

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA
REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.**

Complaint No.2241-2023

Date of Decision: 11.09.2025

Nitin Garg, R/o Parsvnath Green Ville Sohna Road, Gurugram.

Complainant.

Versus

M/s Vatika Limited, Unit A-002, INTXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012, Haryana, India, Through its Directors.

Respondent.

APPEARANCE

For Complainant:

Mr. Rajesh Kumar, Advocate

For Respondent:

Mr. Venket Rao, Advocate

ORDER

1. This is a complaint, filed by Nitin Garg (allottee) under section 18 (3) and 19 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s. Vatika Limited (promoter) as per section 2(zk) of Act 2016.
2. According to complainant, he purchased a Villa from original allottee, No.43/240/simplex/BR, Plot size 240 sq. yds. in project developed by respondent with built-up area 1527 sq. ft. for a total sale consideration of Rs.79,24,650/-. That on the request from the

complainant and original allottee, the respondent transferred/assigned Unit no. No.43/240/simplex/BR, in favour of the complainant on 09.08.2010 with all rights, liabilities and on terms & conditions as agreed upon with the original allottee. That builder's buyer-agreement (BBA) was executed on 25.02.2010, between original allottee Mr. Amit Kumar Rana and respondent. Later on, the builder has changed the location by addendum and allotted another unit having HSG-008/Plot No.7/ST at Signature Villa-2 in Vatika India Next. The complainant had made all the payments to the builder as per their demand and paid Rs.86,62,059.58 as per construction linked plan. The agreement was entered on 25.02.2010 and possession was given after 7 years from the date of execution of agreement.

3. That the builder had delayed the project for 4 years and had given the first letter intimation of possession on 02.03.2017. Thus, there was an inordinate and unreasonable delay in handing over the physical possession and the respondent/Developer failed to fulfill contractual obligations of the agreement. The respondent had violated the law of contract as well as the contractual obligations under Act and their rules and regulations.

4. That the complainant filed a Complaint No. RERA-GRG-538 of 2018 before the Hon'ble Authority, which was decided vide

judgment/order dated 14.02.2019 and wherein DPC was allowed by the Hon'ble Authority. It was held that due date of possession was 25.02.2013. Therefore, there is delay of 4 years & 9 months and interest shall be allowed. It was also held that as promoter has failed to fulfil its obligation under section 11, the promoters are liable under section 18 (1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. It was further held that the complainant reserves his right to seek compensation from the promoters for which he shall make separate application to the Adjudicating Officer, if required. It was further held that the builder has delayed the project for 4 years and given the first letter of intimation of possession on 02.03.2017.

5. That the builder has allotted Unit No.43/240/simplex/BR and demanded a sum of Rs.8,05,486/- vide demand letter dated 31.12.2010 and also with a reminder letter dated 25.01.2011 for start of development work. The complainant made payment vide receipt voucher No.919439354 dt. 14.02.2011. The builder has changed the location abruptly through addendum on 15.03.2012 and allotted another unit having No.HSG-008/Plot No.7/ST at Signature Ville-2 in lieu of unit No.43/240/simplex/BR Vatika India Next and vide again raised a demand for same development work at site and extracted the amount of

Rs.8,09,529/- again by unfair means and concealment of facts vide Receipt Voucher No.919491514 dt. 17.12.2012. Thus, the builder has taken the double payment for the development work at site through unfair means by concealing the material facts by paying fraud and has cheated the complainant.

6. That the complainant visited the office of the respondents several times and requested to adjust the said payments, but the respondent did not pay any heed to the just and genuine request of the complainant. Thus, the complainant was harassed, humiliated and tortured mentally and physically at the hands of the respondent.

7. Citing the facts as mentioned above, complainant prayed for following reliefs: -

- (i) The complainant claims compensation of Rs.10,00,000/- for harassment and mental agony, humiliation and torture at the hands of the respondent.
- (ii) The complainant claims compensation of Rs.5,00,000/- as the cost of litigation.
- (iii) The complainant claims compensation of Rs.39,90,000/- on account of rental loss to him for a period of 4 years and 9 months (57 months) delay.
- (iv) The complainant claims compensation of Rs.5,00,00/- on account of interest on excess/double payment of Rs.8,05,486/- demanded and received by the respondent, for a period more than 3 years i.e. 14.02.2011 to 04.06.2014, at the equivalent rate of interest which was charged by the respondent from the complainant on delayed payment of

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Rs.1,16,188.72. That the complainant has demanded interest on the aforesaid excess/double payment of Rs.8,05,486/- in his complaint No.538 of 2018, to which the respondent had submitted its reply that separate complaint to be filed u/s 12, 14, 18 and 19 of the Act, which is maintainable only before the Adjudicating Officer.

8. The respondent contested the complaint by filing a written reply. It is submitted that the present complaint under reply is false and the contents of the same are denied in toto, unless specifically admitted therein. Nothing contained in the preliminary objections and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any of the averments/allegations.

9. It is further averred that claim of complainant seeking compensation is not maintainable, in terms of the order dated 14.02.2019 passed by the Authority. The complainant has already received the possession of the Villa and Delayed Possession Charges. Subsequently the complainant has leased out said Villa, as disclosed by him (complainant) in present complaint. The complainant never raised any dispute pertaining to any defect in the Villa or in the title of the Project land or default in providing any amenities/facilities within the Project.

10. That on 02.02.2012 an Addendum to BBA was executed between complainant and respondent, whereby the complainant was re-

allotted villa bearing no.7/240/Simplex/ST82D1-6, All the payments made towards erstwhile unit, were transferred to and adjusted towards the new unit.

11. Further, that the construction of project was obstructed due to reasons beyond control of respondent. The complainant has wrongly alleged that flat was purchased for his residence.

12. Stating all this, respondent prayed for dismissal of complaint.

13. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

14. Admittedly, complaint No. 538-2018 filed by present complainant seeking delay possession compensation has already been allowed by the Authority vide order dated 14.02.2019, rectified on 24.04.2019. Complainant has been allowed interest at rate 10.75% per annum which should be adjusted at the time of final payments. I find weight in the plea of respondent claiming that award of interest was in the form of compensation.

15. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----

-, 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 or 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.**

16. It is worth mentioning here that complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of possession, at such rate as may be prescribed. Rule 15 (1) of The Haryana Real Estate (Regulation and Development) Rules 2017 makes it clear that for the purpose of proviso to section 12, section 18 and sub section 4 and sub section 7 of section 19 "interest at the rate prescribed" shall be the State Bank of India higher than marginal cost of lending rate plus 2%. Thus, the provision of interest is in the form of compensation to the buyer when the promoter fails to complete the project in agreed time. The parliament did not intend to

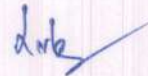
provide compensation separately as in case of refund of the amount described above.

17. When complainant has already been allowed delayed possession compensation by the Authority for same cause of action, there is no reason to allow separate compensation for the delay in completion of construction by the promoter. So far as plea of complainant about change of his unit in other project is concerned, it is not denied that fresh BBA or an addendum was executed between parties after change of unit. The complainant kept on making payments of sale consideration and never raised any objection before filing this complaint. All this shows that such change was agreed to complainant also.

18. No reason to award any compensation. Complaint in hands is thus dismissed.

19. File be consigned to record room.

Announced in open court today i.e. on 11.09.2025.



(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram.