The present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

10. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

11. The respondent raised an objection that this Authority does not have the territorial jurisdiction to deal with the present complaint. However, the Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

12. 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 this complaint.

E.II Subject-matter Jurisdiction:

13. 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.

14. 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 complainant at a later stage.
15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as

envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I Objections regarding delay owing to force majeure conditions.

17. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as passing of GAIL pipeline through the project, non-acquisition of sector roads by HUDA and re-routing of Defunct high-tension line of 66KVA in licenses land despite deposition of charges/fee with HVBPNL, Haryana. However, the pleas advanced in this regard are devoid of merits. Firstly, the GAIL notification regarding lying of pipeline come out in the year 2009, which is prior to the allotment in 2013, and thereafter, GAIL granted permission for reducing ROU from 30 metres to 20 metres vide letter dated 04.03.2011. GAIL notification and permission letter was prior to the execution of buyer's agreement dated 23.03.2015. 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 complainants. Further, 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 has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, there is no justification for the wait for such long period as it is well settled principle

of law that a person cannot take benefit of his own wrong. Thus, no benefit of indefinite period in this regard can be given to the respondent/builder.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

18. 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."

19. 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 23.03.2019. 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.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the amount of Rs.61,66,070/- with interest @ 18% p.a. which has been paid by the complainants to the respondent till date.

20. The factual matrix of the case reveals that the complainants were allotted unit no. 301, 3rd floor, building A in the project "Vatika Sovereign Park", situated at Sector 99, Gurugram, Haryana. The builder buyer agreement was executed

between the parties on 23.03.2015, followed by execution of addendum agreement dated 15.04.2015. The complainants have paid an amount of Rs.61,66,070/- against the total sale consideration of Rs.2,30,57,000/-. The due date of possession had to be calculated in terms of clause 13 of the buyer's agreement i.e., within a period of 48 months from the date of execution of the buyer's agreement. Accordingly, the due date of possession comes out to be 23.03.2019.

21. The plea of the respondents is that the unit of the complainants was cancelled by the respondents vide termination letter dated 03.09.2020 on account failure of the complainants to make payment of the outstanding dues. To corroborate further, the respondent placed on record reminders and demand letters being sent by the respondent to the complainants to make payment of outstanding dues.
22. Perusal of case file reveals that the said notice of termination dated 03.09.2020 was issued by "M/s Vatika Limited", however as per the addendum agreement executed between the parties on 15.04.2015, "M/s Vatika Limited" had transferred the project to "M/s Vatika Sovereign Park Pvt. Ltd." Therefore, Authority is of the view that since "M/s Vatika Limited" had no authority to develop or sell the project, therefore, the said notice of termination letter dated 03.09.2020 issued by "M/s Vatika Limited" in favour of the complainants is declared to be void-ab-initio and is hereby quashed.
23. Further, the complainants herein, intends to withdraw from the project and are seeking refund of the entire amount paid by them under Section 18(1) of the Act of 2016, ibid.

"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
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act **or for any other reason,**

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf** including compensation in the manner as provided under this Act:

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."

24. Keeping in view the fact that the complainant-allottees wish to withdraw from the project and seeks refund of the amount received by the promoter in respect of the unit with interest, the matter is covered under Section 18(1) of the Act of 2016. Accordingly, the respondents are liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.

25. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest as provided 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.

26. 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 ease uniform practice in all the cases.
27. Consequently, as per the 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., 02.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.
28. 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—***
- 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 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;"*
29. 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 complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed

under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules, 2017.

G.II Direct the respondent to pay a sum of Rs.5,00,000/- on account of mental agony and harassment.

G.III The cost of the proceedings may also be awarded.

30. The complainants in above-mentioned reliefs are seeking compensation. The 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. 2021-2022 (1) RCR (c) 357*, 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. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking the relief of compensation.

J. Directions of the authority

31. 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/promoter is directed to refund the amount received by it from the complainants, i.e., Rs. 61,66,070/- along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount within the timelines provided in Rule 16 of the Haryana Rules, 2017.

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

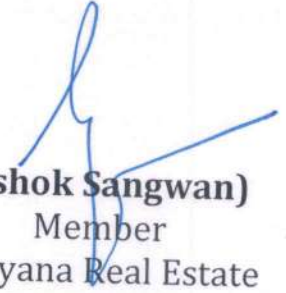
32. Complaint stands disposed of.

33. File be consigned to registry.

Dated: 02.07.2025



HARERA
GURUGRAM


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