

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

Complaint no. : 2915 of 2023
Date of filing complaint: 27.06.2023
Date of Decision : 11.04.2025

Avneet Arya
Through Jaswant Singh
R/o: 3A/67, W.E.A, Karol Bagh, New Delhi-110005. **Complainant**

Versus

M/s Vatika Ltd.
Office: 7th floor, Vatika Triangle, M.G. Road,
Sushant Lok, Phase I, Gurugram, Haryana-122002. **Respondent**

CORAM:

Shri Arun Kumar **Chairman**

APPEARANCE:

Shri Manish Chauhan Advocate for the complainant
Shri Anurag Mishra Advocate for the respondent

ORDER

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

S. No.	Particulars	Details
1.	Name of the project	Vatika Boulevard Residencies & Heights, Sector 83, Gurugram, Haryana.
2.	Nature of the project	Group housing colony
3.	Project area	12.83 acres
4.	DTCP license no.	<ul style="list-style-type: none">• 113 of 2008 dated 01.06.2008 Valid up to- 31.05.2018 Licensed area- 182.8 acres• 71 of 2010 dated 15.09.2010 Valid up to- 14.09.2018 Licensed area- 98.78 acres• 62 of 2011 dated 02.07.2011 Valid up to- 01.07.2024 Licensed area- 44.45 acres
5.	HRERA registration or not	Not registered
6.	Allotment letter dated	07.05.2014 [Page 35 of complaint]
7.	Unit no. and area (as per buyer's agreement dated 23.07.2014)	1403, 14 th floor, tower A1 admeasuring 2110 sq. ft. (super area) [Page 40 of complaint]
8.	Date of execution of buyer's agreement	23.07.2014 [Page 37 of complaint]
9.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT



		<p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of Allottees(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure – I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i></p> <p>[Page 47 of complaint]</p>
10.	Due date of possession	23.07.2018 [Calculated as 48 months from BBA]
11.	Total sale price as per SOA dated 06.10.2017	Rs. 1,50,69,306/- [Page 97 of complaint]
12.	Amount paid by the complainant as per SOA dated 06.10.2017	Rs. 1,57,49,566/- [Page 97 of complaint]
13.	Occupation certificate /Completion certificate	Not received
14.	Offer of possession	03.10.2017 [Page 87 of complaint]
15.	Possession letter signed by complainant	29.11.2017 [Page 88 of complaint]
16.	Legal notice by the complainant allottee for execution of the conveyance deed in the favour of the complainant	20.03.2023 [Page 90 of complaint]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- i. That the respondent company in collaboration with its associate companies conceived of developing a group housing colony by the name of **"Boulevard Residences & Heights"** on the land measuring 12.83 acres in Sector 83, Gurgaon, Haryana being a part of a residential township, proposed to be constructed on land admeasuring 326.017 acres at village Sikohpur, Tehsil Manesar, District Gurgaon. The respondent company represented to the complainant that they have all the requisite permissions and sanctions from the concerned authorities and is sufficiently entitled to develop the aforesaid Group Housing Colony.
- ii. That believing upon the assurances and representations of executives of the respondent company to be true and correct, the complainant paid an amount of Rs. 12,67,346/- as earnest money to the respondent company towards booking of an apartment in the subject project. Vide its allotment letter dated 07.05.2014, the respondent allotted an apartment bearing apartment no. 1403 on 14th Floor of the building/tower A-1 having super area of 2110 sq. ft. along with two separate car parking space at the basement for a total sale consideration of Rs. 1,50,75,950/-.
- iii. That subsequently, BBA was executed inter se parties on 23.07.2014 containing detailed terms and conditions of the allotment. As per clause 13 of the BBA, the respondent company agreed to complete the construction of the building / apartment



within a period of 48 months from the date of execution of this agreement i.e. from 23.07.2014. But surprisingly, vide letter dated 03.10.2017, the respondent company, without even completing the construction of the project and without obtaining the occupation certificate from the concerned department in terms of clause 14 of the Builder Buyer Agreement, called upon the complainant to take the possession of the apartment on or before 14.11.2017.

- iv. That in the aforesaid letter of possession, it was mentioned that the offer of possession shall be valid only up to 14.11.2017 after which holding charges will be applicable in terms of the BBA in case possession is not taken over. Though the offer of possession of incomplete apartment without obtaining the occupation certificate was illegal but since the complainant had already paid the entire amount of Rs. 1,57,49,566/- towards the aforesaid apartment and in order to avoid any cancellation or holding charges, the complainant left with no option except, to unwillingly accept the possession of the apartment under duress. The possession was taken by the complainant on 29.11.2017.
- v. That clause 15 of the BBA is one sided which states that upon receiving a written intimation from a developer, the allottee shall within the time stipulated by the developer in the notice take over the possession of the apartment, the said clause further states that if allottee fails to take over the possession of the apartment upon company's written intimation then the company would be having no responsibility whatsoever relating to the apartment as booked by the allottee, and further the company may cancel the allotment also, further it is stated that in the event



of failure to take possession, the allottee shall be liable to pay holding charges at Rs. 7.5/- per sq. ft. to the company.

