

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

Complaint no.: 2873 of 2023  
Date of filing: 27.06.2023  
Order pronounced on: 22.04.2025

Yogesh Kumar Malhotra

R/o:- C1, 156, ground floor, Janakpuri, New Delhi

**Complainant**

Versus

M/s Vatika Limited

**Regd. Office at:** - Vatika Triangle, 4<sup>th</sup> floor, Sushant  
Lok, ph-1, block A, Mehrauli-Gurugram-122002**Respondent****CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member****APPEARANCE:**

Complainant in person

Shri Gunjan Kumar (Advocate)

Complainant  
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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	Vatika Express City at Sector 88-A & B, Gurugram, Haryana
2.	Nature of the project	Residential plotted colony
3.	DTCP license no.	94 of 2013 dated 31.10.2013 11 of 2015 dated 01.10.2015
4.	RERA Registered/ not registered	271 of 2017 dated 09.10.2017 valid up to 08.10.2022
5.	Allotment letter	15.01.2014 [pg. 227 of complaint]
6.	Date of builder buyer agreement	05.01.2015 [pg. 164 of complaint]
7.	Unit no.	Plot no. 15, Block G-16, 301.39 sq. yards. [page 166 of complaint]
8.	Possession clause	<b>9</b> <i>The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said residential floor within a period of 48 (forty eight) months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein or due to on failure of allottee(s) to pay in time the price of the said residential floor along with all other charges and dues in accordance with the schedule of payments given in</i>

		<i>annexure-i or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this agreement.</i>
9.	Due date of possession	05.01.2019
10.	Total sale consideration as per SOA dated 22.09.2022	₹ 2,13,48,960/- [pg. 186 of complaint]
11.	Paid up amount as per SOA dated 22.09.2022	₹ 78,81,536/- [pg. 186 of complaint]
12.	Reminder letters	06.01.2023, 23.01.2023, 31.01.2023
13.	Notice for termination	31.01.2023 [pg. 49 of reply]
14.	Letter for cancellation cum refund letter	30.05.2023 [pg. 50 of reply]
15.	Occupation certificate	Not received
16.	Offer of Possession	Not offered

**B. Facts of the complaint.**

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

- a. The Complainant on 03.08.2013 visited Respondent's Gurugram office and met the marketing staff and office bearers of the Respondent who allured Complainant by elaborating the details and plan of the said project and assured of timely delivery of the plot. That believing in the representation and assurance of the respondent, Complainant handed over a cheque amounting Rs. 11,00,000/- dated 02.08.2013 along with a filled-up Form 'Expression for a residential Plot' at Respondent's office as advance deposit towards booking a 300 Sq. yards plot in the subject Project



'Vatika Express City' located at Sector 88B on Dwarka Expressway, Gurugram. The plot was booked under the construction link payment plan for a sale consideration of ₹2,13,48,960/-. As per said payment plan, the Complainant has to pay 40% sale consideration within 12 months from the date of booking and the balance 60% sale consideration is payable as per 4 nos. construction linked milestones.

- b. Thereafter on 04.09.2013, payment of ₹8,11,195/- made by the Complainant to Respondent vide cheque no. 014846 dated 04.09.2013 as demanded by the Respondent. On 04.10.2013, TDS amounting ₹19,305/- deposited for the Respondent. On 15.10.2013, payment of ₹19,11,195/- made by the Complainant to Respondent as demanded by the Respondent. On 01.11.2013, payment of ₹19,11,195/- made by the Complainant to Respondent as demanded by the Respondent. On 04.11.2013, TDS amounting ₹19,305/- deposited for the Respondent. On 14.01.2014, a wrong/ misleading letter issued by the Respondent showing outstanding of ₹1,99,082/- as against Nil outstanding.
- c. On 15.01.2014, Respondent issued **Plot Allotment letter** along with terms of payment. On 14.03.2014, a wrong/ misleading letter issued by the Respondent showing outstanding of ₹38,610/- as against Nil outstanding. On 07.08.2014, a wrong/ misleading letter issued by the Respondent showing outstanding of ₹20,04,889/- as against amount of ₹19,30,500/- due creating un-necessary confusion. On 08.12.2014, Respondent demanded ₹22,98,252/- as against amount of ₹20,90,616/- along with threat of forfeit of a major portion of

amount deposited by Complainant as well as cancellation of booking of Plot and hence creating un-necessary confusion and mental trauma. On 29.12.2014, a meeting conducted at Respondent's office after a lot of follow-ups and amount due was settled as ₹20,90,616/- . Payment of ₹20,90,616/- including interest @ 18% per annum against delay in payment (on too much insistence from Respondent and under threat of forfeit of a major portion of amount deposited by Complainant as well as cancellation of booking of Plot) was made vide cheque no. 402427 dated 29.12.2014.

