

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

Complaint no.: 2337 of 2023
Date of filing: 31.05.2023
Date of order: 15.05.2025

Sushila Devi

R/o: - V.P.O Sikanderpur Badha, Gurugram, Haryana-122004.**Complainant**

Versus

M/s Vatika Limited

Regd. Office at: - Unit no. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122002.**Respondent****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Rishabh Gupta (Advocate)

Complainant

Shri Venket Rao (Advocate)

Respondent

ORDER

1. This complaint has been filed by the complainant/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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Vatika India Next", Sector 82A, Gurugram
2.	Nature of project	Residential plotted colony
3.	DTCP license	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
4.	Unit no.	D/240/456 (page no. 26 of complaint)
5.	Re-allotment of unit (as per addendum agreement)	Plot no.-14/J-10/83J/240 (page no. 33 of reply)
6.	Unit admeasuring	240 sq. yards
7.	Date of execution of builder buyer agreement	22.01.2010 (page 22 of complaint)
8.	Endorsement in favor of complainant	19.05.2011 (as submitted by respondent in its reply at page no. 4 para 8 of reply and confirmed by both the parties during the proceedings dated 15.05.2025) (page 45 of complaint)
9.	Possession clause	10 Handing over possession of the said plot to the allottee. <i>"That the promoter based on its present plans and estimates and subject to all just exceptions contemplates to complete the development of the said township or the sector /part thereof where the said plot is proposed to be located within a period</i>

		<i>of three years from the date of execution of this agreement unless there is a delay or there is failure due to the reason beyond the control of the respondent..."</i> [Emphasis Supplied] (page 32 of complaint)
10.	Due date for possession	22.01.2013 (calculated from the date of execution of buyer's agreement)
11.	Addendum to the plot builder buyer agreement (for change in unit no.)	21.10.2013 (page no. 32 of reply)
12.	Total sale consideration	Rs.41,06,160/- (as per BBA page 27 of complaint)
13.	Total amount received against the allotted unit	Rs.38,66,652/- (as alleged by complainant at page no. 05 of complaint and confirmed by both the parties during the proceedings dated 15.05.2025)
14.	Completion certificate	Not obtained
15.	Offer of possession	Not offered
16.	Re-allotment letter	13.02.2017 & 01.06.2017 (page no. 33 & 34 of reply)
17.	Request Letter by allottee (To handover possession of allotted unit)	11.01.2018 & 31.10.2018 (page no. 52 & 53 of complaint)

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - i. That the respondent had advertised about their project under name and style "Vatika India Next" situated in Sector- 82A, Gurugram. Pursuant to the lucrative offer and strong market hold of the respondent, the proposed



buyer namely Sh. Vijay Kumar Sharma son of Late Sh. Siri Ram Bhardwaj, had shown interest in the said project and agreed to purchase a plot measuring 240 sq. yards in the said project. The proposed buyer paid an amount of Rs.20,49,326/- in all total towards purchase of the said plot to the respondent. The plot buyer agreement was executed on 22.10.2010 between the respondent and proposed buyer where they opted for possession payment scheme offered by respondent. According to the plot buyer agreement, the respondent allotted, plot no.456, in Block-D, measuring 240 sq. yards for the basic sale price of Rs.40,70,160/- and the total sale consideration (including the IFMS charges) was Rs.41,06,160/-.

- ii. Thereafter, in month of March 2011, the said proposed buyers transferred their purchase right to Smt. Sushila Devi wife of Mahender Singh, residents of village and post office Sikanderpur Badha, Tehsil and District Gurugram and Rs.60,000/- as administrative charges were paid to the respondent and the respondent also made an endorsement to this effect accepting the transfer of said plot.
- iii. That as per clause 10 of the plot buyer agreement, the possession was to be handed over within 36 months (3 years) from the date of execution of this plot buyer agreement dated 22.1.2010 which comes to an end till 21.01.2013.
- iv. That all the terms and terms of the plot buyer agreement shall remain same and unaltered by transferring the said plot to the present complainant. The respondent acknowledged and endorsed these terms of the plot buyer agreement. The present complainant paid balance of amount of Rs.18,17,326/- to the respondent. Thus, Rs.38,66,652/- has been received by the respondent from the complainant.

- v. That till date no possession has been handed over to the complainant and whenever the complainant tried to contact the respondent, the respondent used to give false assurances to the complainant about the completion of the project and revised date of possession.
- vi. That the complainant regularly contacted the respondent through telephonically to get the final date of possession but the respondent with malafide intention were not giving the positive answer to their request.
- vii. Thereafter the complainant visited the office of the respondent to inspect the spot and status of the construction where the complainant came to know that this Block-D area of project "Vatika India Next" has been scarped and the respondent planned to transfer the unit/ plot booked by customers in other Block-J which was situated at Sector-83, Gurugram. The complainant meets the officials of the respondent and asked the reasons for such scrapping of project but no response to this effect was given by the representative of the respondent and ultimately, the plot of the complainant was transferred to Block-J comprising of unit no.10/14, Block-J, measuring 240 sq. yards without the consent and without approval of the complainant.
- viii. That the complainant being a of subsequent purchaser entered into shoe of proposed purchaser, shall have the same right, title and interest on the said property booked via. plot buyer agreement dated 22.01.2010. Thus, the complainant paid total Rs.38,66,652/- out of total sale consideration of Rs.41,06,160/-. According to the payment plan and instalments as and when demanded by the respondent without any delay.
- ix. That the complainant also requested the respondent in writing dated 11.01.2018 as well as dated 31.10.2018, for providing possession of the said plot but no response to this written request has ever been given by the respondent.



- x. That in the month of October 2020, the complainant visited the office of the respondent at the address mentioned on the letter head as well as plot buyer agreement, but all the time the office had remained closed. The complainant visited the said office in the month of October 2020, November 2020 and December 2020 but all the time the office has remained closed and vacant. In the month of January 2021, after again visit, one security guard was found at the spot and informed the complainant that the respondent has shifted their office at some Sector- 83 Gurugram. The complainant reached the site office at Sector- 83 Gurugram and from there, the complainant came to know about the present address of the respondent. The respondent has without informing any of their customers had shifted the office of its company.
- xi. That the complainant asked the officials of the to get the final date of delivery of possession of the plot where the representative of the respondent informed that the plots situated at Block J-10 are not in zoning plan, thus plot booked by the complainant is not in zoning plan. That the complainant in dark by misrepresenting about non-existence of plot in Block-J under zoning plan, how the respondent has retained the amount of the complainant since 2011.
- xii. That the respondent has unilaterally and arbitrarily kept the complainant in dark for such long time and ultimately in May 2023, had flatly refused to provide any other alternative plot by the respondent. The complainant was and is still ready and willing to purchase the plot either in same area of in the alterative with same price, same area from the respondent. The respondent being in a dominant position and with an ill motive to grab the money of the complainant, had cancelled the booking of the plot intentionally and deliberately. The respondent has no legal right or title to cancel the unit without any reasonable and legal ground.

- xiii. That the complainant requested the respondent many times to either provide alternative same area and same price plot in Block-J or in some any other plotted colony of respondent but the respondent, with mala fide intention, had not paid any heed to their request and has made one pretext or the other. That it is the respondent, who has failed to perform its part of contract to deliver the possession of the plot on time.
- xiv. That the respondent has failed to fulfil its obligations as under plot buyer agreement and also has failed to provide any offer of possession of the plot till now. Hence, the cause of action has been arose to the complainant to file the present complaint before the Authority.
- xv. Thus, the respondents in the given circumstances, has voluntarily committed breached terms of the plot buyer agreement dated 22.01.2010 and have acted arbitrarily and forfeiting the amount paid by the complainant for which the respondent should be even prosecuted criminally for cheating, fraud and criminal breach of trust.
- xvi. That according to section 11, clause 4 sub clause (b) of the RERA Act, and according to Section 18 sub clause 1 of the RERA Act, which is fully applicable in the present case. Thus, the aforesaid section are fully applicable to the present case and this Authority has full jurisdiction to try the present case.
- xvii. That according to the relief claimed by the complainant, this Authority only has Jurisdiction to try the present complaint. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application before the Adjudicating Officer, if required. That no other compliant, suit, is pending or decided by any other Court or Forum between the same parties on same cause of action.

A

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to provide alternative unit in same project or in other completed project of respondent company.
 - b. Direct the respondent to pay delay possession charges.
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:
 - i. The complaint has failed to provide complete facts and the same are reproduced hereunder for necessary and proper adjudication of the present matter. That the complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains.
 - ii. That the complainant has not approached the Authority with clean hands and has suppressed the relevant facts with the intent to mislead this Authority through the representations of the one-sided facts.
 - iii. That around 2009, Sh. Vijay Kumar Sharma came to know about the project titled as, 'Vatika India Next', situated at Sector 82, Vatika India Next, Gurugram and after being aware of the project, the original allottee approached the respondent, to know about the specifications and veracities of the project.
 - iv. That post being satisfied with the specification of the project, the original allottee, on its own will, decided to invest and thus booked a plot vide application form dated 30.07.2009, admeasuring 240 sq. yards, and further paid an amount of Rs.1,00,000/-, for registration.

- v. That on 22.01.2010, a plot buyer agreement, was executed between the original allottee and the respondent, with the respect to the plot bearing no.465, Block-D, admeasuring 240 sq. yds. having total sale consideration of Rs.41,06,160/- in the said project.
- vi. Also, as per clause 10 of the agreement, the respondents proposed to handover the possession within an estimated 3 years from the date of execution of agreement, subject to various hindrances in midway of constructions of the project which are purely beyond the control of the respondent. That the agreement for the said unit was signed by original allottee on 22.01.2010, and as per agreement the possession of the plot was to be handed over by 21.01.2013 to the original allottee, unless there is delay due to the reasons beyond the control of respondent.
- vii. In 2011, the original allottee and the complainant jointly, approached the respondent for transfer of the aforesaid plot in the name of the complainant. That the respondent has no part in the promises made by the original allottee to the complainant. The respondent after verifications and receiving of transfer charges, transferred the allotted unit in the name of the complainant on 19.05.2011.
- viii. That the complainant entered into the shoes of original allottee on 19.05.2011, therefore the due date of possession shall be calculated from the date of transfer of the plot in the name of the complainant that is 19.05.2011 and accordingly the due date of possession comes out to be 19.05.2014.
- ix. That the project was hindered due to the reasons beyond the control of the respondent.
- Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (GAIL) for supplying natural gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram and re-routing of gas

pipe line should be through green belt/corridor proposed master plan. The consequent litigation for the same, due to which the company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the Township, including that of independent floors.

- Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of *Sector roads* 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely;
- Delay in removal/ re-routing of *defunct High-Tension Line of 66KVA* in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
- Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, respondent applied for license and during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs to 20 mtrs., vide its letter dated 04.03.2011 that passes through the project Land. Although GAIL had reduced the ROW, but since they had denied the re-routing of the GAIL corridor, respondent not only lost approx number of 90-100 plots, units and Villas but had to re-design the project land that consumed money and time.
- The Government of Haryana had notified Gurgaon Manesar Urban Complex 2021, vide their notification dated 05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. of Haryana accordingly. However, the acquisition of sector dividing road 84/85 was de-notified by the government in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015.

Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr roads has resulted in massive delay in laying of services, thus impacting development. Two sector roads (24 mtr) are falling in the project land and due to non-acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc., to the project land has become big challenge for us.

- After de-notification of Sector Road, the government had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The Department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure "Integrated Infrastructure Development, Including Roads, Water Supply, Drainage, Electricity, Telecom etc.
- Director Town & Country Planning, Haryana, in a joint meeting held at Gurgaon, had directed to developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers, Munadi and Public notice were published in leading newspapers on 29.11.2013 but it was very difficult to buy the land falling

- exactly within the proposed road section. Respondent had faced issues in purchasing land under TDR policy as (i) some farmers are interested in selling his land parcel, (ii) no timeline for farmers who do not agree to sell their lands, (iii) some farmers do not wish to follow the lengthy acquisition process and (iv) some farmers are not satisfied with the amount of sale consideration offered.
- Some of the local land owners including a collaborator such as Janakraj, Dhani Mamchand etc. had entered into litigation in respect of their respective land parcel against respondent/Govt. and obtained stay orders. The said litigations have resulted in delay in construction of sector road and further delay in the construction activity in the project.
 - The inability of HSVP to resolve this issue of 100 square yards is affecting the entire development of the 84 mtr. sector road which is the main access point into this GH society.
 - The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
 - That the developmental work of the said project was slightly decelerated due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area. The respondent had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.
 - Due to out brake of Covid-19. Despite facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work and has to carry out the work of repair in the already constructed building and fixtures as the construction left abandoned for more than 1 year due to Covid-19.
- x. That the respondent without any fault of its own, was unable to deliver possession due to constant ban on construction by the government bodies or court orders, which is covered under force majeure circumstances. That all these factors being force majeure may be taken into consideration for the calculation of the period of the construction of the project. That the respondent had carried out its obligations in agreement with utmost diligence.

- xi. That due to the above reasons, the respondent issued the letter dated 03.04.2013, to the complainant, inviting them for re-allotment of the plot. After hearing no response from the complainant, the respondent sent letters dated 21.05.2013, 11.06.2013 and 19.09.2013, inviting the complainant for the re-allotment of the erstwhile plot. Thereafter, the addendum dated 21.10.2013, was executed between both the parties mutually with free will and consent. Through this addendum, the complainant was re-allotted plot bearing no.14/J-10/83J/240 sq. yd. in Sector-83.
- xii. That the respondent was constrained to change certain specifications of some units. The respondent then again intimated the complainant about the re-allotment process vide issuing letters dated 13.02.2017 and 01.06.2017. That the respondent despite the hindrances in the construction was making efforts to accommodate the complainant by allotting them a new Plot.
- xiii. That the plot being claimed by the complainant is not available with the respondent, and the respondent had accordingly invited the complainant for re-allotment of plot. However, the complainant failed to turn up and filed this complaint with malafide motive to harass the respondent. That the complainant may visit to the office of the respondent company for re-allotment of the plot, which is available with the inventory of the respondent.
- xiv. That the complainant has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Authority, for the reasons stated above. That none of the reliefs as prayed for by the complainant is sustainable before this Authority and in the interest of justice.

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.

E. Jurisdiction of the Authority:

8. 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:

9. 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:

10. 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.

11. 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. Findings on the objection raised by the respondent:

F.I Objection w.r.t force majeure circumstances.

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts, implementation of GST, demonetization and adverse effects of Covid-19 etc. and others force majeure circumstances but all the pleas advanced in this regard are devoid of merit. Firstly, the events such as orders of NGT in NCR on account of the environmental conditions, ban on construction activity and others force majeure circumstances do not have any impact on the project being developed by the respondent. As the events mentioned above are for short period which does not make such a huge impact on project which can cause and justify inordinate delay of 12 years. Moreover, these events are of routine in nature happening annually and the promoter is required to take the same into consideration while fixing the due date of possession. Secondly, the event of implementation of GST and demonetization are in accordance with government policies and guidelines. Therefore, the respondent cannot categorize the same as force majeure events. And lastly, the Authority has gone through the possession clause of the agreement and observed that the respondent-promoter proposes to handover the possession of the allotted

unit within 3 years from the date of execution of buyer's agreement, So the due date comes out to 22.01.2013, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The authority put reliance judgment of **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 IAs 3696-3697/2020 dated 29.05.2020** which 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."

13. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

- G.I. Direct the respondent to provide alternative unit in same project or in other completed project of respondent company.**
G.II. Direct the respondent to pay interest at prescribed rate for every month of delay for delayed period as per Section 18(1) read with Section 2(za) of Act, 2016.

14. In the present complaint, the original allottee was allotted a unit vide plot buyer agreement dated 22.01.2010 and thereafter, the original allottee sold the subject unit to the first subsequent allottee being the complainant and the same was endorsed in favor of the complainant vide endorsement dated 19.05.2011. Therefore, the complainant stepped into the shoes of original allottee on 19.05.2011.

15. 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."*

16. Clause 10 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"10. Handing over possession of the said plot to the allottee.

That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/ part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons beyond the control of the promoter or due to failure of the Allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in Annexure-II or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement.

(Emphasis Supplied)

17. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the buyer agreement. In the present complaint, the buyer agreement was executed on 22.01.2010. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 22.01.2013.
18. The Authority observes that, in the present complaint, the Original allottee i.e., Mr. Vijay Kumar Sharma booked a plot in the project "Vatika India Next" and was allotted a plot bearing no. D/240/456 having admeasuring super area 240 sq. yds. Thereafter, a builder buyer's agreement was executed on 22.01.2010 between the respondent and original allottee for a total sale