- vi. That after taking the so-called possession of the apartment, the complainant requested the respondent to get the conveyance deed executed or get the property registered in her name but the respondent company always gave false assurance for doing the needful. Till filling of the present complaint, the respondent has miserably failed to get the same done, needless to say because the respondent company due to its own wrong has not got the occupation certificate from the concerned department in respect of tower A-1 in the aforesaid group housing colony.
- vii. Since, nothing was coming forth from the respondent company, therefore the complainant through his advocate served a legal notice to the respondent company calling upon them, and given one last and final opportunity, to immediately get the occupation certificate from the concerned authority relating to Tower A and get the conveyance deed registered in respect of the subject apartment. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to get the conveyance deed executed in respect of the subject unit in favour of the complainant.
 - ii. Direct the respondent to return the money charged by them illegally from the complainant under the garb of maintenance charges from the date of so-called forceful possession i.e., 29.11.2017 along with interest.



- iii. Direct the respondent to pay the amount to the complainant as per clause 18 of BBA @ Rs.7.50/- per sq. ft. of super area of the apartment per month till the delivery of possession.

D. Reply by respondent:

5. The respondent by way of written reply dated 06.11.2023 has made the following submissions:

- i. That is admitted position of the complainant that the respondent had offered the possession of Flat No. 1403, 14th Floor in Tower A1 in the Project namely "Boulevard Residences and Heights", Sector 83, Gurgaon, Haryana on 03.10.2017 which is within 39 months from the date of execution of the BBA dated 23.07.2014. The respondent has complied with the terms of the said BBA and has delivered the project in timely manner. As per clause 13 of the said BBA, the respondent was to deliver the building within 48 months from the date of execution of BBA that too subject to clause 14,17 and 37. However, the respondent has completed the entire project well within time and has delivered the possession of the flat to the complainant in accordance with the said BBA.
- ii. That the complainant is taking objection regarding clause 15 of the said BBA which is only a afterthought as the complainant had never raised any dispute or objection on the terms of the said BBA before signing of the said Agreement and the complainant had signed the said Agreement with open eyes. It is submitted that the said clause is absolutely fair as there are instances wherein the respondent has suffered huge losses in past as the proposed buyers do not come forward to take over the possession of the flat even when the project is completed and



such acts of the buyers cause huge financial losses to the builder. It is pertinent to submit that in case where the builder has to hold the possession of the unit where the buyer is not coming forward to take the possession, the builder is required to maintain the said unit and the common areas which includes housekeeping, electrical and safety and security of the said unit and its fitting and fixtures and all such activities take reasonable amounts. The said amount therefore is required to be paid by the buyer and therefore Holding Charges are fair and logical. However, in the present case the respondent has never asked for any holding charges and therefore such allegations made by the complainant are unwarranted at such belated stage.

- iii. That the complainant herein has already taken over the possession of the said unit on 29.11.2017 after making the payment of the total consideration of Rs. 1,57,49,566/-. However, it is clarified that the same, does not include Stamp duty charges as the same shall be payable by the complainant at the time of execution of the sale deed in favour of the complainant. The complainant had taken over the possession of the said unit on its own free will and therefore the complainant was not under any force or coercion by the respondent in any manner whatsoever. The complainant had the option to take refund of his entire amount in case the complainant was not willing to take over the possession of the said unit, however, the complainant took over the possession of the said unit and is enjoying peaceful possession of the said property since then.
- iv. That the respondent company believes in delivering the project timely and has done the same in the present case. Further,

"Boulevard Residences & Heights" has total 10 towers and out of the said towers, 7 towers have already received Occupation Certificate on 01.09.2016. However, it is pertinent to submit that although the respondent had applied for the occupation certificate of tower A1 vide its application dated 18.06.2017 and accordingly the respondent was made to understand that as the building is in compliant of all the required parameters and thus there would be no impediment by the DTCP for not granting Occupation certificate for Tower A1.

- v. That however, to the utter shock and surprise to the respondent, DTCP has failed to grant Occupation Certificate till date. The said application is pending with DTCP in light of some issue concerning preparation and approval of the Electrical Service Plan Estimates for licenced colonies for which license has been granted by the Town and Country Planning, Haryana under the provisions of Haryana Development and Regulations of Urban Areas Act, 1975. An order dated 30.10.2019 was passed whereby it was made out that the licensed colony shall have to get approved by the colonizer from DHBVN/UHBVN to ensure the integration of electrical infrastructure requirements and the cost thereof for the licensed areas.
- vi. That the said order further states that before the grant of Occupation Certificate/Completion certificate, Town and Country Planning Department will seek report from the Superintending Engineer (Planning), HVPNL, Panchkula with respect to erection and commissioning of the Electrical Infrastructure in the colony as per the approved Electrical Infrastructure Plan/Estimates of the colony.



vii. That due to these change in the norms and in light of the order passed by Town and Country Planning Department, the respondent is also going pillar to post for procuring the Occupation Certificate of the said Tower. The building of the respondent is complete and functional as per the previous norms those were applicable. The revised norms of DHVBL are also being complied by the respondent and thus, the respondent has made appropriate application seeking the approval for occupation certificate however the same is still pending. After 2020, the entire country was facing COVID-19 and thus even the government departments functioning has been affected and pendency on the departments have resulted into the said delay in granting occupation certificate. The respondent is also suffering due to such lethargic approach of the concerned authority and therefore there is nothing in the hands of the respondent that can be done to expedite the said process. The respondent has duly communicated the entire situation to the complainant at various occasions however, the complainant has come before this Hon'ble forum with unclean hands.

