

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Date of Decision: 23.07.2025**

**Appeal No.730 of 2023**

M/s. Vatika Limited, Regd. Office: Vatika Triangle, 4<sup>th</sup> Floor Sushant Lok, Phase-1, Block-A, Mehrauli-Gurgaon Road, Gurugram, Haryana – 122022.

Appellant-Promoter

Versus

Raj Kumar Maggon, D-82, Westend Heights, DLF Phase V, Sector 53, Babupur, Gurgaon, Haryana – 122 006.

Respondent-Allottee

**Appeal No. 104 of 2024**

M/s. Vatika Limited, Regd. Office: Unit No. A-002 INXT City Centre, Ground Floor, Block A, Sector-83, Vatika India Next, Gurugram, 122012.

Appellant-Promoter

Versus

Sakshi Maggon, D-82, Westend Heights, DLF Phase V, Sector 53, Babupur, Gurgaon, Haryana – 122 006.

Respondent-Allottee

**CORAM:**

**Justice Rajan Gupta  
Shri Rakesh Manocha**

**Chairman  
Member (Technical)**  
(Joined through VC)

Argued by : Mr. Venket Rao, Advocate along with  
Mr. Pankaj Chandola, Advocate  
for the appellant-promoter.

Mr. Rishabh Jain, Advocate  
for the respondent-allottees.

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN :**

This order shall dispose of above-mentioned two appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 730 of 2023.

2. Present appeal is directed against order dated 26.09.2023 passed by the Authority<sup>1</sup>, operative part whereof reads as under :-

*“ 35. 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 the interest at the prescribed rate i.e. 10.75 p.a. w.e.f. due date of possession i.e. 22.12.2012 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.*
- ii. 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.*
- iii. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate or occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(1) of the Act of 2016, shall take the physical possession of the subject plot/unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.*
- iv. Vide order dated 13.01.2023, a cost of Rs. 10,000/- was imposed upon the respondent to be paid to the complainant, has not been paid by the respondent so far. The respondent is directed to pay the said cost to the complainant.*
- v. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement. The respondent is also not entitled to*

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<sup>1</sup> HARYANA Real Estate Regulatory Authority, Gurugram

*claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

- vi. 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 rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 10.75% 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 delay possession as per section 2(za) of the Act.*

*36. Complaint stands disposed of.*

*37. File be consigned to registry.”*

3. Brief factual matrix of the case are that unit bearing no. 27/360/Simplex/BR measuring 360 sq yds having built up area of 1920 sq ft, was originally allotted to Mr Vishwas Kohli (original allottee) in the year 2009 in appellant's project namely 'Signature Villa 2, Vatika India Next, Sector-82, 82A, 83, 84 and 85, Gurugram, Haryana (Formerly known as Bellevue Residencies). The Builder Buyer's Agreement (hereinafter called 'the agreement') was executed between original allottee and promoter on 22.12.2009, and addendum to said agreement was executed on 25.05.2012. Thereafter the said agreement was endorsed in the favour of subsequent allottee (respondent herein) on 22.08.2012. Allotted unit was changed to 44/360/Simplex/ST.82D1-7/Signature 2 Villa measuring 360 sq yds having built up area of 1920 sq ft. and welcome letter dated 07.12.2012 was issued in favour of subsequent allottee in this respect. The respondent-allottee had paid a total sum of Rs.41,17,256/- by the time of filing of complaint against the total consideration of Rs. 127,47,924/-. The possession of the unit was to

be delivered on or before 22.12.2012 as per clause 11.1 of agreement dated 22.12.2009. However, the appellant-promoter failed to deliver possession within the stipulated time.

4. Accordingly, the respondent-allottee filed a complaint before the Authority on 26.09.2023, seeking possession of the unit and delayed possession interest till handing over of possession.

5. The learned Authority, after hearing counsel for the parties, passed the impugned order, granting the relief of possession and interest to the allottee. Operative part has already been reproduced in para 1 of this order.

6. Aggrieved by the impugned order, the appellant-promoter has approached this Tribunal by way of instant appeal for setting aside the impugned order with further prayer to refund the amount paid by the allottee along with interest.

7. The appellant has also deposited requisite pre-deposit amount in compliance with the provisions of Section 43(5) of the Haryana Real Estate (Regulation and Development) Act, 2016.

8. Appellant-promoter contended that due to change in the alignment of the GAIL pipeline and reasons beyond the control of appellant-promoter due to unauthorised encumbrances on plot area, plot cannot be developed and hence the villa/plot in question is not available to be offered to the respondent-allottee and in view of the same, appellant-promoter is ready to refund the entire amount paid by allottee along with interest.

9. Per contra, ld. Counsel for respondent-allottee submitted that the plot in question is in fact available at the site. Same has also been inspected and reported by the Local Commissioner appointed by Authority, in its report dated 09.02.2023, which is as reproduced below:

**"Conclusion:**

**A.** *The present site conditions clearly show that the said plot (Plot no 44, D1-7, Signature Villa 2, Vatika India Next, Sector 82) has not been clearly demarked at the site. The vacant space is available on ground for development of captioned pocket/plot and the captioned unit area has not been affected by any GAIL pipeline. Till now, the captioned pocket area has not been developed by the respondent' promoter and some unauthorised JHUGGEES/Labour Huts have been erected in that pocket area. No development work i.e., road work/ water supply/ sewerage/ storm-water/ electricity/ street lights etc. has been started/carried out by the respondent promoter in captioned pocket area, Also, no construction activity has been started by the respondent-promoter on captioned plot/ site till now. B. The photographs captured from the captioned site are attached herewith which clearly shows the present position/ condition of the captioned site. (Attached as Annexed "E")"*

10. He stated that instead of offering the possession of plot to the complainant-allottee who is waiting for possession for the last 10 years, third-party rights had been created by the promoter without formally cancelling the allotment of the respondent-allottee.

11. After hearing both the parties and considering documents on record, this bench finds that under section 18(1) of the Act, where the promoter fails to complete the project or hand over possession as per the terms of the agreement, the allottee has an option to either withdraw and seek refund along with interest, or continue in the project and seek interest for the delay till possession is offered. The option clearly lies with the allottee and not with the promoter. The promoter cannot unilaterally impose refund upon the allottee against the latter's expressed desire to continue with the project.

12. In this case, the respondent-allottee has consistently made efforts to seek possession of the allotted unit along with delay possession interest. It was only due to dilly-dallying tactics of the promoter that it failed to deliver possession till date. There is no encumbrance on the unit in question. Thus, justification given by promoter is untenable.

13. Based on the above, the Authority rightly found the promoter in breach and granted the allottee relief of possession and

interest. In case any third-party rights have been created, same shall not operate as doctrine of *lis pendens* would be attracted in the facts and circumstances of the instant case.

14. The appeals are without any merit and are hereby dismissed.

15. The amount deposited by the appellant-promoter with this Tribunal in each appeal, along with accrued interest, in order to comply with the provisions of Section 43(5) of the Act be remitted to the Ld. Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the allottee in accordance with law and Rules.

16. The copy of this order be communicated to parties/Ld. counsel for the parties and the Ld. Authority

17. Files be consigned to the records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)  
(Joined through VC)

July 23, 2025/mk

Appeal No.730 of 2023 and 104 of 2024