- d. On 01.01.2015, after a long follow-up, Complainant received **Builder Buyer Agreement** from Respondent after a period of around one and half year of booking and paying around 40% of total Sales consideration. The terms & conditions of Builder Buyer Agreement were totally one sided in favour of Respondent with threat of forfeit of a major portion of amount deposited by Complainant as well as cancellation of booking of Plot if not signed immediately. On 05.01.2015, unilateral, one-sided, arbitrary, and ex-facie Builder Buyer Agreement was executed inter-se the parties. As per para 9 of the Builder Buyer Agreement, Respondent has to give possession of the plot within 48 months from the date of execution of this agreement, The agreement was executed on 05.01.2015, therefore due date of possession was 04.01.2019.
- e. That on 05.05.2015, Respondent made a demand against Commencement of PHE work. On 18.05.2015, Complainant vide his email requested Respondent to provide him the details like PHE layout and the photographs showing commencement of water



supply piping, Man holes, Drainage and Sewer pipes so as to establish the commencement of PHE work in order to enable the Complainant to make the payment against the demand raised. That the Respondent failed to provide details regarding development of Project/ at Plot carried out by him in-spite of repeated request mails of Complainant dated 19.05.2015 to 12.01.2019 and numerous letters of Complainant dated 18.02.2019, 19.04.2019, 22.10.2019, 20.07.2020, 02.12.2020, 19.07.2021 as well various letters dated earlier, and despite of various meetings held with Respondent's representative at Respondent's office on 18.02.2019, 19.04.2019, 22.10.2019, 02.12.2020, 22.09.2022, 28.09.2022, 30.09.2023, 10.05.2023, 09.06.2023 as well as email of Complainant dated 06.02.2019. Respondent did not pay any heed to various requests of the Complainant. Respondent has miserably failed to make any development of plot in last 10 years and failed to fulfill its obligations as under Builder Buyer agreement. That as per RERA Rules 2017, Rule 14 (1) -(vii) reproduced under - the Respondent shall be responsible to make available to the allottee the above requested information. Same is also mentioned at Point (xiii) in the RERA certificate issued to Respondent's project.

- f. That the Respondent failed to handover Possession on 04.01.2019 as committed in Builder Buyer Agreement. That the Respondent failed to undertake development work in the project 'Vatika Express City' as evident from Respondent's Email dated 19.04.2019 in which Respondent mentioned its inability to execute and carryout all the

necessary work for the completion of Project as well as its inability to even inform the timelines.

- g. That the Respondent failed to provide the revised final date of handover of Possession of Plot even after more than 4 and half years after the expiry of committed Possession date. In one of his mail dated 26.07.2021, in reply to Complainant's letter dated 19.07.2021, Respondent committed to handover possession of plot in 2<sup>nd</sup> Quarter of 2021 but again failed to handover the possession of plot to Complainant.
- h. That the Respondent failed to provide correct Accounts statement/ Demand letter despite of Complainant's numerous requests vide his letters i.e. dated 22.09.2022, 13.12.2022, 11.01.2023, 30.01.2023, 13.04.2023, 10.05.2023 and numerous previous letters. In these letters, Complainant requested Respondent to rectify his Demand letter/ Payment request/ Accounts statement (including deletion of interest payment which was not applicable and already waived off on account as per Respondent's mail dated 7<sup>th</sup> June 2019).
- i. That the Respondent misled and has caused to Complainant severe mental trauma and harassment by sending inflated/ wrong Demand letters. That the Respondent raised wrong/ misleading Demand letters in a very short period from 20.09.2022 to 30.11.2022 demanding payment for all the milestones (in a construction linked payment plan) all together i.e. almost full payment for the plot while till 10<sup>th</sup> June 2023, there has been even no commencement of these milestones (i.e. in more than last 10 years and after around 4 and half years after the expiry of committed Possession date). It is



pertinent to note that in a construction linked payment plan, payment demand for a milestone is to be raised stepwise only after achieving completion on preceding milestone. Surprisingly Respondent wanted to grab full amount by raising demand for all the milestone altogether. Complainant recently visited Respondent's office on 10.05.2023 and 30.01.2023 (apart from various earlier visits) to discuss subject matter and hand deliver letter, however Respondent's office refused to listen and to even receive Complainant's letter after a long waiting of around 2 hours. Respondent did not pay any heed to various requests of the Complainant.

- j. Vide these letters Complainant requested Respondent to provide correct Demand letter/ Payment request/ Accounts statement and reiterated that based on Respondent's correct Demand letter/ Payment request/ Accounts statement and actual progress in the construction linked milestones at site, Complainant is ready to make payment.
- k. Complainant reiterated that fake PHE work (not more than 10% of PHE work) which has been executed in last 8 years since commencement has also have been become redundant (useless) in current layout. Complainant also reiterated that Electrification work and Road crust up to DBM have not even commenced at site till date. Complainant reiterated that as per RERA Rules 2017, Rule 9.2 -(ii) reproduced under, in case of default by the Respondent, Complainant is entitled to stop making further payments to Promoter as demanded by the Promoter till the Respondent correct



the situation by completing the construction/ development milestones.

- l. That the Respondent offered Possession on 13<sup>th</sup> December 2022 and demanded full payment against all the milestones altogether (in a construction linked payment plan) including payment against Possession offer. Surprisingly the Respondent offered invalid/ illegal Possession without obtaining Completion/ Part completion Certificate. Complainant reiterated that fake PHE work (not more than 10% of PHE work) which has been executed in last 8 years since commencement has also have been become redundant (useless) in current layout. Complainant also reiterated that Electrification work and Road crust up to DBM have not even commenced at site till Complainant's last visit to site on 10<sup>th</sup> June 2023 (video recording with date marked showing real progress at site can be shared). Respondent did not pay any heed to various requests of the Complainant.
- m. That on 8<sup>th</sup> June, 2023, the Respondent sent an email (enclosing his letter dated 30.05.2023 received on 8<sup>th</sup> June) mentioning cancellation of Builder Buyer Agreement. On very next day i.e. on 9<sup>th</sup> June 2023, Complainant visited office of the Respondent to discuss and clarify but Respondent's office refused to entertain Complainant and even refused to receive Complainant's letter after a long waiting of around 2 hours. Subsequently Complainant sent his reply letter dated 09.06.2023 vide speed post which got received at Respondent's office on 12.06.2023. In his letter, Complainant again requested Respondent to provide correct Accounts statement/ Demand letter (apart from Complainant's numerous requests vide his letters -

already mentioned in para 4 above) and requested Respondent to set aside cancellation issued vide his email dated 08.06.2023 and his letter dated 30.05.2023 (received on 08.06.2023) on immediate basis and restore the booking of the plot in the same name. In his letter, Complainant also clarified that he has not received demand letters dated 31.01.2023 and 23.01.2023 stated (falsely) in Respondent's letter dated 30.05.2023.

- n. Complainant also reiterated that based on hence forward physical real progress in the construction/ development milestones at site and Respondent's confirmation of Final revised Possession date, he is ready to make pro-rata payment. Respondent did not pay any heed to various requests of the Complainant and there is no reply from the Respondent till date. Surprisingly the Respondent had offered invalid/ illegal Possession without obtaining Completion/ Part completion Certificate. It is submitted that the Respondent has unilaterally and arbitrarily cancelled the plot after 10 years of booking, falsely stating previous demand letters dated 31.01.2023 and 23.01.2023. The Respondent being in a dominant position and with an ill motive to grab the money of the Complainant had unilaterally and arbitrarily cancelled the Builder buyer agreement. The Respondent has no legal right to cancel the Builder Buyer agreement without any reasonable and legal ground. It is the Respondent who has miserably failed to achieve the various milestones and miserably failed to make any development of plot site in last 10 years and failed to fulfill its obligations as under Builder Buyer agreement. It is pertinent to note that in last 10 years



(after booking of Plot and receiving 40 % payment), prices of Plots have risen more than double. Respondent simply wants to gain by reselling the same plot at very higher prices totally ignoring mental trauma, agony, harassment and financial loss caused to Complainant.

- o. That in last 4 years the Respondent used to email to Complainant vide his "no reply" mail id and Complainant was not permitted to send his reply through email. Even after numerous requests made by Complainant during Complainant's visit to Respondent's office, Respondent did not pay any heed to various requests of the Complainant and refused to provide his email id.
- p. The Respondent is prolonging the matter by giving false assurances. Since the very inception, the respondent never had any intention of developing the project in time and lured the complainant and public at large by misrepresentation and succeeded in collecting several hundred crore rupees, without there being any intention to timely complete the project. It has also cleared the air on the fact that all the promises made by the Respondent at the time of sale of involved Plot were fake and false. The Respondent had made all those false, wrongful and fraudulent promises just to induce the complainant to purchase the Plot, which the Respondent never intended to fulfill. That the Respondent made an invalid / illegal offer of possession as the Respondent had not obtained Completion/ Part completion certificate.
- q. That the Respondent has committed grave deficiency in services by delaying the delivery of possession and making false promises made at the time of sale of Plot which amounts to unfair trade practice and



being immoral as well illegal. The Respondent has also criminally misappropriated the monies paid by the Complainant as sale consideration of the said plot by not delivering the unit by agreed timelines. It is much more an act of playing fraud with the Complainant and is prima facie clear on the part of the Respondent which makes Respondent liable to answer the Authority.

- r. That Complainant has undergone severe intense mental trauma, endless agony, harassment due to the failure on part of the Respondent to deliver his dream plot (home) on time agreed. He has faced huge financial burden and hardship from his limited income resources, only because of Respondent's failure to fulfill its promises and commitments. The failure of commitment on Respondent's part has made the life of the Complainant miserable socially as well as financially as all his personal financial plans and strategies were based on the date of delivery of possession as committed by the Respondent, Therefore the Respondent has forced the Complainant to suffer grave and severe mental trauma and financial harassment with no fault on his part. The Complainant being a common person just made the mistake of relying on Respondent's false and fake promises, which lured him to buy a residential plot in the aforesaid residential project. The Respondent has trapped the Complainant in a vicious circle of mental, physical and financial agony, mental trauma and harassment in the name of delivering the residential plot for dream home within deadline representing itself as a real estate giant. Complainant has suffered huge financial loss due to missed

opportunity of investing in other Project or other investment instruments like mutual funds etc in last 9-10 years.

- s. That the Respondent has cheated Complainant. Respondent committed to handover the Possession of Plot (No. 15, Street G-16, Sector 88B) by 04.01.2019 as per Builder Buyer Agreement. However it is quite surprising (as it came to knowledge of Complainant recently) that same Respondent committed to handover the Possession of neighboring Plot (No. 12, Street G-16, Sector 88B) by 14.11.2017 as per his Builder Buyer Agreement. Dates of two Builder Buyer Agreements were 05.01.2015 and 14.11.2014 (i.e. very close). It is quite pertinent to note wide disparity in Handing over dates for the two neighboring Plots. Even the price of plots of same size of 300 sq. yards is widely varying. A case was filed in RERA Gurugram by this neighbour vide complaint no. 669/ 2018 with case titled as Girdhari Lal Versus Vatika Ltd. As prayed by Buyer, Hon'ble court on 10.01.2019 ordered Respondent to refund the amount deposited by Buyer (Girdhari Lal) along with interest. It is a crystal-clear case of cheating by the Respondent, which is evident from wide disparity in Handing over dates of possession and the prices of the two neighboring Plots of same size and with almost identical Builder Buyer Agreement dates.
- t. That the Respondent charged interest at 18% per annum for delay on deposit of installment which was actually due to confusion created by Respondent himself. That the Respondent misled and has caused to Complainant severe harassment by sending inflated/ wrong Demand letters dated 14.01.2014, 14.03.2014, 07.08.2014,



08.12.2014. That the Respondent has cheated Complainant by collecting around 40% of total sales consideration before executing Builder Buyer agreement.

- u. Complainant Received **Builder Buyer Agreement** from Respondent i.e. after a period of around one and half year of booking and paying around **40% of total Sales consideration**. Further The terms & conditions of **Builder Buyer Agreement** were totally one sided in favor of Respondent with threat of forfeit of a major portion of amount deposited by Complainant as well as cancellation of booking of Plot if not signed immediately. Same had been repetitively brought into notice of Respondent by Complainant vide his letters dated 23.06.2022, 22.09.2022, 28.09.2022, 07.12.2022, 13.12.2022, 14.12.2022, as well various letters dated earlier, in-spite of various meetings held with Respondent's representative at Respondent's office on 18.02.2019, 19.04.2019, 22.10.2019, 02.12.2020, 22.09.2022, 28.09.2022, 30.09.2023, 10.05.2023, 09.06.2023. That as per RERA Act 2017, Act 13 (1) reproduced under – not more than 10% deposit or advance to be taken by Respondent without first entering into agreement for sale. Same is also mentioned at Point (viii) in the RERA certificate issued to Respondent project. It is clearly an act of hiding information, mislead, default on part of Respondent and act of cheating by Respondent.
- v. That the Respondent in the given circumstances, has voluntarily breached terms of the Builder Buyer agreement dated 05.01.2015 and have acted unilaterally and arbitrarily for cancelling the plot and forfeiting the amount paid by the complainant for which it should be



even prosecuted criminally for cheating, fraud and criminal breach of trust.

- w. That the first-time cause of action for the present complaint accrued in favor of the Complainant and against the Respondent on 03.08.2013 when the said plot was booked based on Respondent's false, wrongful and fraudulent promises and it further arose in January 2015 when the Builder buyer agreement containing unfair and unreasonable terms was forced upon the Complainant. It further arose when the Respondent on 04.01.2019 failed to deliver the possession. It further arose when the Respondent offered invalid/illegal Possession (without completion / part completion certificate) on 13<sup>th</sup> December 2022 and demanded full payment against all the milestones altogether (in a construction linked payment plan) including payment against Possession offer. It further arose when the Respondent failed to provide correct Accounts statement/ Demand letter despite of Complainant's numerous requests vide his numerous letters (as enumerated in para 4). It further arose when the Respondent failed to provide details regarding development of Project carried out by him in-spite of repeated request letters of Complainant (as enumerated in para 6). It further arose when the Respondent unilaterally and arbitrarily cancelled the plot on 08.06.2023 after 10 years of booking and collecting 40% payment, falsely stating previous demand letters dated 31.01.2023 and 23.01.2023. The cause of action is alive and continuing and would continue to subsist on day-to day basis.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

- a. Direct the respondent to set aside the cancellation of builder buyer agreement issued vide respondent's email dated 08.06.2023 and restrain the respondent from creating any third-party interest of the said plot.
- b. Direct the respondent to handover possession of plot after getting completion/ part completion certificate in a given time frame.
- c. Direct the respondent to pay the delayed possession interest for every month of delay on ₹78.82 Lacs deposited by complainant for the delay w.e.f. due date of possession (i.e. 04.01.2019) till the handing over of the physical possession of plot and registration of conveyance deed. Interest to be same as charged by respondent on delayed payment from complainant on 29.12.2014 i.e. @18% per annum.
- d. Direct the respondent to issue correct demand letters / account statements.
- e. Direct the respondent not to charge anything from the complainant which are not part of the builder buyer agreement.
- f. Direct the respondent to pay suitable compensation for illegal cancellation of the allotted unit.
- g. Respondent should be penalized for not providing the final revised date of handover of possession of plot even after more than 4 and half years after expiry of possession date 04.01.2019 as committed in builder buyer agreement and not providing details regarding development of project/ at plot carried out by him in-spite of complainant's repeated request letters, emails & meetings.



- h. Direct the respondent to pay compensation of ₹80 Lacs for causing to complainant severe intense mental trauma, anxiety, endless agony, harassment, cheating, huge financial loss due to missed opportunity of investing in other project or other investment instruments like mutual funds etc in last 9-10 years.
  - i. Respondent should be penalized for collecting excessive advance (i.e., around 40% of Total sales consideration) prior to signing Builder buyer agreement.
- 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 around 2013, Complainant came to know about the project titled as, 'Vatika Express City Plots' (hereinafter referred to as 'Project'), situated at Sector 88A&88B, Gurugram and after being aware of the Project, the Complainant approached the Respondent, to know about the specifications and veracities of the Project.
  - b. That post being satisfied with the specification of the Project, the Complainant, on its own will, decided to invest and thus booked a plot vide Expression of Interest dated 03.08.2013, admeasuring 300 Sq. Yards, and further paid an amount of ₹11,00,000/- for further registration.
  - c. That on 06.01.2014, the Respondent sent a letter for offer of allotment of plot in the aforesaid Project, to the Complainant and



requested the Complainant to be present for the allotment of plot on 15.01.2014. Thereafter, the Respondent vide Allotment Letter dated 15.01.2014, allotted the Plot no. 15, Street G-16, Sector 88B, admeasuring 300 sq. yds. to the Complainant.

- d. That the Respondent vide Letter dated 20.10.2014, sent the Builder Buyer Agreement for signing, to the Complainant, and requested the Complainant to return the same within 15 days of dispatch of the Agreement, but the Complainant failed to do so within the proposed timeline. After consistent reminders, the Complainant on 05.01.2015, sent the signed Builder Buyer Agreement (hereinafter referred to as 'Agreement') and the Agreement was executed between the Complainant and the Respondent, with the respect to the Plot no. 15, Street G-16, Block G, Sector 88B admeasuring 301.39 sq. yds. (hereinafter referred to as 'Unit') having total sale consideration of ₹2,13,48,960.65/- in the said Project.
- e. Also, as per Clause 9 of the Agreement, the Respondents proposed to handover the possession within an estimated period of 48 months 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. It is an admitted fact that the Agreement for the said Unit was signed by Complainant on 05.01.2015, and as per Agreement the possession of the plot was to be handed over by 05.01.2019 to the Complainant, unless there is delay due to the reasons beyond the control of Respondent company or due to failure of Allottee to pay in time the price of the said unit as per the agreed payment schedule. The Complainant

herein has defaulted in payments, thus contributing to delay in handover of possession of the unit.

- f. That the Complainants have been defaulting in payments, despite knowing that the timely payments are the essence of the Agreement. As per the Clause 8 of the Agreement, the Complainant was under obligation to pay timely instalments for timely completion of the Project. The Complainant has constantly delayed in making payments at initial stage and later on stopped the payments.
- g. That on 08.07.2014, the Complainant sent a Demand Letter for the payment of ₹19,39,445/-, as per the agreed payment schedule. The Respondent in the said letter intimated and requested the Complainant to pay the amount on or before the due date i.e., 01.08.2014, but the Complainant failed to pay the same on one pretext or the other.
- h. The Respondent having no other option again sent a Final Reminder Letter dated 08.12.2014, calling upon the Complainant for the payment of outstanding due of ₹22,98,251/-, within 7 days of the receipt of the letter. After much pursuance the Complainant finally paid the amount after five (5) months of delay.
- i. Further, as per Section 19(6) of the RERA Act, 2016, the allottee is duty bound to make necessary payments within the time specified as per the terms and conditions of the Agreement. The Complainant herein, has continuously delayed from making payments as per the agreed schedule of the Agreement.



- j. That the Respondent vide Letter dated 20.04.2015, informed the Complainant that an amount of Rs. 38,63,819.80/- (Rupees Thirty-Eight Lakhs Sixty-Three Thousand Eight Hundred Nineteen Only) is due on 05.05.2015, as per the payment schedule and the Complainant shall make the payment accordingly.
- k. The Respondent vide Letter dated 03.06.2015 and Letter dated 08.07.2015, again reminded the Complainant regarding the outstanding dues of Rs. 39,20,982.76, to be paid against the unit allotted to him and requested the Complainants to pay the same within the 15 days of dispatch of the respective letters but the same has not been paid.
- l. It is a matter of fact, that the Complainant herein was aware that timely payment of instalment was an essence for the completion of the project but in spite after knowing the Complainant has failed to pay the instalment as and when demanded by the Complainant.
- m. That after several reminders and calls, the Respondent issued a Notice of Termination dated 15.06.2016, wherein the Complainant that the Respondent has not received the outstanding balance of ₹46,41,241.03/- (Rupees Forty-Six Lakhs Forty-One Thousand Two Hundred Forty-One Only) and if the Complainant failed to make the payment within 7 days from the letter date, then the Respondent shall be forced to cancel the allotment as per the mutually agreed terms and conditions of the Agreement.
- n. It is pertinent to mention that the Complainant in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is

caused either due to any act or notice or notification issued by the Government or Public or Competent Authority. The relevant abstract of the aforesaid clause i.e. Clause 12 is mentioned below for your reference:

- o. "The Allottee agrees not to claim compensation of any nature whatsoever (including the compensation stipulated in other clauses of the Agreement) for the period of extension of time for handing over possession of the Residential Plot."
- p. It is submitted that as per the Agreement executed for the said Plot, the Complainant was well aware that the Respondent shall not be liable for not fulfilling the obligation under the Agreement if such obligations are delayed due to any reasons mentioned under the category of Force Majeure. It is to note, that since starting the Respondent was committed to complete the project and has invested each and every amount so received from the Complainant towards the agreed total sale consideration. It is submitted that the project was hindered due to the reasons beyond the control of the Respondent and the same are now being reproduced as under:
  - Laying of Gail Pipe Line and Loss of Land in Rou Alignment of Gail Corridor
  - Acquisition of Sector Road Land Parcels in the Township
  - Acquisition of Sector Roads by Government Notification and Orders
- q. That despite the stated hindrances, the Respondent was able to complete the construction of the Project. The Respondent vide Intimation of Possession Letter dated 13.12.2022, intimated the



Complainant that the Respondent is starting the handover of possession of the unit in the Project and requested the Complainant to clear his dues against the unit so that the Respondent can commence the process of handover of possession. After no response or payment from the Complainant, the Respondent issued letter dated 06.01.2023 and 23.01.2023, respectively, to intimate the Complainant that the Respondent has not received the outstanding due amount against the unit of the Project. It is pertinent to mention herein that the Respondent has not received the outstanding due amount for completion of possession till date.

- r. That the Respondent was constrained to send the Notice of Termination Letter dated 31.01.2023, as the Complainant was not showing any intention to pay the outstanding amount for taking over of possession of the unit. It is pertinent to note that the Respondent was prepared to provide possession of the unit to the Complainant and it was the Complainant that refused to take possession by not paying the outstanding amount against the unit.
- s. That as per Section 11(5) of the RERA Act, 2016, the Respondent has right to cancel the allotment as per the agreement for sale. The Complainant has been a regular defaulter and despite various reminders refuses to clear the outstanding payments. Thus, the Respondent has the right to cancel the allotment as per Clause 11 of the Agreement. The said clause provided the right to the Respondent to cancel the allotment if the allottee fails to take possession of the unit. The Complainant herein also failed to take the possession.

- t. That despite Respondent numerous efforts and reminders, the Complainant refused to pay the amount for the possession of the unit. Therefore, the Respondent sent Letter for cancellation of Builder Buyer Agreement cum Refund dated 30.05.2023 to the Complainant, intimating the Complainant that due to failure of clearing outstanding dues, the Respondent is left with no alternative but to cancel the Agreement as per the clauses of Agreement. It is pertinent to mention herein that the Respondent performed its obligations as per the terms and conditions of the Agreement despite the hindrances and non-timely payments by the Complainant.
- u. Therefore, the cancellation of the unit by the Respondent is as per the terms and conditions of the Agreement and the provisions of the RERA Act, 2016. It is pertinent to bring into the attention of the Ld. Authority that the instant unit in question has been cancelled by the Respondent due to constant default in payment of outstanding dues and having no other option the Respondent has further sold the said unit to other allottee(s). It may be noted, that third party rights have already been created upon the unit in question. That on the basis of above contentions, it is stated 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.
- v. That the Complainant herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless.



vague, wrong grounds and has misled this Ld. Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the Complainant are sustainable before this Ld. 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 complainants at a later stage.

**F. Findings on the relief sought by the complainant.**

F.I. Direct the respondent to set aside the cancellation of builder buyer agreement issued vide respondent's email dated 08.06.2023 and restrain the respondent from creating any third-party interest of the said plot.

F.II. Direct the respondent to handover possession of plot after getting completion/ part completion certificate in a given time frame.

F.III. Direct the respondent to pay the delayed possession interest for every month of delay on ₹78.82 Lacs deposited by complainant for the delay w.e.f. due date of possession (i.e. 04.01.2019) till the handing over of the physical possession of plot and registration of conveyance deed. Interest to be same as charged by respondent on delayed payment from complainant on 29.12.2014 i.e. @18% per annum.

F.IV. Direct the respondent to issue correct demand letters / account statements.

F.V. Direct the respondent not to charge anything from the complainant which are not part of the builder buyer agreement.

12. In the present matter the complainant was allotted the Plot no. 15 admeasuring 301.39 sq. yds. at sector 84, Gurugram in the project Vatika India Next vide allotment letter dated 15.01.2014. Thereafter a builder buyers' agreement was executed between the parties on 05.01.2015 for



a total sale consideration of ₹2,13,48,960/-. As per clause 9 of the said agreement the respondent was obligated to deliver the possession of the unit within 48 months from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 05.01.2019. The complainant on 18.03.2025 stated that the possession of the said plot has been offered on 13.12.2022 and raised the demand of ₹1,48,91,274/-. The complainant submitted that the cancellation and forfeiture of the deposited amount is illegal for the following reasons:

- I. The respondent raised incorrect demand asking payment for all the construction linked milestones while even after the offer of possession there had been nil commencement of these milestones.
  - II. Secondly, the offer of possession is not a valid demand in absence of completion certificate.
13. On the contrary, the respondent submitted that in furtherance of the allotment, the complainant was obligated to make the payments as per the payment plan agreed between the parties. Despite repeated reminders issued by the respondent to the complainant, the complainant never came forward and complied with his obligations, therefore, the respondent was constrained to issue a notice for termination dated 31.01.2023. The respondent cancelled the subject unit vide cancellation letter dated 30.05.2023 wherein the respondent stated that. Now, the issue for consideration arises as to whether the cancellation made by the respondent is valid or not?

14. It is pertinent to mention here that the subject unit was allotted to the complainant vide allotment letter dated 15.01.2014 and the following payment plan was also agreed by the parties:

At the time of booking	11 lacs
Within 30 days from the date of booking	10% less booking amount
Within 60 days from the date of booking	10% of BSP
Within 90 days from the date of booking	10% of BSP
Within 12 months from the date of booking	10% of BSP + 45% PLC
On commencement of utility services	15% of BSP + 50% EDC/IDC
On commencement of electrification work	15% of BSP + 50% PLC
On commencement of road crust up to DBM	20% of BSP + 45% EDC/IDC
On possession	10% of BSP + 5% PLC & EDC/IDC + 100% IFMS + other charges

15. After consideration of the facts and circumstances, authority is of view that as per the payment plan, the respondent was supposed to raise the demand up on commencement of utility services and not on completion of utility services accordingly the contention of complainant regarding laying down of the said services is hereby refuted by the Authority and accordingly, the demand raised by the respondent was correct.
16. It is important to note that the complainants were in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of BBA. Upon perusal of documents on records, the respondent raised various reminders for payment dated 06.01.2023, 23.01.2023 & 31.01.2023. The complainant received cancellation notice dated 30.05.2023 and asked the respondent to collect the refund of the Amount as per BBA. It is observed that the respondent has raised various demand letters to the complainants and as



per section 19 (6) & (7) of Act of 2016, the allottees were under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. When sufficient time and opportunities have been given to the complainants to make a payment towards consideration of allotted unit, it would be violation of section 19 (6) & (7) of Act of 2016. As per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder has to return the remaining amount after deducting 10% of total sale consideration as earnest money, along with interest @11% (MCLR+2%) from the date of cancellation till its realization.

**F.VI. Compensation.**

17. The complainant is also seeking relief w.r.t. litigation expense. It is observed that 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. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.


**G. Directions of the authority**

18. 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):

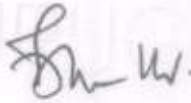
- a. The respondent/builder is directed to refund the amount received from the complainants i.e., ₹78,81,536/- after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 30.05.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- b. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
19. Complaint stands disposed of.
20. File be consigned to registry.



(Ashok Sangwan)  
Member



(Vijay Kumar Goyal)  
Member



(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.04.2025