6. 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.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

9. 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.

10. 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.



F. Finding of the authority on application for amendment of relief sought

11. The complainant in the complaint has sought the relief of execution of conveyance deed along with refund of maintenance charges and delay possession charges. It is pertinent to mention here that the complainant in alternative also sought the refund of amount paid alongwith interest. The Authority vide order dated 12.07.2024 sought clarification of the relief sought by the complainant. In pursuant to the aforesaid order, the complainant vide application dated 30.01.2025 pursued with the relief of refund alongwith interest.
12. The Authority, in the present matter, observes that although the respondent has not obtained the OC for the subject tower from the competent authority, the respondent offered possession of the subject unit to the complainant on 03.10.2017 and the complainant subsequently took possession of the said unit on 29.11.2017. The Authority is of the view that the complainant-allottee cannot blow hot and cold at the same time. The complainant-allottee is already in possession of the subject unit and has been enjoying the possession of the subject unit since 2017. Keeping in view the aforesaid facts, the Authority hereby declines the request for amendment of relief at such advanced stage.

G. Findings on the objections raised by the respondent:

F.1 Objection regarding delay due to force majeure circumstances.

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. Further, the authority has gone through the



possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 48 months from the date of execution of the buyer's agreement. In the present case, the date of execution of the buyer's agreement is 23.07.2014. Thus, the due date of handing over possession comes out to be 23.07.2018.

14. As far as delay in construction due to outbreak of Covid-19 is concerned, 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 (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that:

"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."

15. The respondent was liable to handover the possession of the said unit by 23.07.2018 and is claiming benefit of lockdown which came into effect on 24.03.2020 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 is not excluded while calculating the delay in handing over possession.
16. Further in the judgement of the Hon'ble Supreme Court of India in the case of ***Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors.*** (Civil Appeal no. 6745-6749 of 2021), it was observed-



25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

17. In view of the above, the objection raised by the respondent to extend the due date of handing over possession due to force majeure circumstances due to COVID-19 is declined.

H. Findings on the relief sought by the complainant

G.1 Delay Possession Charges.

18. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 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, —

.....

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."

(Emphasis supplied)

19. Clause 13 of the builder buyer's agreement provides the time period of handing over possession and the same is reproduced below:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

*The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment **within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of Allottees(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the Schedule of Payments given in Annexure – I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.*

20. The buyer's agreement was executed inter se parties on 23.07.2014 and the complainant was allotted a unit bearing no. 1403, 14th floor, tower A1 admeasuring 2110 sq. ft. In view of clause 13 of the BBA and as delineated hereinabove, the respondent was obligated to handover possession of the subject unit by 23.07.2018.
21. It is admitted fact that till date the respondent has not obtained occupation certificate in respect of the tower where the unit of the complainant is situated. But the complainant admittedly is in possession of the subject unit since 29.11.2017.
22. It is a very interesting situation where complainant-allottee on one side is demanding completion of all requisite infrastructure and amenities, and then offer physical possession in the name of legally valid physical possession, whereas she has already taken over the physical possession on 29.11.2017 as confirmed and is enjoying the fruit of the property for which she has invested with the promoter. Although the promoter has given the physical possession and complainant has accepted physical possession on basis of offer of



possession dated 03.10.2017, which may not be legally valid offer of possession without obtaining occupation certificate. The Authority is of the view that both the promoter and allottee have acted not as per the spirit of law but as per their own convenience. The promoter is liable for action for offering physical position without obtaining OC and allottee cannot be allowed to take benefit of delay possession charges beyond the time he has taken the physical possession. Keeping in view the aforesaid facts, the Authority holds that no case of delay possession is made out as the possession was already taken by the complainant prior to the date committed by the respondent in the builder buyer agreement. However, as the promoter illegally offered the possession of the unit without obtaining occupation certificate, the complainant is at liberty to proceed under relevant law and penalty may be imposed upon the promoter for handing over possession to an allottee without the receipt of occupation certificate.

G.II Conveyance Deed

23. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, the respondent has not obtained the occupation certificate in respect of the tower where the unit of the complainant is situated. In view of the above, the respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 upon payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

I. Directions of the Authority

24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act:
- i. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 upon payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
25. Complaint stands disposed of.
26. File be consigned to the registry.

Dated: 11.04.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram