

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

Complaint no. : 2132 of 2024
Date of filing : 22.05.2024
Date of decision : 09.05.2025

1. Arun Thakur
2. Preeti Kanwar

R/o: Vill Bandal, PO Khouda, Teh Sarkaghat
Distt Mandi, Himachal Pradesh-175024.

Complainants

Versus

M/s Vatika Ltd.

Address: Unit number A-002, Ground Floor,
Block A, Vatika Inxt City Center,
Gurugram, Haryana-122012.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPERANCE:

Shri Vinod Batra
Shri Dhruv Dutt Sharma

**AR of the complainant
Counsel for the respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the

Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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:

S.No.	Particulars	Details	
1.	Name of the project	Xpressions by Vatika in Vatika Express City, Sector 88A and 88B, Gurugram, Haryana	
2.	Nature of the project	Group Housing Colony	
3.	RERA Registered/ not registered	271 of 2017 dated 09.10.2017 "Vatika Express City" (Expression for phase I)	
	Validity status	08.10.2022	
	Registered area	38640.48 acres	
4.	License no.	94 of 2013 dated 31.10.2013	11 of 2015 dated 01.10.2015
	Validity status	30.10.2019	30.09.2020
5.	Unit no.	HSG-028, Plot no,-14, Pocket-H-2, Level-2, Type-2BR+ [Page 101 of complaint]	
6.	Unit area admeasuring	1350 sq. ft. (super area) [Page 101 of complaint]	
7.	Date of booking	20.07.2015 [Page 17 of complaint]	
8.	Date of Builder buyer agreement	12.07.2016 [Page 98 of complaint]	
9.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR	



		<p>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 failure of Allottee(s) to pay in time ..."</p> <p>[Page 109 of complaint]</p>
10.	Due date of possession	<p>12.01.2021</p> <p>[12.07.2020 + 6 months on account of Covid 19]</p>
11.	Total consideration sale	<p>Rs.88,39,490/-</p> <p>[As per statement of account dated 15.03.2024 at page 17 of complaint]</p>
12.	Amount paid by the complainant	<p>Rs.96,45,179/-</p> <p>[As per statement of account dated 15.03.2024 at page 17 of complaint]</p>
13.	Occupation certificate /Completion certificate	<p>29.01.2024</p> <p>[Page 80 of reply]</p>
14.	Notice of possession	<p>Initially on 20.12.2023</p> <p>[Page 76 of complaint]</p> <p>Subsequently on 10.05.2024</p> <p>[Page 82 of reply]</p>
15.	Handing over of possession	<p>10.05.2024</p> <p>[Page 83-84 of reply]</p>

B. Facts of the complaint

3. The complainants have made following submissions in the complaint:

- i. That complainants paid booking amount of Rs.2 Lac to the builder for booking a floor in 'Vatika Xpressions' on 20 July 2015.

- ii. The complainants choose park facing floor and agreed to pay Preferential Location Charges (PLC) of Rs.4,05,000/- excluding tax as per the drawings of the floors. The builder buyer agreement was executed by the builder after a gap of 1 year on 12.07.2016. The project was to be completed within 4 years i.e., by 12.07.2020 as per builder buyer agreement, however since it was signed one year later, the project should have been completed by 20.07.2019 well before COVID lockdown.
- iii. That during the visit to under construction property on 09.06.2022, since no one from Vatika was responding to letters, mails and phone calls, the complainants noticed some structures being raised which were obstructing the view of the park from their floor. The complainants wrote multiple times to address the issues of waiving off the PLC charges or removing the structure in front of the floor and Delay compensation.
- iv. That the complainants themselves went to Vatika Office and apprised the authorities of delay compensation and also waiving off the PLC charges. The complainants also handed over the letter to Mr. Hitesh Yadav of Vatika Limited. The Last demand on intimation of possession was to be payable by 05.01.2024. The demand for the same was received in last week of Dec 2023.
- v. That the complainants kept on requesting for the photographs of completed project multiple times but the same were never received as it was the mandatory requirement of the loan agency 'Army Group Insurance Fund'. The SPA holder of the complainants met Ms. Nidhi Bhatnagar (Head of Department in Vatika) and also

apprised her about pending issues of Photograph of completed project, delay compensation and PLC charges.

- vi. That after numerous mails and tele calls, the issues of delay compensation and PLC charges were negated by Ms. Nidhi Bhatnagar and a document of 06 months extension of RERA was provided. She also said that the unit would only be handed over after 100% sales consideration.
- vii. That the complainants were forced to pay the full and final payment to the respondent-builder on 20.02.2024 to take the possession of their unit. The respondent initially offered the possession of the unit by 20.03.2024. The date of handing over of the unit was subsequently changed to second week of 30.04.2024. The unit was finally handed over on 10.05.2024 after signing an affidavit, content of which is nothing less than Blackmailing.
- viii. The unit has been handed over after a delay of 04 years 10 Months. (The unit was to be handed over in Jul 2019, however it has been handed over in May 2024). Considering the extension given by RERA, there has been an effective delay of 04 years 04 Months.
- ix. That there is construction/building in front of the floor which is obstructing the view of the park and purpose of PLC has been defeated.

C. Relief sought by the complainants:

- 4. The complainants have sought following relief(s):
 - i. Direct the respondent to pay the delay possession charges along with interest at the prescribed rate on the entire amount paid by complainants with effect from the committed date of possession till the handing over of possession.



- ii. Direct the respondent to refund PLC charges amounting to Rs.4,53,600/- since construction in front of unit obstructs the view of the park and also as there was no mention of construction in layout plan.
 - iii. Direct the respondent to pay compensation for the mental trauma caused to the complainants by the respondent by non-provision of photograph of the completed project for releasing loan instalment from 'Army Group Insurance Fund'.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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. 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 contemplates to complete construction of the said Residential Floor unit within a period of 48 months from the date of execution of the Agreement, unless there shall be delay due to force majeure events and failure of Allottee(s) to pay in time the price of the said Residential Floor.
 - ii. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the respondent-developer then the Developer shall be automatically entitled to the extension of time for delivery of possession. Further, the Developer

may also suspend the project for such period as it may consider expedient.

iii. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:

- Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the Respondent. Initially HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana Government had transferred the land falling in sector 87, 88 and others sectors to GMDA for constructing new highway 352 W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs. It is pertinent to note that Respondent has already laid down its facilities before such upliftment. As a result, respondent is constrained to uplift the project land and re-align the facilities. Thereafter GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W. All this process has caused considerable amount of delay and thus hampered the project in question which are beyond the control and ambit of developer.
- The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs was uplifted. Before start of the acquisition and construction process, the Respondent had already laid down the services according to the earlier sector road levels, however due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the Respondent.
- Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.
- The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months.



Among these measures were bans imposed on construction activities for a total period of 70 days between November, 2016 to December, 2019.

- Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- Disruptions caused by unusually heavy rains in Gurgaon every year.
- Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
 - a. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
 - b. The usage of Diesel Generator Sets was prohibited for 128 days.
 - c. The entries of truck traffic into Delhi were restricted.
 - d. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - e. Stringently enforced rules for dust control in construction activities and close non-compliant sites
- Due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labors were available. Further, this Hon'ble Authority has also given an extension of 6 months due to outbreak of Covid-19 by invoking force majeure clause.

- iv. The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.

- v. Further, it had been also agreed and accepted that in case the delay is due to the Force Majeure then the Developer shall not be held responsible for delay in delivery of possession. The above has resulted in delays in construction of the project, for reasons that essentially are beyond the control of respondent for which the respondent cannot be held liable.
 - vi. That the respondent has already received the occupation certificate in respect of the unit purchased by the complainants. The respondent after the receipt of the occupation certificate has also offered possession to the complainants vide letter of offer of possession dated 20.12.2023 and 10.05.2024. The complainants after fully satisfying themselves with regard to the measurements, specifications and fittings / fixtures had taken possession vide Letter dated 10.05.2024. The Complainants have already condoned the alleged delay and relinquished the claim of delay possession charges and are therefore now estopped from claiming the delay possession charges.
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 submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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) The promoter shall-

(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 maybe;

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 objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances

12. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various



orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour, orders passed by National Green Tribunal and other statutory Authorities.

13. The Authority notes that the construction ban cited by the respondent, was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent being a promoter, should have accounted for it during project planning. Further, the respondent has not demonstrated whether it extended any equivalent relief to the allottees during the period of the construction ban. If the respondent did not relax the payment schedules for the allottees, its plea for relief due to delays caused by the construction ban appears unjustified. Hence, all the pleas advanced in this regard are devoid of merits.
14. In accordance with BBA, the respondent was obligated to handover the possession of the allotted unit within a period of 48 months from the date of execution of the Agreement. In the present case, the Agreement was executed on 12.07.2016, so, the due date of subject unit comes out to be 12.07.2020. Further ***as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 12.07.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date for handing over possession ***in view of notification no. 9/3-2020 dated 26.05.2020,*** on account of force majeure conditions due to



the outbreak of Covid-19 pandemic. So, in such a case the due date for handing over of possession comes out to 12.01.2021. Granting any other additional relaxation would undermine the objectives of the Act.

G. Findings on the relief sought by the complainant

G.I Delay possession charges

15. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to Section 18(1) of the Act which 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 13 of the buyer's agreement (in short, the agreement) dated 12.07.2016, provides for handing over possession and the same is reproduced below:

"13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR

*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 failure of Allottee(s) to pay in time"*

17. **Due date of handing over possession and admissibility of grace period:** As per clause 12 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 48 months from the date of execution of the

agreement. As detailed hereinabove, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 12.01.2020.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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]

- (1) *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.

19. The legislature in its wisdom in the subordinate legislation under the provision of 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.
20. 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., 09.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.



21. 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. 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 the complainant in case of delayed possession charges.
22. 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 13 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered by 12.01.2021 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the complainant in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.
23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 29.01.202. The respondent has offered the possession of the subject unit to the complainant on 10.05.2024 after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' reasonable time is being given to the complainants keeping



in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to the fact that the unit being handed over at the time of taking possession is in habitable condition. In the present case, the complainant had taken possession of the subject unit on 10.05.2024 as is evident from the letter annexed on page 83-84 of the reply.

24. 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. As such, the complainants-allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 12.01.2021 till offer of possession (10.05.2024) plus 2 months after obtaining occupation certificate from the competent authority 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.

G.II Preferential Location Charges

25. The complainants are seeking refund of PLC charges amounting to Rs.4,53,600/- since construction in front of unit obstructs the view of park and also as there was no mention of construction in lay-out plan.
26. To ascertain the same, Local Commissioner was appointed to visit the site/unit of the complainant to see the factual position vide order dated 04.04.2025. The LC has submitted report on 30.04.2025 wherein it is observed as under:

*"B. The construction in front of Plot no. 14 over which complainant unit exists on 2nd floor, **does not obstruct the view** of green area/say park from the complainant unit's balcony.*

*C. ...The **additional construction** of multipurpose booth in that green area **has been approved at the time of approval of revised lay out plan** due to grant of additional licenses for the residential plotted colony and accordingly the same has been constructed by the developer."*

27. As per the aforesaid report of LC, the plot No.14 of the complainant exists on 2nd floor and the same does not obstruct the view of green area/say park from the complainant's unit balcony and multi-purpose booth is constructed as per revised lay out plan. In view of report of LC, the relief of PLC is declined.

H. Directions of the authority

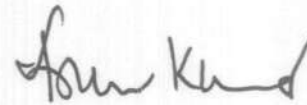
28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 12.01.2021 till offer of possession i.e., 10.05.2024 plus two months or actual handing over of possession, whichever is earlier, as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- ii. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

29. The complaint and application, if any, stands disposed of.

30. File be consigned to registry.

Dated: 09.05.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram