

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA
REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

**Complaint No.1362-2023
Date of Decision: 27.05.2025**

**Promila Mehra, B-1/10, First Floor, Hauz Khas, New Delhi-
110016**

Complainant

Versus

**M/s. Vatika Limited, 7th Floor, Vatika Triangle, Sushant Lok-1,
Block-A Mehrauli Gurgaon Road, Gurgaon-122002**

Respondent

APPEARANCE

**For Complainant:
For Respondent**

**Mr. Anshul Yadav, Advocate
Mr. Dhananjay Jain, Advocate**

ORDER

1. This is a complaint, filed by Promila Mehra (allottee) under section 71 & 72 of the Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s. Vatika Limited (promoter).
2. According to complainant, she (complainant) was allotted a residential unit bearing Apartment No. 402, 4th Floor, Tower C, admeasuring approximately 3200 sq. feet super area ("the unit) by

the respondent in its project named and titled as "**Sovereign Next**" in sector-82A, Gurgaon, which is a part of the integrated township "Vatika India Next" being developed in Sectors 82, 82A, 83, 84 and 85 of Gurgaon Manesar Urban Complex, 2021 (hereinafter referred to as "The Project").

3. That respondent is a company incorporated under the Companies Act, 1956, having its registered office at Flat No. 621, 6th Floor Devika Towers, 6 Nehru Place, New Delhi and Corporate Office at 7th Floor, "Vatika Triangle" Mehrauli Gurgaon Road, Sushant Lok Phase-I, Gurgaon-122002.

4. That she (complainant) filed booking application dated 19.12.2011 and paid money amounting to Rs. 8,66,800/-. The amount was paid based on various commitments, representatives and understanding made by the respondents including a representation to the effect that all requisite approvals including the approval for the Project Plan were in place.

5. That she (complainant) made the payment of instalments as were demanded by the respondent, from time to time, without any default or delay whatsoever.

6. That the respondent, vide letter dated 30.11.2012, sent two copies of the Apartment Buyers' Agreement for execution which

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was duly executed by the parties on 10.12.2012 ("ABA"). Some of the important clauses of the ABA are as follows:

a. As per clause 1 of the ABA, the complainant had agreed to buy the Unit for a total amount of Rs. 1,73,36,000/-.

b. As per clause 11 of the ABA, the complainant was required to pay interest @ 18% per annum in the event of any delay of payment of an instalment.

c. As per clause 14 of the ABA, the respondent had agreed to complete the construction and provide possession of the Unit within 3 years of the execution of the ABA. Thus, as per the ABA, the respondent was required to offer possession of the unit by December 2015.

7. That she (complainant) is a senior citizen and the entire amount for the said apartment was borrowed from her son working in the United States of America (USA).

8. That ^{file 2} ~~By~~ December 2016, the respondent had received a total payment of Rs. 1,93,88,893.69 being 95% of the total consideration payable by her (complainant) towards the purchase of the unit.

9. That the project was registered with this Hon'ble Authority and subsequently the registration certificate bearing No. 280 of 2017 dated 09.10.2017 was granted to the respondent.

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10. That as the possession of the Unit was already delayed and was not forthcoming, she (complainant) was left with no option but to cancel the allotment of the Unit and seek refund of the payments made along with delay interest @ 18% per annum till repayment.
11. That having no other alternative, she (complainant) filed a complaint before the Harayana Real Estate Regulatory Authority, Gurugram, bearing complaint No. 3591 of 2020 for refund of the entire amount paid by her (complainant) to the respondent along with the interest as provided under the Act.
12. That Hon'ble Authority, after considering the submissions of both the parties, passed the order dated 14.07.2022, whereby the respondent was directed to refund the entire amount paid by the complainant along with interest. The Hon'ble Authority further observed that the compensation sought by her (complainant) cannot be granted in the proceeding before it u/s 18 of the Act and permitted her (complainant) to file a separate complaint before Hon'ble Adjudicating Officer u/s 71 and 72 of the Act.
13. That she (complainant) was never given possession of the Apartment and thus suffered huge financial loss on account of rental

income for a period of seven years from 2015 being the year in which the possession was to be given, which is calculated as follows:-

- Average rental amount for the subject apartment per month: Rs.1,00,000/-
- Number of months from the proposed date of giving possession till date of order of refund 78 (January, 2012 to July 2022)
- Total loss : **Rs. 78,00,000/-**

14 That she (complainant) suffered mental harassment, being a senior citizen and a lady aged about 82 years. She along with her husband had planned to shift in the said unit at this late stage in her life. The respondent has kept the subject matter in abeyance and unnecessarily delayed the refund of the amounts on account of which she (complainant) has already suffered and is continuing to suffer not only monetary loss but also mental stress and harassment, whereas the respondent has unjustly profited and enriched itself by earning interest from the amount of instalments paid by her (complainant) till date. Accordingly, she (complainant) is entitled to compensation on account of mental harassment being calculated at Rs. 1,00,000/- per year, being Rs. 7,00,000/- for a period of seven years.

15. That she (complainant) had to run from pillar to post at this age and had to bear litigation expenses to the tune of Rs.

1,00,000/- and the respondent is liable to pay the same to her (complainant).

16. The respondent contested the complaint by filing a written reply. It is averred that there is no merit whatsoever in the complaint and it is liable to be dismissed on following grounds: -

- (a) That the complainant has already been granted the order of refund vide order dated 14.07.2022 in CC NO. 3591 of 2020 with refund of 9.7% per annum. Refund along with interest @ 9.7% per annum is the maximum compensation, which under no circumstances can be further enhanced by way of special damages as sought to be claimed in the present complaint.
- (b) That the facts mentioned in the present complaint are reiteration of the complaint made by the complainant in CC No. 3591 of 2020 which has already been decided by order dated 14.07.2022 and thus, there is no question of any further claim.
- (c) The property would not have fetched a rent of Rs. 1,00,000/- per month. Even otherwise, the money paid by the complainant is duly compensated in terms of interest

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and thus, she cannot make windfall gains out of the booking done with the respondent.

(d) There is no mental harassment to the complainant and thus the manner in which the same has been calculated is most erroneous and is liable to be outrightly rejected.

(e) The claim has been exaggerated from the previous complaint and thus is liable to be dismissed. She (complainant) is not entitled to any litigation costs as especially a sum of Rs. 1,00,000/-, which is high and excessive.

17. Contending all this, the respondent prayed that the complaint may be dismissed, in the interest of justice.

18. Both of the parties filed affidavits in support of their claims.

19. I have heard learned counsels for both of the parties and perused the record.

20. It is not in dispute that, as per Clause 14 of Apartment Buyers Agreement (ABA) entered between the parties, the respondent had agreed to complete the construction and to provide possession of subject unit within three years of execution of ABA. The ABA was executed between the parties on 10.12.2012. Admittedly, neither

construction was complete, nor possession of subject unit was handed over to the complainant within this agreed time by the respondent. The complainant was constrained to approach the authority seeking refund of the amount. The Authority through order dated 14.07.2022, allowed said complaint and directed respondent to refund the entire amount Rs. 1,93,88,893.69/- as paid by the complainant alongwith prescribe rate of interest at the rate of 9.70% per annum as prescribed under Rule 15 of The Haryana Real Estate (Regulation and Development) Rules 2017 from the date of each payment till actual date of refund of deposited amount. The Authority also agreed with complainant that respondent failed to hand over possession of subject unit within agreed time.

25. As per Section 18(1) of The Real Estate (Regulation and Development) Act 2016, if promoter fails to complete or is unable to give possession of 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-----, he shall be liable on demand to the allottee, 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 or 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.

26. A perusal of this provision makes it clear that apart from getting refund of the amount. Complainant is entitled for compensation also, when the promoter failed to complete the project in agreed time. As mentioned above, from the order of the Authority, it is well established that respondent failed to complete the project as per agreement to sell entered between the parties. Same is thus liable to pay compensation to the complainant.

27. As per Section 72 of the Act of 2016, following factors are to be taken into account by the Adjudicating Officer, in determining amount of compensation: -

- (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) *the amount of loss caused as a result of the default;*
- (c) *the repetitive nature of the default;*
- (d) *such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

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28. Admittedly, respondent has received amount of sale consideration from the complainant but failed to complete the construction and to hand over possession of subject unit. In this way, respondent used money paid by the complainant for its gain, illegally causing consequential loss to the complainant. The complainant has prayed for Rs. 1 lac per month as loss of rental amount. The complainant did not adduce any evidence to prove that the apartment, allotted to her would have fetched Rs. 1 lac per month as rent or what is prevalent rate of rent in that area. The unit allotted to the complainant is a residential unit measuring 3200 Sq. ft. (super area) it is in project namely "Sovereign Next" Sector 82-A, Gurgaon. This sector is a developing area of Gurugram. Considering all this, in my opinion, rental for similar accommodation would be Rs. 20,000/- per month. Compensation for rental loss is thus allowed at this rate i.e. Rs. 20,000/- per month to the complainant, to be paid by the respondent, from the due date, when respondent was obliged to hand over possession i.e. 10.12.2015, till order for refund was passed by the authority i.e. 14.07.2022.

30. The complainant has prayed for Rs. 7 lacs for mental harassment and agony. She is stated to be a lady, aged about 82 years. Apparently, when complainant paid sale consideration but did not get

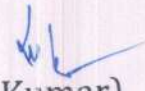
her dream home, same suffered mental agony and harassment Rs. 7 lacs appears to be excessive amount of compensation in this regard. Keeping in facts of case, age and circumstance of complainant she is awarded a sum of Rs. 2 lac as compensation for mental harassment and agony, to paid by the respondent.

31. Complainant further requested for Rs. 1 lac as litigation cost. Although no receipt of fee by her advocate is put on the file by the complainant. It is apparent that she was represented by a counsel during proceedings in this case. Same is allowed a sum of Rs. 50,000/- as cost of litigation to be paid by the respondent.

32. The respondent is directed to pay aforesaid amounts of the compensation alongwith interest at rate of Rs.10.50% per annum, till the date of realization of amount.

Announced in open Court today i.e. 27.05.2025

File be consigned to record room.


 (Rajender Kumar)
 Adjudicating Officer,
 Haryana Real Estate Regulatory Authority,
 Gurugram