

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

Complaint no. :	334 of 2024
Date of complaint :	19.02.2024
Date of order :	20.03.2025

1. Usha Mahajan
2. Jagdish Mahajan
Both R/o: B-1/628, Janak Puri, New Delhi-110058.

Complainants

Versus

M/s Vatika Limited
Registered office: Unit A002, INXT City Center, Ground
Floor, Block-A, Sector-83, Gurugram-122012.

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Jagdish Mahajan (Complainant no.2)
Shri Dhruv Dutt Sharma, Advocate

Complainants
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. Project and unit related details.

2. The particulars of the unit, project, the details of 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Triangle", at Mehrauli-Gurgaon Road, Gurugram.
2.	Project area	1.47 Acres
3.	Nature of Project	Commercial complex
4.	DTCP license no. and validity status	33 of 1986 dated 16.04.1986 40 of 1989 dated 02.12.1989 17 of 1993 dated 08.07.1993
5.	Name of Licensee	Not known
6.	Rera registered/ not registered	Un-registered
7.	Unit no.	209 on 2nd floor (Page 15 of complaint)
8.	Unit Admeasuring	1058.89 (super area) (page 15 of complaint)
9.	Buyer's Agreement	27.03.2001/2002 (page 12 of complaint)
10.	Possession Clause as per buyer's agreement	6.The complex shall be ready for possession by 1st November, 2002 . The developer shall issue a notice in writing to every allottee for taking over possession. All the possession, subject to the payment of entire consideration along with any other dues payable by the allottee to the developer, shall be handed over by 01st December, 2002. (page 19 of complaint)
11.	Due date of possession	01.11.2002 (as mentioned in BBA at page 19 of complaint)
12.	Total sale consideration	Rs.16,94,224/-



		(as mentioned in BBA at page 15 of complaint)
13.	Total amount paid	Rs.11,94,224/- (as mentioned in BBA at page 16 of complaint)
14.	Occupancy Certificate	Not provided either the parties.
15.	Offer of possession	In the year, 2002. (as confirmed by the complainant no.2 and counsel for the respondent during the proceedings dated 20.03.2025)
16.	Lease Deed (with M/s Vatika Hotels Pvt. Ltd.)	29.02.2012, 05.01.2017 (page 31 & 51 of complaint)
17.	Addendum to lease deed	21.08.2020 (page 56 of complaint)
18.	Certain objections raised by complainants (w.r.t lease rental & Addendum)	28.04.2023, 08.06.2023 & 05.09.2023 (page 58, 69 & 69 of complaint)
19.	Legal notice by complainants	25.10.2023 (page 74 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint: -
 - i. That the complainants and respondent, entered into a builder buyer agreement dated 27.03.2002 whereby complainants bought one commercial apartment no.209 in "Vatika Triangle" with a super-area measuring approx. 1058.89 sq. ft.
 - ii. That as per Clause P of the builder buyer agreement respondent undertook to put the above-said flat on lease and to effectuate the same and the complainants authorized the respondent to negotiate and finalise the leasing arrangement with any suitable tenants.
 - iii. That a proposal, dated 13.12.201, was received from the respondents whereby the rental information's was specified i.e. Lease of 15 years and rent starting at Rs.82.5/- per sq. ft and with provision of increment in rental every three year



- @15%. That it was duly accepted by the complainants via letter dated 15.12.2011.
- iv. That the first lease with M/s Vatika Hotel Private Ltd was entered in January 2012. That period of lease was 60 months, with an option in favour of the lessee to renew the lease for further terms of 60 months each. That the starting rental was @ Rs.82.50/- per sq. ft of super built-up area. That the monthly rental shall be subject to an escalation of 15%, over the last paid rent, after the expiry of every three years. That respondent has sent a letter dated 13.12.2011 seeking permission /confirmation from complainants regarding the above-said lease deed and accordingly, complainant sent respondent a confirmation acceptance letter dated 15.12.2011. The letters along with speed post receipts are in safe custody of my client and will be produced as and when required by the court of law.
- v. That the above-mentioned lease expired accordingly and a new lease deed was entered between the complainants and respondent, in January of 2017 whereby it was renewed again for 60 months.
- vi. That thereafter due to the unforeseeable outbreak of Covid-19, the lessee vide letter dated 29.06.2020 requested a discount in the payment of monthly rent and accordingly the rent from 18.04.2020 to 30.05.2020 was waived off completely. That further the respondent agreed to the addendum dated 21.08.2020, modifying the terms of lease deed dated 05.01.2017, substantially reducing the rates of rent and increasing the duration period of the lease.
- vii. That the government of India lifted all covid restrictions on 31.03.2022 but the respondent has passed the addendum without the consent of the complainants, whereby the respondent has increased the lease period by two years from 05.01.2022 to 05.01.2024 and also decreased the rental of the above-said unit despite the fact that the restriction of Covid-19 was lifted completely. That



respondent has acted in malafide manner to cause illegal loss to the complainant and illegal gain to the lessees who are the subsidiary company of the respondent, which was arbitrary and unjustified in the eyes of the law.

- viii. That the Vatika Limited and Vatika Hotel Limited (which is a subsidiary company of Vatika Ltd.) amended certain terms and conditions through the execution of addendum to lease deed: i) Rental from 01.06.2020 to 04.01.2022 @Rs. 70/- per sq. ft. ii) Rental from 05.01.2022 to 04.07.2022 @Rs. 70/- per sq. ft. & iii) Rental from 05.07.2022 to 04.01.2024 @Rs. 80/- per sq. ft.

That no permission or consent has been taken from complainants or other unit holders regarding the same and the respondent with the criminal intention to cause wrongful loss to complainants and other unit holders and didn't even bother to intimate complainants about it. The complainants and other unit holders came to know about this fraud only when they enquired about the rental dues.

- ix. That the respondent has dishonestly and fraudulently caused illegal gains to Vatika Hotel Ltd, which is a subsidiary company of the respondent and illegal loss to complainants and other unit holders.
- x. That respondent has violated the standard of procedure i.e., taking permission from complainants regarding the change of terms and conditions and as such acted in ultra vires of the respondent's capacity.
- xi. That the respondent with malafide intention has executed the addendum and inserted the clause that the property tax shall paid by the unit holder, but as per the original lease deed the property tax was to be paid by the lessee.
- xii. That legal notice dated 20.10.2023 was sent to the respondent but till date no response has been received from the respondent.
- xiii. That respondent with malafide intention has misrepresented monthly rent as Rs.94.87/- per sq. ft. in the addendum for the full lease period of the lease deed



dated January, 2017. Whereas, the lease deed dated January 2017 was for a period of 5 years from 05.01.2017 to 04.01.2022, and the rent was specified as under: i) From 05.01.2017 to 04.01.2018 - Rent @Rs.94.87 per sq. ft., ii) From 05.01.2018 to 04.01.2021 - Rent @Rs.109.11 per sq. ft. & iii) From 05.01.2021 to 04.01.2022 - Rent @Rs.125.47 per sq. ft.

- xiv. However, when the rent invoice for January, 2018 was raised @Rs.109.11/- per sq. ft., it was returned and the complainants were advised to re-submit the rent invoice at the earlier rate of Rs.94.87/- per sq. ft. and this rate of Rs.94.87/- per sq. ft. continued upto march 2020, when corona epidemic struck.
- xv. That the rent was specified as Rs.82.50/- per sq. ft as the rate in January, 2012. And that 11 years later in December, 2023, the rental is at the rate of Rs.80/- per sq. ft.
- xvi. That the need for addendum dated 21.08.2020 arose because of the Covid pandemic. That the respondent took the undue advantage of extending the lease period by two years from 05.01.2022 to 04.01.2024 at a substantially reduced rate to provide undue advantage to lessees, i.e. Vatika Hotel Pvt. Ltd at the cost of the flat owners.
- xvii. That respondent has acted with a malafide intention and in a planned and calculated manner to cause wrongful loss to complainants.
- xviii. That complainants are senior citizens of India and are dependent on the rental income for their survival but, the respondent has violated the complainant's right to life as enshrined under Article 21 of the Constitution of India.

C. Relief sought by the complainants: -

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

- a. A scrutiny committee of unit holders of the 2nd floor be formed so that there may be a representation on behalf of unit holders.



- b. Names and contact details of the unit holders of the 2nd floor rented out to Vatika Hotel Limited as it has been missing from the lease deed dated 29.02.2012. (which was supposed to be included in Annexure-A of the above said leased deed).
 - c. Certified/ hard copies of the lease deed dated January, 2012 and January, 2017 and addendum dated August, 2020.
 - d. In respect of the Vatika Triangle, the comparative rent rates before the onset of Covid-19 and during the pandemic period and after that, as on April 2019, 2020 and 2021 for various floors of Vatika Limited.
 - e. Compensation of Rs.10,00,000/- with interest be awarded against the respondent and in favour 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.
- D. Reply by the respondent.**
6. The respondent has filed an application under Order VII, Rule 11 of CPC and contested the maintainability of present complaint on the following grounds: -
- i. That the present complaint is not maintainable and there is no basis for the complainants to file the present complaint invoking jurisdiction of this Hon'ble Authority. Admittedly the transaction of construction and handover stands completed in the year 2002 and thereafter the civil transaction between the parties cannot be made basis of invoking jurisdiction of RERA. Any and every transaction between the parties cannot be made subject matter of RERA.
 - ii. The complaint has not even been able to prove prima facie basic ingredients of provision of RERA Act seeking redressal of his alleged grievances under the Act. As such RERA has no application. The complaint has failed miserably to show any deficiency on part of the respondent which may be remedied under RERA.

The facts alleged in the present complaint does not constitute any cause of action and the present complaint is required to be dismissed as not maintainable.

- iii. The present complaint also suffers from delays and latches and is required to be dismissed for the said ground alone. Transaction of the year 2002 cannot be agitated in the year 2024. Any other transaction independent between the parties cannot form basis of RERA complaint, the complaint has further not shown which provision of RERA has been violated by respondent to maintain the complaint before this Authority.
 - iv. The prayer clause of the complaint itself does not disclose any case for proceeding further with the hearing of the matter and it is necessary that represent complaint is dismissed at the threshold as being not maintainable and it is prayed as such.
 - v. That the complainant filed the complaint on or about 21.01.2024, before the Haryana Real Estate Regulatory Authority, Gurugram, against the respondent. The same is pending before this Hon'ble Authority.
 - vi. That the respondent is challenging the maintainability of the complaint and the imposition of cost for a frivolous complaint would cause grave hardship to the respondent and as such the same is being prayed to be waived while dismissing the complaint as not maintainable.
 - vii. That the present complaint be dismissed with exemplary cost for filing frivolous complaint not disclosing and cause of action wrongly and maliciously invoking jurisdiction of RERA and harassing the respondent and wasting time of the Hon'ble Authority. None of the prayers in the complaint are made out and all of them are required to be dismissed as not maintainable
7. All other averments made in the complaint were denied in toto.



8. Copies of all the relevant documents have been filed and placed on the 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

9. 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

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.

E. II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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.

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.

A

F. Findings on the reliefs sought by the respondent

- F.I** A scrutiny committee of unit holders of the 2nd floor be formed so that there may be a representation on behalf of unit holders.
- F.II** Names and contact details of the unit holders of the 2nd floor rented out to Vatika Hotel Limited as it has been missing from the lease deed dated 29.02.2012. (which was supposed to be included in Annexure-A of the above said leased deed).
- F.III** Certified/hard copies of the lease deed dated January, 2012 and January, 2017 and addendum dated August, 2020.
- F.IV** In respect of the Vatika Triangle, the comparative rent rates before the onset of Covid-19 and during the pandemic period and after that, as on April 2019, 2020 and 2021 for various floors of Vatika Limited.
13. On the above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
14. The complainant has contested due to the unforeseeable outbreak of the Covid-19 pandemic, which caused a significant disruption to business and commercial operations. Upon which, the lessee (i.e., M/s Vatika Hotels Pvt. Ltd.), vide letter dated 29.06.2020, requested for a discount in the payment of monthly rent. Taking into account the prevailing circumstances, the rent for the period from 01.04.2020 to 30.05.2020 was completely waived off.
15. Thereafter, the respondent agreed to revise the monthly rent and executed an addendum dated 21.08.2020, thereby modifying the terms of the original Lease Deed dated 05.01.2017. The said addendum substantially reduced the agreed monthly rent from Rs.109.11/- per sq. ft. per month (01.06.2020 – 04.01.2021) and thereafter from Rs.125.47/- per sq. ft. per month (05.01.2021 – 04.01.2022) to Rs.70/- per sq. ft. per month (01.06.2020 – 04.01.2022) and Rs.80/- per sq. ft. per month (05.01.2022 – 04.01.2024) and extended the lease duration from 05.01.2022 to 04.01.2024. However, the respondent, acting with malafide intention, included a clause in the said addendum stating that the property tax shall be paid by the unit holder/allottee. This is contrary to the stipulation under

the original Lease Deed, wherein the liability to pay property tax rested with the lessee. When the rent invoice for January 2018 was raised at the rate of Rs.109.11/- per sq. ft., the same was returned by the lessee, and the complainants were instructed to re-submit the invoice at the earlier rate of Rs.94.87/- per sq. ft. This reduced rate continued to be paid up to March 2020, when the Covid-19 pandemic struck.

16. That the rental rate as of January 2012 was Rs.82.50/- per sq. ft., whereas, eleven years later, in December 2023, the rental rate was only Rs.80/- per sq. ft., indicating a clear stagnation and depreciation in rent despite the passage of more than a decade. However, the respondent took undue advantage of the situation by unilaterally extending the lease period by two years from 05.01.2022 to 04.01.2024 at a substantially reduced rent. This act was done solely to favor the lessee (i.e., M/s Vatika Hotels Pvt. Ltd.), and has resulted in significant financial loss and prejudice to the allottees/ space owners.
17. The respondent has contested the maintainability of the present complaint by filing an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, seeking its dismissal. In addition to disputing the complaint on merits, the respondent has raised a preliminary objection, challenging the very maintainability of the complaint before this Authority.
18. The respondent has contended that this Authority does not have the jurisdiction to entertain and adjudicate the present complaint. It is further submitted that even assuming the complainants are entitled to any reliefs, the proper forum for such adjudication would be the Civil Court and not this Authority under the provisions of the Real Estate (Regulation and Development) Act, 2016.
19. Upon a perusal of the pleadings and considering the submissions made by both parties, the Authority observes that the present dispute arisen between the complainant and the respondent, subsequent to the modification made by the

respondent in the terms and conditions of the lease deed dated 05.01.2017, by entering into addendum to lease agreement dated 21.08.2020 with lessee, whereby the respondent reduced the lease rental and extended the period of lease by one year.

20. Further, during the proceedings dated 20.03.2025 both the parties confirms that the possession of the unit was offered to and the same was accepted by the complainant in the year, 2002.

21. Also, the complainants have not specified any violation of section under the provisions of the Act, 2016 and the Rules, 2017 by the respondent, nor have they established how such alleged act fall within the purview of the Authority's jurisdiction under the Act. Therefore, this Authority is of the view that the nature of reliefs sought by the complainants pertaining to the details of name & contact details of the each allottee of the unit's situated at 2nd floor rented out to Vatika Hotel limited, and to provide a copy of certified lease deed from January, 2012, January, 2017 & addendum dated August, 2020 and comparative lease rent rates before and after covid pandemic period fall outside the scope of jurisdiction conferred upon this Authority under the RERA Act, 2016. Thus, this Authority is not empowered to grant the reliefs as prayed for which are beyond the provisions of the Act, 2016 and the Rules, 2017 made thereunder.

22. In view of the above, the above reliefs sought in the present complaint are not maintainable before this Authority and the present is hereby dismissed for want of jurisdiction. However, the complainants are at liberty to approach the appropriate forum for redressal of their grievances, in accordance with law.

F.V Compensation of Rs.10,00,000/- with interest be awarded against the respondent and in favour of the complainants.

23. The complainants are also seeking relief w.r.t 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. Vs. State of UP & Ors.* (supra) has

held that the adjudicating officer has exclusive jurisdiction to deal with the relief with respect to compensation.

24. Complaints stand disposed of.

25. File be consigned to registry.

Dated: 20.03.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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