consideration of Rs.41,06,160/- (inclusive of Rs.36,000/- on account of IFMS) against which respondent has received an amount of Rs.40,70,380/-. As per clause 10 of the said agreement the respondent was obligated to deliver the possession of the unit within 3 years from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 22.09.2012. Thereafter, the Original allottee (i.e., Mr. Vijay Kumar Sharma) made a request to respondent for assignment of unit in favor of complainant, upon which on 19.05.2011, the unit/ plot was endorsed in favor of the present complainant (i.e., Smt. Sushila Devi). Therefore, the complainant stepped into the shoes of original allottee on 19.05.2021. Thereafter, the complainant was allotted plot no. 14/J-10/83J/240 having area admeasuring 240 sq. yds. in the project "Vatika India Next" situated in Sector-83, Gurugram vide addendum agreement 21.10.2013. That the addendum agreement states that '*all other terms and conditions of the builder buyer's agreement dated 22.01.2010 shall remain unaltered and effective*'. And the respondent re-allotted the above said unit of the complainant without her consent vide letters dated 13.02.2017 and 01.06.2017. The complainant has filed the present complaint on 15.05.2023 seeking possession of plot no. 14/J-10/83J/240 having area admeasuring 240 sq. yds. in the project "Vatika India Next" situated in Sector-83 or alternative unit/ plot and delay possession charges as per proviso to section 18 (1) of the Act.

19. The respondent has stated that the said unit is not deliverable due to change in the alignment of the GAIL pipeline and the respondent is ready to refund the amount paid along with simple interest at the rate 9% per annum by invoking clause 13 and 14 of the buyer's agreement. However, the Authority observes that the GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from

30 mtrs. to 20 mtrs. The GAIL notification and permission letter was prior to the execution of agreement dated 22.01.2010 and addendum to the buyers' agreements dated 21.10.2013. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same to the complainant. The respondent-promoter has failed to develop the unit. Accordingly, the respondent is liable to offer alternative unit to the complainant at the same rate as per the agreed terms of subject agreement dated 22.01.2010 and addendum to the buyers' agreements dated 21.10.2013 on account of its inability to develop the subject unit. The rationale behind the same is that the allottee purchased the subject unit way back in 2010 and paid the demanded amount in hope to get possession of the allotted unit.

20. It is noteworthy that the respondent despite expressing readiness to offer an alternative unit to the complainant in its reply and has failed to offer the same. In light of these observations, the respondent is directed to offer an alternative unit to the complainant at the same rate as per the agreed terms of the subject agreement and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.
21. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of section 2(zb) of the Act. The complainant cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.
22. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 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.

23. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. 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., 15.05.2025 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(z) 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:

"(z) "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. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.
27. The Authority is of considered view that there is delay on the part of the respondent-promoter to offer of possession of the allotted unit/ villa to the complainant as per the terms and conditions of the buyer's agreement dated 22.01.2010. Accordingly, it is failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period.
28. Accordingly, the respondent is liable to offer alternative similar situated unit to the complainant as per specifications, at the same rate at which the unit was earlier purchased and on a similar location of original BBA dated 22.01.2010 and addendum to the buyers' agreements dated 21.10.2013 on account of its inability to deliver the said unit. The rationale behind the same that the allottee booked the unit in the project way back in 2010 and paid the demanded amount in a hope to get the possession of allotted unit.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. due date of possession i.e., 22.01.2013 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.

H. Directions of the authority

30. 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):

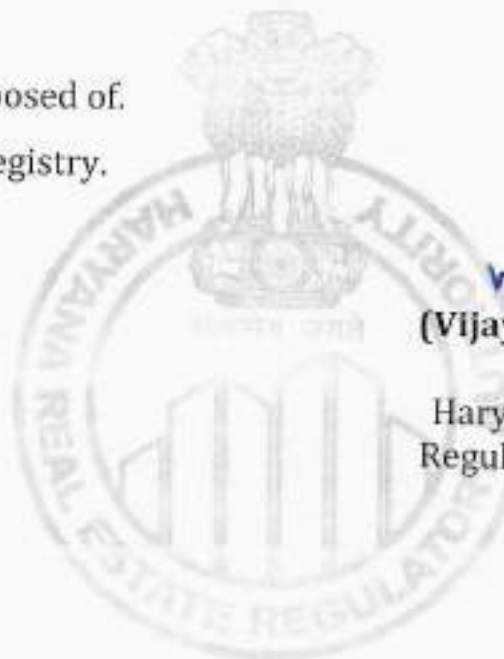
- a. The respondent is directed to offer an alternative unit/ plot of same size, at similar location and at the same rate and specifications at which the unit was earlier purchased within 90 days from the date of this order and handover the possession of alternative unit/ plot to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- 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. from the due date of possession i.e., 22.01.2013 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. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent-promoter which is same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.

31. Complaint stands disposed of.

32. File be consigned to registry.

Date: 15.05.2025



V. I. 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM