

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

Complaint no.: 7822 of 2022
Date of filing: 03.01.2023
Order pronounced on: 01.04.2025

1. Dahnwanti Ahuja
2. Lokesh Ahuja
3. Sunita Ahuja through GPA holder Lokesh Ahuja
All RR/o: - 11A/30, WEA, Karol Bagh, New Delhi-110005

Complainants

Versus

M/s Vatika Limited
**Regd. Office at: - INXT City Centre, GF, Sector 83,
Block A, Gurugram-122012**

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Ashok Sangwan

**Chairperson
Member
Member**

APPEARANCE:

Ms. R. Gayatri Mansa & Sh. Navneet Kumar
(Advocate)
Ms. Ankur Berry (Advocate)

Complainants

Respondent

ORDER

1. This complaint has been filed by the complainants/allottees 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 allottees 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Signature 2 Villas" (formerly known as Bellevue Residences) in Vatika India Next, Sector- 82-85, Gurugram.
2.	Rera registered/ not registered and validity status	Registered (Vatika India Next Phase-II) Vide no. 36 of 2022 dated 06.05.2022 Valid up to 31.03.2029
3.	Unit No.	7/240/Simplex/BR/82 D1-9 (page 106 of complaint)
4.	Unit area admeasuring (Super Area)	1527 sq. ft. (page 106 of complaint)
5.	Application form	21.12.2009 (page 34 of complaint)
6.	Re-Allotment letter	20.01.2012 (page 103 of complaint)
7.	Date of buyer's agreement	21.01.2010 (page 44 of complaint)
8.	Addendum to buyer's agreement for change of villa	30.01.2012 (page 106 of complaint)
9.	Possession clause	11.1 Schedule for Possession of the Said Unit The company based on its present plans and estimated and subject to all just exceptions contemplated to complete construction of the said unit/ said unit within a period of three (3) years from the date of execution of this agreement. However, in case the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and clause (38) or due to failure of

		<i>applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement.</i> (Emphasis supplied)
10.	Due date of possession	21.01.2013 (Calculated from the date of execution of buyer's agreement)
11.	Total Sale Consideration	Rs.73,87,875/- (page 47 of complaint)
12.	Amount paid by complainant	Rs.75,40,288/- (page 132 of complaint)
13.	Occupation certificate	Not obtained
14.	Payment notice or final offer of possession	30.04.2013 & 25.06.2013 (page 22 & 23 of reply)
15.	Notice for termination by the respondent due to inability to deliver the unit because of GAIL corridor and HUDA sector road.	08.12.2021 (page 132 of complaint)
16.	Legal notice (From complainant for execution of sale deed)	04.01.2022 (page 134 of complaint)
17.	Registered Will of co allottee i.e., Tulsi Das Ahuja	16.04.2007 [pg. 120 of complaint]
18.	Codicil amending the will (registered)	16.12.2013 [pg. 127 of complaint]

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - a. That the Complainant No. 1 along with her husband Late Sh. Tulsi Dass Ahuja (demised on 11.03.2016), Booked Villa No. 67/240/Simplex/BR, having 240 Sq. Yards in their project Bellevue Residences (Hereinafter called "Said Villa") on 21.12.2009 and made payment of Booking amount of ₹5,00,000/- by way of cheque no. 195565 dated 21.12.2009 drawn on State Bank of India, out of total sale consideration amount.

- b. That the complainant entered into a 'buyer agreement' with the respondent on 21.01.2010 and the complainant was allotted Villa No. 67/240/Simplex/BR, having 240 Sq. Yards in the above project namely Bellevue Residence, 'Vatika India Next' situated in Sectors 82, 82A, 83, 84 & 85 of the Gurgaon Manesar for total sale consideration of ₹73,87,875/-.
- c. That as per the above said builder buyer agreement the respondent was obliged to hand over the possession of the said villa within 3 years from the date of execution of builder agreement i.e., by 21.01.2013. That the Complainant No. 1 along with her husband Late Sh. Tulsi Dass Ahuja (demised on 11.03.2016), is the joint allottee of said Villa in the Respondent's project "Bellevue Residences". The project is an unregistered project with HRERA Gurugram. The Complainant is aggrieved on account of violation of clause 11.1 of the Buyer Agreement executed on 21.01.2010.
- d. Cause 11.1 of the Buyer Agreement executed on 21.01.2010 is reproduced here:

"The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/said unit within a period of three years from the date of execution of this agreement. However, in case the company is not able to adhere the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be dealt or there shall be failure due to reasons mentioned in clauses (12.1), (12.2), (12.3) and clause (38) or due to failure of Applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure - III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by any of the terms and conditions of this Agreement."

- e. It is submitted that with the enforcement of RERA on 01.05.2017, the provisions of RERA are applicable to the project read with Haryana Real Estate (Regulation and Development) Rules, 2017. Further, as per notification no. 1/92/2017 - 1TCP dated

14.12.2017 issued by the Town and Country Planning Department, the Jurisdiction of Real Estate Regulatory Authority, Gurugram, shall be entire Gurugram District for all purposes with office situated in Gurugram.

- f. It is submitted that the Respondent failed to comply the provisions of the Real Estate (Regulation and Development) Act, 2016, according to which the project is required to be registered. That the Complainant made various payments to the Respondent towards purchase price of the said Villa aggregating to more than 100% of total sale consideration amount, i.e., ₹75,40,288/- by 01.07.2013.
- g. That 10% of total sale consideration amount was to be paid within 30 days from the date of booking, as per payment plan, accordingly Complainant paid ₹2,31,588/- vide 195566 dated 15.01.2010 drawn on State Bank of India.
- h. That on 02.03.2010, the Respondent had issued demand letter dated 02.03.2010 for payment of ₹58,52,699.5/- to be paid on or before 09.03.2010, Thereafter, Complainant vide letters dated 18.03.2010, 04.05.2010 and 10.06.2010, had requested for extension of time for payment and the same was agreed by the Respondent. The Respondent has agreed to revised the payment schedule allowing the Complainant to make payment till August 2010. The Complainant made payment of ₹56,12,700/- vide 195573 dated 10.08.2010, drawn on State Bank of India. The same was duly acknowledged vide the Respondent's letter dated 10.08.2010.
- i. That the Respondent had failed to adjust the Brokerage amount in the account of Complainant. The Respondent had erroneously

issued another alleged demand letter dated 01.09.2010 for demanding balance amount of demand letter dated 02.03.2010, i.e., ₹2,39,999.50/-, for which Complainant was not liable to pay any such amount. The Complainant on receipt of the alleged demand letter dated 01.09.2010 had approached the Respondent and on 06.12.2010 filed a written Complaint. The Respondent confirmed the adjustment of ₹2,39,999.50/- with Brokerage and on 25.04.2011 issued payment plan showing receipt of 90 % of total sale consideration.

- j. On 20.01.2012 the Respondent had issued letter of reallocation to the Complainant and called him at their office on 30.01.2012 to complete the formalities of reallocation. On 30.01.2012, Complainant had visited the office of the Respondent along with her demised husband and executed an Addendum for reallocation of unit no. 7/240/Simplex/Br/82 D1-9 in Signature 2 Villa (Earlier unit no. was 67/240/Simplex/BR).
- k. The Respondent had failed to adhere the terms of Buyer Agreement dated 21.01.2010 and had failed to give the possession of Villa to Complainant by 21.01.2013. Thereafter, on 25.04.2013, the Complainant had written a letter to Respondent and had demanded possession of villa but all in vain. No response was received from the Respondent, therefore, on 07.08.2012, the Complainant had written an email to Respondent and asked them about the status of construction. The said email was replied on 13.08.2012 by the Respondent who assured that possession of villa shall be given as promised.

- l. That on 25.06.2013, Respondent issued a payment notice and asked the complainant to remit an amount of ₹9,56,000/- towards final payment for offer of possession. Final Demand amount of ₹9,56,000/- was paid via DD No. 968959 dated 01.07.2013 Drawn on State Bank of India by Complainant. The receipt of final demand amount was confirmed by the Respondent on 05.07.2013.
- m. Co-allottee, i.e., Sh. Tulsi Dass Ahuja demised on 16.12.2013, husband of the complainant vide will dated 16.04.2007 and codicil of will dated 16.12.2013, his share in Villa was devolved and vested with Complainant No. 2 and 3. That the complainants had paid an aggregate amount of ₹75,40,288/- till 01.07.2013 which was confirmed and acknowledged by the Respondent. It is pertinent to mention that the said amount is more than the total sale consideration. However, the Respondent failed to handover the possession to the Complainant.
- n. That the Complainant no. 2, informed Respondent about demise of his father (Co-allottee, i.e., Sh. Tulsi Dass Ahuja) and requested for transfer of unit and submitted death certificate and will of his father. But instead of handing over of possession of Villa Respondent asked for arbitrary additional amount of Rs 15 to 20 lakhs (approx.), on account of additional built-up area, which is in contravention of Apex Court order in the matter of Experion Developers Pvt Ltd Vs Pawan Gupta (Civil Appeal Nos 3703-3704 of 2020).
- o. That the complainant had received termination notice dated 08.12.2021, from the Respondent, complainant shocked to see this

- termination letter, which is showing termination of allotment of Villa, even after receipt of more than 100% of total consideration.
- p. That the total period of 9 years and 11 months has been expired from the promised date of possession of the Villa, in terms of the Buyer Agreement dated 21.01.2010 whereas a period of 9 years and 11 months has expired from the promised date of possession of the Villa in question but the Respondent has miserably failed to offer possession of the Villa in question and has been is liable for violation the provision of Real Estate (Regulation and Development) Act, 2016 and Rules made thereunder.
- q. The Respondent has also been served with a legal notice dated 04.01.2022 by the complainant seeking possession of the Villa in question but despite having received the legal notice, the Respondent has neither offered possession of the Villa nor replied of the legal notice.
- r. That as per Section 18 of the Real Estate (Regulation and Development) Act, 2016, in case the Allottee does not intend to withdraw from the project then the Respondent shall be liable to pay interest for every month delay, till the handing over the possession of Villa in question, at such rate, as may be prescribed.
- s. That the Respondent even after receipt of entire amount not handing over possession of Villa to complainant which amount to cheating and criminal breach of trust by the Respondent.
- t. That the complainant does not intend to withdraw from the project and is therefore entitled to receive interest for every month of delay, till the handing over of the possession of Villa in question, at the rate prescribed by RERA for the period from the due date of

possession i.e., 21.01.2013 (as per Buyer Agreement dated 21.01.2010), till the actual date of possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to pay delay possession charges from the due date of handing over of possession till actual handing over of possession.
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 contested the complaint on the following grounds:
 - a. That the Complainants have got 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 an incorrect understanding of the terms and conditions of the Buyer's Agreement dated 21.01.2010 as shall be evident from the submissions made in the following paragraphs of the present reply.
 - b. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court.

Therefore, the present complaint deserves to be dismissed on this ground alone.

- c. That the Complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply. He is vehemently and most humbly stated that bringing out the true and correct facts and circumstances is subject to the contention of the Respondent that the Hon'ble Authority has no jurisdiction to deal with the present matter and that the present Complaint is not maintainable for reasons stated in the present reply. That the Complainant is not "Allottee" but Investor who has booked the said unit in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the Complainant as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the Complainants.
- d. That the Complainants approached the Respondent and expressed interest in booking of a residential plot in the proposed project namely "Signature 2 Villa" (formerly known as Bellevue Residences) on the land which is a part of integrated township known as "Vatika India Next" situated in Sector 82-85, Gurgaon, Haryana. And repeatedly visited the office of the Respondent to know the details of the said project. Prior to the booking, the Complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the Respondent, to book the unit in question.

- e. That the Complainants after taking into consideration the veracity of the said project, vide an application form dated 21.12.2009 applied to the Respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 67/240/Simplex/BR, admeasuring 1527 sq. ft. (tentative area) was allotted. The Complainants consciously and wilfully opted for a down payment plan for remittance of sale consideration for the unit in question and further represented to the Respondent that they shall remit the total consideration on time as per the payment schedule. The Respondent had no reason to suspect the bonafide of the Complainants and proceeded to allot the unit in question in their favour.
- f. That it is submitted that the Complainants were supposed to remit the sale consideration as agreed between the parties within the stipulated time whereas, the Complainants failed to remit the total sale consideration which resulted in the termination of the allotment of their booked unit. It is pertinent to note that despite multiple requests and reminders, the Complainants defaulted in remitting sale consideration, hence, the termination letter dated 03.12.2010 on account of non-payment of dues was duly served to the Complainants. Thereafter, the Complainants approached the Respondent in order to restore the allotment of their unit and undertook to remit all payments within the stipulated time. That the Respondent believing the representations of the Complainants to be true, restored the allotment of the said unit.
- g. Thereafter, a Buyer's Agreement dated 21.01.2010 was executed between the Complainants and the Respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily

executed between the parties and the terms and conditions of the same are binding on the Parties. The copy of the Buyer's Agreement dated 21.01.2010 is already annexed with the complaint. That pursuant thereto, due to the revision in master layout plan of the said township due to certain changes or modifications necessitated due to architectural and other related construction in the said project, the Complainants were called for re-allotment of their unit in the said project vide letter dated 20.01.2012. That the said position was explained and understood by the Complainants. The said re-allotment of the said unit is within the terms and conditions of the Agreement and within the permissible limits as per the Model RERA Agreement and hence no contention/allegation in regard to the same can be accepted.

- h. That pursuant thereto, the Complainants voluntarily participated in the re-allotment process of their unit and were allotted a new unit bearing number 7/240/Simplex/BR/82D1-9, admeasuring 1527 sq. ft. in the said project. That the said position was explained and understood by the Complainants. That the Complainants after being fully satisfied about the re-allotment of the unit, executed an addendum to the Buyer's Agreement dated 30.01.2012 readily accepting the new unit. It is submitted that as per clause B of the Buyer Agreement which reads as under:

AND WHEREAS the Company has specifically made clear that the layout plan of "Vatika India Next", as is presently annexed hereto as Annexure-I is tentative and is subject to approval of Director, Town & Country Planning, Haryana, Chandigarh and any changes/ directions/ conditions imposed by Director, Town & Country Planning, Haryana, Chandigarh, while approving the proposed tentative layout plan, shall be binding on both the Applicant and the Company and the Applicant hereby agree that it shall not

be necessary on the part of the Company to seek consent of the Applicant for the purpose of making any changes in order to comply with such directions/ conditions/ changes and that the lay out plan of "Vatika India Next" as may be amended and approved from time to time shall supersede the proposed tentative layout plan as given in Annexure-I hereto and/ or previously approved layout plan(s), as may be, and shall automatically form a part of this Agreement as Annexure-I in place of presently attached layout plan as Annexure-I or previously approved layout plan(s) as the case may be".

- i. That as per clause 11 of the Agreement, the due date of possession was subject to the Complainants having complied with all the terms and conditions of the Agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continues to be binding upon the parties thereto with full force and effect.
- j. It is submitted that the remittance of all amounts due and payable by the Complainants under the Agreement as per the schedule of payment incorporated in the Agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the Respondent.
- k. That it is submitted that the Complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the Complainants and had paid delayed payment interest at multiple occasions. That the bonafide of the Respondent is also essential to be highlighted at this instance, who had served a number of request letters and demand notes to the Complainants to ensure

that the payments are made in a timely fashion. A list of the Demand notes, request letters, and reminder are as under:

- l. That it is submitted that the Complainants on number of occasions has written letters seeking extension of timelines for remitting requisite instalments. That the Respondent has always obligated the terms and conditions of the Agreement and moreover, has extended the timeline for the Complainants to make payment as a goodwill gesture. That the Complainants cannot seek interest for the delay caused due to them by not remitting timely instalments.
- m. Furthermore, the delivery of possession was also subject to the force majeure circumstances as under Clause 12 and Clause 31 of the Agreement which are reiterated hereunder:

Clause 12.1 of the Agreement:

If, however, the completion of the said Unit is delayed by reason of non-availability of steel and/ or cement or other materials or water supply or electric power or slow down, strike or due to dispute with the construction agency (ies) employed by the Company, lock-out or civil commotion, by reason of war or enemy action or terrorist action or earthquake or any act of God or if non-delivery for possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/ or any other Public or Competent Authority or due to delay in sanction of unit zoning plans/ grant of completion/ occupation certificate by any Competent Authority or for any other reasons beyond the control of the Company then the Applicant agrees that the Company shall be automatically entitled to the extension of time for delivery of possession of the said Unit. The Company as a result of such a contingency arising reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the Company so warrant, the Company may suspend the project for such period as it may consider expedient and the Applicant agrees not to claim compensation of any nature whatsoever (including the compensation stipulated in Clause (12.5) of this Agreement during the period of suspension of the Scheme.

Clause 38 of the Agreement:

The Company shall not be held responsible or liable for not performing any of its obligations or undertakings provided for in this Agreement if such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions Court Case decree/ stay or any other cause(s) (whether similar or dissimilar to the foregoing) not within the reasonable control of the Company.

- n. That without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 rules, has been executed between the parties. Rather, the Agreement that has been referred to for the purpose of getting the adjudication of the complaint though without jurisdiction is the builder buyer's agreement, executed much prior to coming into force of 2017 rules.
- o. That the adjudication of the complaint for possession and interest as provided under sections 11, 12 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 rules and no other agreement. This submission of the Respondent inter alia, finds support from reading of the provisions of 2016 Act as well as 2017 rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to them.
- p. That apparently the complaint filed by the Complainants is abuse and misuse of process of law and the reliefs claimed as sought for are

liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to them.

- q. That it has been categorically agreed between the parties that subject to the Complainants having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc, the developer contemplated to complete construction of the said building/ said apartment unit within a period of 3 years from the date of execution of the agreement and which period would automatically stand extended. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond its control, then it would be automatically entitled to the extension of time for delivery of possession. Further the Respondent may also suspend the project for such period as it may consider expedient.
- r. It is pertinent to enlighten that the said project is a Mega Township spreading in Sector- 82, 82A, 83, 84 and 85 and has been duly approved and have been granted various Licenses issued by Directorate of Town & Country Planning ('DTCP'), Haryana. The Chronological events and fact statement for the cogent reasons which further hampers, effected and prevented the development at Sector, 82 and Sector 82A, which are beyond the control of Respondent and also effects the non-development of the unit allocated to Complainants are as:
1. The acquisition of land for Lying of Gas Pipe line Corridor and Right of User in land as shown in the schedule attached with the said Notification.

2. At the time of approval of initial layout for the licensed land there is an existence of overhead defanged High-tension Line ("HT Line"), which is also passing through a portion of land under the Licensed area of Company. The company was in continuous communication with the HVPNL since year 2009 and finally the re-routing/ shifting of defanged HT Line was done partially in sector-82 in year-end of 2019.
3. That since grant of License No. 113 of 2013, the company is continuously facing the umpteen roadblocks and lost in land area, un development of land under HT Lines and further change in Lay Out also due to addition of land from time to time, thus the Company has to get changed/ revised lay out for the township- Vatika India Next, wherein the Plot of Complainants falls. Thus, non-development of said land and plot of Complainants is beyond the control of Company and not with any malafide intention of defrauding and cheating.
4. It is further submitted that the company has planned and made available one STP (Sewage Treatment Plant) for residential Plotted Colony at Sector-82, which will cater the sewage need of the township at Sector 82, 82A, and 85 and the separate licensed group housings have its separate STP.
- s. That it is submitted that due to above mentioned force majeure conditions, the Respondent has faced unforeseen eventualities which have impacted the development of the said project. That the construction was halted due to the reasons beyond the control of the Respondent. That pursuant to that, the Respondent sent a notice of termination dated 08.12.2021 thereby intimating the Complainants

that the Respondent is not in a position to develop the said unit as per the terms of the Buyer's Agreement. That in view hereof, the Respondent offered the Complainants, the refund of the total amount paid by them with interest as per the terms of the Buyer's Agreement. It is submitted that through the said notice, the Complainants were even called to come down to the office of the Respondent for initiating the process of refund of their amount along with interest and to complete necessary formalities.

- t. Further it is submitted that the Respondent herein was committed to complete the project and has invested each and every amount towards the construction of the same. However, due to the reasons beyond the control which are explained hereinabove and not repeated herein for the sake of brevity, it had become impossible for the Respondent to fulfil the contractual obligations as promised under the agreement and the said agreement has become void in nature.
- u. That the agreement between the Respondent and the Complainants has been frustrated as it is impossible for the Respondent to provide the possession of the plot in question which is valid and approved by the DTCP. It is submitted that the Doctrine of frustration as enshrined in Section 56 of the Indian contract act 1872 deals with cases where the performance of contract has been frustrated and the performance of it has become impossible to perform due to any unavoidable reason or condition.
- v. That as per the notice of termination dated 08.12.2021, the Complainants were supposed to come down to the office of the Respondent, so that the necessary formalities may be completed and

the Respondent may initiate the process of refund along with interest. That the Respondent tried to contact the Complainants on number of occasions to settle the matter but no response was ever received by the Complainants. That the Complainants in order to extort more and more money prolonged the said process. Moreover, the Respondent cannot be held liable for the inactions and omissions at the end of the Complainants.

- w. Since there has been no inducement, no dishonest intention at any point of time leave alone from the time of the alleged inducement, no loss to the Complainants and no misrepresentation on part of the Respondent, none of the ingredients of the offence as enshrined under RERA Act are made out in the complaint itself.
- x. That the Complainants had defaulted in timely remittance of the instalments pertaining to the unit and therefore, have disentitled themselves for any compensation/interest. The Respondent had conveyed to Complainants that on account of the defaults, they would not be entitled to any interest for delay, if any. That furthermore, it is imperative to note that the Complainants have failed to oblige their commitments towards the Unit as per the Agreement.
- y. That the Complainants have intentionally distorted the real and true facts in order to generate an impression that the Respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the Complainants to institute or prosecute the instant complaint. The Complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the Respondent. That the project got delayed due to reasons beyond the control of the Respondent.

Therefore, there is no default or lapse on the part of the Respondent and there is no equity in favor of the Complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the Respondent. That in light of the bona fide conduct of the Respondent, delay caused is beyond the control of the Respondent, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favour of the respondent.

7. 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 on the basis of these undisputed documents and submissions made by the parties.
8. The respondent & complainants have filed the written submissions. The same are taken on record and the Authority has considered the same while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the Authority:

9. The authority observes that it has complete territorial and 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 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.

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.
13. The subject unit was allotted by the respondent in favour of Dhanwanti Ahuja (complainant no. 1) & Tulsi Das Ahuja (deceased). However, the present complaint was filed by Dhanwanti Ahuja, Lokesh Ahuja (Tulsi Das Ahuja's son) & Sumita Ahuja (Lokesh Ahuja's Wife). The complainants placed on record the will of the deceased. Upon, this the Authority on 16.05.2024, directed the complainants to file legal heir's certificate in the Authority giving name of the successors of the deceased allottee.
14. Following this, the counsel for the complainant filed a civil writ petition before the Hon'ble Punjab and Haryana High Court at Chandigarh. While

disposing of the petition on 16.07.2024, the Hon'ble Court observed in paragraph 9 as follows:

"In the considered opinion of this court, the legal heir's certificate would not be required for the continuation of the proceedings before RERA and at best legal representatives of Sh. Tulsi Dass Ahuja could be brought on record as per law"

15. In light of the above, the Authority hereby directs the respondent to act accordingly and substitute the name of Sh. Tulsi Dass Ahuja (deceased) with that of his lawful successor(s).

F. Findings on the relief sought by the complainants.

F.I. Direct the respondent to pay interest on account of delay in offering possession till the date of delivery of possession.

16. In the present matter, Complainant No. 1, along with her husband, was originally allotted Unit No. 67/240/Simplex/BR, having a super area of 1527 sq. ft., situated at Sector 82-85, Gurugram, pursuant to the Builder Buyer Agreement (BBA) dated 21.01.2010, for a total sale consideration of ₹73,87,875/-. Subsequently, vide allotment letter dated 20.01.2012, the said allotment was revised, and a new unit, being Villa No. 7/240/Simplex/BR/82 D1-9, in the Signature 2 Villas segment, was allotted in its place. In furtherance thereof, an Addendum Agreement was executed between the parties on 30.01.2012, wherein it was specifically stipulated that *"all other terms and conditions of the Builder Buyer Agreement dated 21.01.2010 shall remain unaltered and effective."*
17. The complainant has instituted the present complaint seeking possession of the newly allotted villa, along with delay compensation in accordance with the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act. The respondent, however, vide cancellation letter dated 08.12.2021, unilaterally cancelled the allotment of the subject unit

on the ground that the same was no longer deliverable due to a change in the alignment of the GAIL pipeline, and expressed readiness to refund the amount received along with simple interest at the rate of 6% per annum.

18. It is observed by this Authority that the notification regarding the GAIL pipeline was issued in the year 2009, and that subsequently, GAIL, vide communication dated 04.03.2011, permitted a reduction in the Right of Use (ROU) from 30 meters to 20 meters, as also admitted by the respondent in its reply. It is further noted that both the said GAIL notification and permission predate the execution of the Addendum Agreement dated 30.01.2012. Accordingly, if any impediment existed which could potentially affect the timely delivery of possession of the subject unit, it was incumbent upon the respondent to extend the due date of possession under the original BBA dated 21.01.2010 being subsequently signed. No such extension was incorporated either in the original BBA or in the subsequent Addendum Agreement.
19. In view of the above, the unilateral cancellation of the subject unit by the respondent is found to be arbitrary, without legal justification, and contrary to the terms of the agreement. Therefore, the said cancellation is declared to be void and is hereby set aside.
20. Further the complainants in the present matter are seeking delay possession charges along with interest and possession of the unit. As per clause 11.1 of the said agreement the respondent was obligated to deliver the possession of the unit within a period of three (3) years from the date of execution of this agreement. Accordingly, the due date of possession comes out to be 21.01.2013. The complainant has filed the present complaint seeking delay possession charges as per proviso to section 18 (1) of the Act, 2016.

"Section 18: - Return of amount and compensation

"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".*

21. The apartment buyer's agreement was executed between the parties. As per clause 11.1 of the agreement, the possession was to be handed over within a period of 3 years from the date of execution of agreement. The clause 11.1 of the buyer's agreement is reproduced below:

"Schedule for Possession of the Said Unit

The company based on its present plans and estimated and subject to all just exceptions contemplated to complete construction of the said unit/ said unit within a period of three (3) years from the date of execution of this agreement. However, in case the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement."

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the

promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

23. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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]

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."

24. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per 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., 01.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. 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;"*

26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 3 years from the date of execution of agreement i.e., by 21.01.2013.
27. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with

proviso to section 18(1) of the Act on the part of the respondent is established. The Authority observes that the complainant is willing to continue in the said project and therefore, the respondent is directed to hand over the possession of the subject unit and if the same cannot be delivered then allot an alternate unit similarly situated, of similar size and at similar price within 60 days from the date of this order. The respondent is further directed to pay delayed possession charges on the amount paid by the complainant, from the due date of possession i.e., 21.01.2013 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 11% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

28. 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):
- a. The respondent is directed to hand over the possession of the subject unit and if the same cannot be delivered then allot an alternate unit similarly situated, of similar size and at similar price within 60 days from the date of this order.
 - b. The respondent is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10 % p.a. w.e.f. due date of possession i.e., 21.01.2013 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is

earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- c. 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 10th of the subsequent month as per rule 16(2) of the rules.
 - d. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
 - e. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
29. Complaint stands disposed of.
30. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 01.04.2025