

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

**Complaint No. 6013-2023
Date of Decision: 08.09.2025**

1. Col. Manoj Kumar son of Sh. P.N. Sharma,
2. Mrs. Vijaya W/o Col. Manoj Kumar.
Resident of 55, Gulmohar Enclave, Shamshabad Road, Agra-
282001.

Complainants

Versus

M/s. Vatika Limited, Unit No. A-002, INTX City Centre, Ground
Floor, Block-A, Sector-83, Vatika India Next Gurugram

Respondent

APPEARANCE

For Complainants:
For Respondent:

Mr. Rajender Goyal, Advocate.
Mr. Dhruv Dutt Sharma, Advocate.

ORDER

1. This is a complaint filed by Col. Manoj Kumar and Mrs. Vijaya (allottees) under section 31 read with section 37 of The Real Estate (Regulation and Development), Act 2016 (referred as "Act of 2016"), against M/s. Vatika Limited being promoter within the meaning of section 2 (zk) of the Act of 2016.

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2. According to complainants, on 26.09.2009 they booked a unit in the project namely "**Emilla Floors Phase-2 in Vatika India Next**" situated at Sector 83, Gurugram, Haryana-122004 for a total sale consideration of Rs. 24,02,544/-. They paid 10% of the booking amount i.e. Rs. 2,40,255/-. In pursuant to the booking, The respondent issued an allotment letter dated 03.11.2010 to them (complainants). Thereafter, the respondent conveyed them (complainants) priority number Emilia/GF/031) along with date of meeting (15.11.2010) for allotment of independent floor.

3. That the respondent also sent two unsigned copies of Floor Buyer Agreement (FBA) and conveyed the subsequent payment due after completion of allotment process.

4. That on 15.11.2010, they (complainants) visited the office of the respondent for allotment of unit and a Unit type "**Emilia**" on the Ground Floor at Plot No. 38, Block-E, Street 4th at Sector 83, Gurugram was allotted. In this regard, allotment letter dated 15.11.2010 was sent by the respondent. Floor Buyer Agreement was executed.

5. That as per said FBA, the respondent committed to the complainants that the residential project will be completed and

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handed over to them (buyers) within 3 years from the date of signing the agreement i.e. by 24.03.2014 along with possession of the allotted unit. Further, as per clause 10.1 of the FBA, the respondent assured that the time is essence of agreement.

6. That they (complainants) have been regular in making payment of instalments and have paid Rs.10,48,671/- till date. The respondent sent a letter dated 09.01.2012 to them (complainants), wherein it unilaterally revised the buildup area of the unit from 781.25 sq. ft to 929.02 sq. ft. and also increased the total sale consideration from Rs.24,02,544/- to Rs.29,81,994/-, thereby revising the agreed payment plan. In the said letter, the respondent even arbitrarily applied the prevailing rates as on the date of issuance of impugned letter instead of the old rates at which the booking was applied in 2009.

7. That the respondent was liable to deliver the possession of the allotted unit by March 2014. The request was sent to the respondent asking to update the progress of the project but failed. The complainants were constrained to personally visit the project site, but they were shocked to see no progress in the project. The complainants sent a letter dated 31.12.2014 to respondent

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regarding illegal conduct and malpractices, such as no-progress on the project site, unilateral revision of the payment schedule, non-adherence to completion time/possession of the unit to the complainants. Since no response was received from the respondent on the said communication, they (complainants) again sent a similar letter dated 20.06.2016 and follow up on 21.09.2016 but to no avail.

8. That they (complainants) were constrained and left with no option but to seek full refund of the amount paid with prescribed rate of interest, including but not limited to all payments made in lieu of the said unit, as per the terms and conditions of the Unit Buyer Agreement executed by the respondent.

9. That the complainants approached the Hon'ble HRERA, Gurugram with a complaint No. 1791 of 2022 filed on 28.04.2022 for following reliefs: -

- i) Direct the respondent to refund the total amount of Rs. 10,48,671/- to the complainants along with the prescribed rate of interest as per the applicable rules.
- ii) Direct the respondent to pay a sum of Rs. 50,000/- towards cost of litigation and a sum of Rs. 1,00,000/- for the harassment and mental agony suffered by the complainants.

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10. That the Hon'ble Authority, Gurugram passed the directions vide order dated 10.01.2023 to the respondent to refund the entire amount of Rs.10,48,671/- paid by the complainants along with prescribed rate of interest @ 10.60% per annum as prescribed under rule 15 of The Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till date of refund of the deposited amount. A period of 90 days for making payment to the complainants was given to the respondent to comply with the directions of the Authority of the order dated 10.01.2023.

11. That the Authority Gurugram did not oblige to pass order regarding compensation for mental agony, sufferings, monetary loss and legal expenses.

12. That now, they (complainants) have filed this complaint for compensation for mental agony, harassment monetary losses etc. worth Rs.5,00,000/-, notional loss of rent @ Rs.5000/- per month from promised date of possession i.e. 24.03.2014 to 31.12.2023 (117 months), which is amounting to Rs.5,85,000/-, litigation expenses for Rs.15,000/- and advocate fees worth Rs.1,00,000/-, totaling Rs.12,00,000/-

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13. The respondent contested claim of complainants by filing a written reply. It (respondent) challenged even maintainability of present complaint, labelling it as abuse and misuse of process of law. It is claimed by the respondent that same has complied with all the terms and conditions of the Buyer's Agreement and is not in default under any of the provisions of the said Agreement.

14. It is further averred by the respondent that it was agreed and accepted between parties that in case of any default/delay in payment as per the schedule of payments as provided in Annexure III to the FBA, the date of handing over of the possession shall be extended. Reference may be made to clause 10.1 of the Buyer's Agreement. Further, in case the delay is due to the reasons beyond the control of the Developer, then the Developer shall be automatically entitled to the extension of time for delivery of possession.

15. Further, the respondent may also suspend the project for such period as it may consider expedient. Reference may be made to Clause 11.1. There has been delay due to various reasons which were beyond the control of the respondent for which documents are filed as Annexure R/2 (Colly). The respondent had already

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terminated the Buyer's Agreement dated 24.03.2011 vide Termination Letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan due to initiation of the GAIL Corridor, non-removal or shifting of the defunct High Tension lines and non-acquisition of sector roads by HUDA.

→ Again that

16. The complainants have filed a false and frivolous complaint.

The Authority has already adjudicated upon the cause of action raised by the complainants in the instant complaint vide its order dated 10.01.2023 passed in complaint No. 1791 of 2022. No prejudice whatsoever shall be caused to the complainants in case the present complaint is dismissed.

17. In view of the aforesaid facts, the respondent prayed for dismissal of complaint.

18. Both the parties filed affidavits in their evidence reaffirming their case.

19. I have heard learned counsels for both the parties and perused the record on file.

20. Admittedly present complainants filed a complaint before the Authority i.e. complaint no. 1791 of 2022 seeking refund of the amount. The Authority through order dated 10.01.2023 allowed

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said complaint and respondent has been directed to refund the entire amount of Rs.10,48,671/- paid by the complainants along with interest @ 10.60% p.a. from the date of each payment till the date of refund of the deposited amount.

21. Section 18 (1) of The Real Estate (Regulation and Development) Act 2016, provides that 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-----, 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.**

22. The Authority allowed refund of the amount along with interest finding fault in the respondent in delivery of possession in agreed time. At the cost of repetition, it is claimed by the complainants that they were regular in making the payment but there was no progress on the project site. Moreover, the

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respondent unilaterally revised sale consideration stating that buildup area was increased from 781.25 sq. ft. to 929.02 sq. ft. without their consent or knowledge. All this is not disputed during deliberations. As per Section 18 (1) of the Act the complainants are entitled for compensation apart from refund of the amount.

23. So far as plea of respondent that according to schedule of payments as provided in Annexure-III of FBA, the date of handing over of possession was liable to be extended in case there was any delay in payment of sale consideration by the buyer and again that as per clause 10.1 of FBA in case of delay due to reasons beyond the control of developer the delivery of the possession will be extended automatically, is concerned, learned counsel for complainants claimed that his clients were given an already printed proforma of FBA. His clients were not given any option to make any modification but same were compelled to sign it as the same was.

24. Apparently, such terms were oppressive for the buyer, apart from being unreasonable. It stands to no reason to mention that in case of some delay in the payment by the buyer, the delivery of the possession will be automatically extended. It is trite to mention here that promoter had right to levy penal interest in case, allottee

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fails to make payment in time. It also stands to no reason to say that due to various reasons which were beyond control of the respondent, the project was delayed and hence respondent terminated FBA vide letter dated 14.11.2018. A party i.e. promoter cannot take benefit of its own wrong. On the one hand, same failed to complete the project in time but at the same time it cancelled allotment of the buyer, without any fault of latter. Dealing with similar matter in case titled as **"IREO Grace Real-tech Pvt. Ltd. versus Abhishek Khanna and others (C.A. 5785 of 2019)"**, the Hon'ble Supreme Court of India examined binding value of oppressive and one-sided contracts, and to see as what is recourse for the effected parties. It was held that terms of the agreement were clearly oppressive and one-sided, therefore, it is an unfair trade practice for the purpose of selling flats. The Apex Court upheld the finding of National Consumer Disputes Redressal Commission (NCDRC) which held the agreement between the promoter and buyer as wholly one-sided and unjust.

25. FBA in this case, even if was signed by the buyers i.e. complainants, same was oppressive and unfair to the latters i.e. buyers and hence, not binding.

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26. As mentioned above, the complainants have sought compensation in the name of notional loss of rent @ Rs.5,000/- per month from promised date of possession i.e. 24.03.2014 to 31.12.2023 (117 months), amounting to Rs.5,85,000/-.

27. Admittedly, complainants had not paid entire sale consideration. Even as per their plea, same (complainants) had paid Rs.10,48,671/- out of total sale consideration of Rs.24,02,544/-.

28. To substantiate their plea about appreciation in value of houses in Gurugram, the complainants have put on file a screen shot from real estate sites² from internet, market value of 3 BHK apartment having super built-up area 1532- 2155 sq. ft. is shown from Rs.1.61 – 3.49 Crs. Plus Government Charges. Although said document is not enough to prove the actual appreciation of prices of similar houses. Even otherwise, there is great variation in the prices ranging from 1.61 Cr. to 3.49 Cr. Moreover, said quotation is about project of some other promoter. On being searched about the appreciation of value in residential property^{-ies} in Gurugram, it[✓] is shown by 'AI Overview' that residential property in Gurugram has been significantly appreciated during last decade. Some reports

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show increase of 84% in average of residential prices from Q1 2020 to Q1 2025. Some other sites suggested a 67% rise in average prices over two previous years.

29. Even if these sites are not conclusive evidence about appreciation in prices in real estate Gurugram, a judicial notice can be taken of the fact that prices of immoveable properties, may it be a plot or residential house or commercial unit, have been substantially increased in previous decade. Taking at the lower end, even if it is presumed that the value of residential properties has been appreciated by 30% during the period i.e. March 2014 i.e. due date of possession up to 31.12.2023, as claimed by the complainants. 30% of Rs.10,48,671/- (as paid by the complainants) comes to Rs.3,14,601/-. Complainants are allowed a sum of Rs.3,15,000/- (rounded up) as compensation in this regard.

30. The complainants have prayed for a sum of Rs.5,00,000/- as compensation for mental agony, harassment and monetary losses. Apparently when complainants were making timely payment of instalments but when they found that there was no progress against construction of their project, it would have caused mental agony and harassment to them. Rs.5,00,000/- in this regard

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appears to be excessive. Same are allowed a sum of Rs.1,00,000/- for mental agony and harassment.

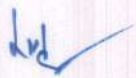
31. The complainants again asked for Rs.15,000/- as litigation expenses and Rs.1,00,000/- as Advocate Fees. Although no receipt of payment of their Advocate, has been put on file by the complainants, it is apparent that they were represented by a lawyer during proceedings of this case. Complainants are allowed a sum of Rs.50,000/- as litigation expenses including Advocate Fees.

32. The respondent is directed to pay said amounts of the compensation along with interest at rate of 10.50% per annum from the date of this order till realization of these amounts.

33. The complaint in hand is disposed of accordingly.

34. File be consigned to the record room.

Announced in open court today i.e. on 08.09.2025.


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