

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

Complaint no. : 3417 of 2024
Order pronounced on: 11.07.2025

Parag Jain
R/o: - 221, 1st floor Deep Plaza Complex Opp Civil Court,
Gurugram

Complainant

Versus

M/s Vatika Hotels Pvt. Ltd.
Address: - Flat no. 621-A, 6th floor, Devika Towers 6,
Nehru Place, New Delhi-110019

Respondent

Coram:
Shri Arun Kumar

Chairman

Appearance:
Shri Sanjeev Kumar Sharma
Shri Dhananjai Jain

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details



2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Particulars | Details |
|--------|---|--|
| 1. | Name of the project | "Vatika Triangle", MG Road, Gurugram. |
| 2. | Nature of the project | Commercial |
| 3. | DTCP license no. | Not Available |
| 4. | Rera registered/ not registered and validity status | Un-Registered |
| 5. | Allotment letter dated | 13.11.2019 [Page 16 of complaint] |
| 6. | Unit no. | 210, Block-B (As mentioned in Allotment Letter on page 16 of complaint) |
| 7. | Unit Admeasuring | 695 sq. ft. (super area) (As mentioned in Allotment Letter on page 16 of complaint) |
| 8. | Buyer's Agreement | Not executed |
| 9. | Possession Clause as per expression of interest | N/A |
| 10. | Due date of possession | 13.11.2022 (Calculated as per Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018- SC); MANU/SC/0253/2018 From the date of allotment letter i.e. 13.11.2019) |
| 11. | Lease rental clause | Rs 115/- per sq. ft. per month (the rent shall be payable with effect from 12.02.2021) (As mentioned in Allotment Letter on page 16 of complaint) |
| 12. | Basic sale price | Rs.86,35,375/- |



| | | |
|-----|-----------------------|---|
| | | (As mentioned in Allotment Letter on page 16 of complaint) |
| 13. | Total amount paid | Rs.86,35,375/- (payment receipts on page 17-18 of complaint) |
| 14. | Occupancy Certificate | Not known (To be ascertained) |
| 15. | Offer of possession | Not known (To be ascertained) |

B. Facts of the complaint

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

- i. That upon the representation by the respondent and advertisement done on behalf of the respondent was to construct and develop a commercial site namely "Vatika Triangle" on a piece and parcel of land admeasuring super area 24350 sq. ft. it Mehrauli Gurgaon Road, Gurugram Near City Centre Mall, Gurugram.
- ii. That the complainant had applied for a unit with the respondent dated 21.07.2019 for booking of a commercial unit and paid Rs. 5,00,000/- vide receipt voucher dated 01.10.2019, wherein the allotment letter was issued on 13.11.2019 in the name of the complainant and allotted a unit no. 210, in Block B, having super area 695 sq. ft. for a total consideration of Rs. 86,35,375/-.
- iii. On the assurance of the respondent/developer that construction shall be completed in time and possession would be handed over in time. The complainant has paid remaining amount of Rs. 81,35,375/- to the respondent/developer vide vouchered dated 13.11.2019. That the complainant had paid an amount of Rs. 86,35,375/- to the respondent/builder till 13.11.2019.

- iv. As per allotment letter the respondent had promised to pay to complainant rental amount of Rs. 79,925/- per month calculated on basis of Rs. 115/- per sq. ft payable from 12.02.2021 onward. But respondent never pay rental amount to the complainant.
- v. That the complainant has made multiple verbal reminders to the respondent/developer for issuances of builder buyer's agreement. But agreement has not issued to the complainant by the respondent/developer. Therefore, the buyer's agreement has not been executed between the both parties.
- vi. That after repeated visits by the complainant to the office of the respondent has neither offered handing over of the possession nor any satisfactory reply is given in this regard.
- vii. That thus, the complainant approached the Hon'ble Authority and filed a complaint relating to issue by invoked the jurisdiction of this Hon'ble Authority under section 18.

C. Relief sought by the complainant

- 4. The complainant has filed the present compliant for seeking following reliefs:
 - i. Direct the respondent refund the entire amount paid by the complainants amounting to Rs. 86,35,375/-.
 - ii. Direct the respondent to pay interest upon the amount paid by the complainants from the date of the payments made by the complainants to the respondent till date.
- 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 and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the complainant has filed the present complaint seeking refund of the deposited amount, however it is submitted that at the stage when project is at the stage of completion, it would be in the interest of both the parties to have the disputes settled amicably as order of refund with interest would prejudice the completion of the commercial spaces.
- ii. That the complainant had expressed their interest in the commercial spaces in commercial project named "Vatika Triangle" of the respondent in the year 2019 and filled application for allotment by booking amount of INR 5,00,000/- and submitted the same to the respondent company. The respondent company allotted commercial space i.e., 695 sq. ft super area, vide allotment letter dated 13.11.2019. The complainant was allotted a small portion of 695 sq ft super area to the complainant which is forming part of larger total area admeasuring 24350 sq ft by the respondent. However, the said commercial deal could not materialize and the commercial space could not be occupied by Vatika Business Centre as the occupancy certificate is waited for the said project. Therefore, it is apparently clear that the arrangement was of virtual space and monthly rentals being the essence of the agreement and not "possession" per se. It was never the scenario that the complainant required physical possession or demanded for the same prior to the filing of the present complaint thus, any grievance for delay in possession is not genuine and ought to be rejected. However, in the present case the complainant never came up for executing the builder buyer agreement even after the respondent had issued allotment letter dated 02.08.2019 in favour of



the complainant. It is because of the reasons best known to the complainant, she did not come forward to get the builder buyer agreement. It is pertinent to state that the said project has been duly constructed and the occupation certificate is awaited from the concerned Authority.

- iii. That it is an established fact herein that the complainant booked the said commercial unit with the respondent for investment purposes. The said complainant herein is not an "allottee", as the complainant approached the respondent with an investment opportunity in the form of a steady rental income from the commercial unit. It is not the case of the complainant that physical possession is asked by her from the respondent as the complainant was clear that the case is booking made by the complainant was for virtual space. It is so because, the complainant was well aware that the essence of her agreement was investment for earning "monthly rentals" and not possession which is pivotal to "allottee" who is contemplated under RERA Act.
- iv. That after having dire interest in the project constructed by the respondent the complainant booked a commercial space under the said project, on her own judgement and investigation. It is evident that the complainant was aware of the status of the project and booked the unit to make steady monthly returns, without any protest or demur.
- v. That the complainant booked a unit in the project "Vatika Triangle" located in Vatika Triangle (Block-B), Annexe Sushant Lok-1, MG Road, Gurugram, Haryana for a total consideration of Rs.86,35,375/-. However, as the complainant himself did not come forward to execute the document and therefore the further terms could not follow.



- vi. It is submitted that since starting the respondent had always tried level best to comply with the terms of the agreement and has always intimated the exact status of the project.
- vii. That the complainant is merely trying to hoodwink the Ld. Authority by concealing facts which are detrimental to this complaint at hand. Therefore, the said allotment of the said commercial unit contained a "Lease Clause" which empowers the developer to put a unit of complainant along with other commercial space unit on lease and does not have "possession clauses", for physical possession.
- viii. That the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainant has filed for refund however for the reasons stated in the reply it is submitted that this Hon'ble le Authority balancing the interest of both the staked holders of the industry refers this complaint for mediation so that an amicable settlement can be arrived at.
- ix. It is submitted that the respondent is already in communication with the complainant and has offered refund and in alternative has also offered the complainant that their investment can be transferred to some other project.
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 preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed 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 office 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 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 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 as per provisions of section 11(4)(a) of the Act 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 relief sought by the respondent:



F.I. Direct the respondent refund the entire amount paid by the complainants amounting to Rs. 86,35,375/-.

F.II. Direct the respondent to pay interest upon the amount paid by the complainants from the date of the payments made by the complainants to the respondent till date.

12. The factual matrix of the case reveals that the complainant was allotted a unit no. 210, Block B admeasuring 695 sq. ft. super area vide allotment letter dated 13.11.2019 in the project "Vatika Triangle" being developed by the respondent for a basic sale consideration of Rs. 86,35,375/-. The complainant had paid an amount of Rs. 86,35,375/- to the respondent against the unit.
13. As per the allotment letter dated 13.11.2019 the respondent had promised to pay to complainant rental amount of Rs.115/- per sq. ft. payable from 12.02.2021. But respondent never pay rental amount to the complainant.
14. The builder buyer agreement was not executed between the parties. It is pertinent to note that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.**" (12.03.2018 SC); **MANU/SC/0253/2018**, the Hon'ble Apex Court observed that "*a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*"

15. Herein, in the peculiar facts and circumstances of the present case, the due date of possession has to be calculated to be three years from the date of the allotment letter i.e. 13.11.2019. Therefore, the due date comes out to be 13.11.2022.
16. Further, the complainant herein intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per Section 18(1) of the Act and the same is reproduced below for ready reference:

"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. -

in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;
or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act...

(Emphasis supplied)

17. The due date of delivery of possession of the subject unit was 13.11.2019. Further, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent- promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., Civil Appeal no. 5785 of 2019**, decided on 11.01.2021.

"...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made

to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....

18. Moreover, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

19. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant is well within right to seek refund of the paid-up amount. This is without prejudice to any other remedy available to the allottees including compensation for which the allottees may file an application for adjudging compensation with the Adjudicating Officer under Sections 71 and 72 read with Section 31(1) of the Act of 2016.

20. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest as provided under Rule 15 of the Rules, *ibid*. 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 subsections (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."

21. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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 cases.

22. 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., 11.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

23. The definition of term "interest" as defined under Section 2(z a)(ii) of the act provides that the interest payable by the promoter to the allottee shall from the date the promoter received the amount. The relevant section is reproduced below: -

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. -For the purpose of this clause- ...

(ii) 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, ...

24. Therefore, the authority hereby directs the respondent to return the amount received by him i.e., Rs. 86,35,375/- 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 each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, ibid.

G. Directions of the authority:

25. Hence, the authority hereby passes this order and issues 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 refund the entire amount paid by the complainant, i.e., Rs. 39,40,340/- along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
- II. 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.

26. Complaint as well as applications, if any, stands disposed of accordingly.

27. File be consigned to registry.

Dated: 11.07.2025

(Arun Kumar)

Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram