

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

Complaint no.: 83 of 2025
Date of filing: 27.06.2023
Order pronounced on: 09.09.2025

Pankaj Kumar Jha & Anamika Suprava Jha
R/o:- 3302, Tower L, The Executive Towers, Buisness
Bay, Dubai, United Arab Emirates PO Box-118265

Complainants**Versus**

M/s Vatika Limited
Regd. Office at: - Vatika Triangle, 4th floor, Sushant Lok,
ph-1, block A, Mehrauli-Gurugram-122002

Respondent**CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

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

Shri. Shubham (Advocate)
Ms. Ankur Berry (Advocate)

**Complainants
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 and location of the project	"Vatika Express City", Sector-88, Gurgaon.
2.	RERA Registered/ not registered	Registered
3.	plot no.	Plot no. 31, st. H-30, top level (as per Addendum to the buyer agreement)
4.	plot area admeasuring	1700 sq. ft.
5.	Allotment letter	03.05.2016 [pg. 33 of complaint]
6.	Buyer's agreement	28.04.2017 (As per page no.40 of complaint)
7.	Possession clause	13 The promoter based on its present plans and estimates and subject to all just exception, contemplates to complete the construction of the said residential floor, within a period of 48 months from the date of execution of this agreement unless there is a delay or there is a failure due to reasons beyond... (Emphasis Supplied)
8.	Due date of possession	28.04.2021 (Note: The due date of possession is calculated from the date of execution of buyer's agreement.)
9.	Total sale consideration	₹99,36,747/- (As mentioned in BBA at page no. 43 of complaint)
10.	Amount paid by complainant	₹20,01,432.45/- (pg. 27 of complaint)
11.	Completion certificate	Not obtained
12.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainants have made the following submissions in the complaint:
 - a. The grievance of the Complainants relate to Breach of Contract, False Promises, Gross Unfair Trade Practices and Deficiencies in the Services

committed by the Respondent in regard to the Floor No. HSG-028, Pocket H-2, Top Level, Plot No. 31, Street No. H-30 (hereinafter referred to as 'Floor') measuring 1700 square feet of super area in the project 'Xpressions' (hereinafter referred to as 'Project') situated at Sector 88A & 88B, Gurugram, Haryana, bought by the Complainants paying their hard-earned money.

- b. In the Builder Buyer Agreement dated 28th April, 2017 (hereinafter referred to as "Agreement"), it is stated that the Respondent, Vatika Limited in association and collaboration with its associates is developing a residential plotted colony by the name of Vatika Express City at Sector 88A & 88B, Gurugram, Haryana. The Director, Town & Country Planning, Haryana has granted license no. 94 of 2013 dated 31st October, 2013, licence no. 11 of 2015 dated 1st October, 2015 and approved lay out plans vide drawing no. DG, TCP-4155 dated 17th October, 2013.
- c. The Respondent collected a huge amount from gullible and naïve buyers including the Complainants from 2016 onwards and kept on promising the Complainants for the delivery of possession of their Floor on time as per the Agreement. The Complainants paid all payable amounts, as and when demanded by the Respondent, a total of ₹20,01,432/- till July, 2016 for the Floor.
- d. As per the Builder Buyer Agreement, the Respondent promised to deliver the possession by 28th April, 2021 as mentioned in clause 13, page 11 of the Agreement. The Respondent Developer has failed to complete the construction activities at the project site and timely deliver the possession of the Floor to the Complainants till date, even after a delay of more than three (3) years and seven (7) months.
- e. The Respondent has failed to fulfil its obligations as per the Agreement and deliver legitimate and lawful possession of the Floor to the

Complainants in timely manner. Thus, the Respondent is liable to pay interest on the amount deposited by the Complainants due to inordinate delay in delivery of possession, handover the legal possession of the Floor to the Complainants and execute the Conveyance Deed of the Floor in favour of the Complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a. The respondent is liable to pay a sum of ₹8,17,423/- towards the delay caused, calculated at the rate of 11.10% from the due date of possession, i.e., 28th April, 2021 till 31st December, 2024.
 - b. Direct the respondent to complete the development of the project along with all facilities and amenities like water, electricity, roads, green belts etc. immediately.
 - c. Direct the respondent to handover the possession of the floor complete in all respect.
 - d. Direct the respondent not to charge anything which is not mentioned in the agreement.
 - e. Direct the respondent to execute the conveyance deed in favour of the complainants.
 - f. Legal cost-₹1,00,000/-.
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 the Complainants have filed the present complaint under section 31 of the Act of 2016, with oblique motive of harassing the Respondent and to extort illegitimate money while making absolute false and baseless

allegations against the Respondent. It is extremely pertinent to submit at the very outset that the Complainants have failed to inform the Hon'ble Authority that they have not paid the consideration for the unit since 2016. The account statement attached with the complaint shows that the very first payment the Complainants made, bounced. Rather the proof of payment attached with the complaint clearly reflects that the Complainants in actuality only paid ₹16,59,010/- till date out of the total sale consideration of ₹1,07,93,903.50/-, with a benefit of discount on property sale of ₹3,42,422.50/-. Thus only 16% of the total sale consideration was paid by the Complainants 9 years back and since then not a single penny has been paid, thus at best at this stage the only refund after 10% deduction of the sale consideration ought to be granted to the Complainants.

- b. That around the year 2016, the Complainants learned about the residential project launched by the Respondent titled as "Xpressions by Vatika", situated at Sector 88B, Gurugram, and visited the office of the Respondent to know the details of the project. The Complainants further inquired about the specifications and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
- c. That after having keen interest in the project, being developed by the Respondent and after being satisfied with the specifications of the project, the Complainants decided to book the unit vide application form dated 15.01.2016. Thereafter the Respondent vide invitation for allotment, letter dated 04.04.2016, invited the Complainants for taking the allotment of the unit in the aforesaid Project. And finally, allotment letter dated 03.05.2016 was issued to the Complainants for Unit HSG-028 Pocket H-2, Top Level, Plot No. 31, Street H-30, Sector-88B, Gurugram

admeasuring 1700 sq. ft. in project 'Xpressions'. The said unit no. was tentative and provisional and this fact was duly mentioned in the allotment letter also.

- d. That thereafter the Builder buyer Agreement was sent on 08.06.2016 to the Complainants for signing however the Complainants failed to send the signed copies thus a reminder letter dated 28.07.2016 was issued to the Complainants for execution of the BBA. The delay in signing of the BBA was due to the Complainants' negligence and finally BBA was signed and executed between the Complainants and the Respondent on 28.04.2017. The basic sale price of the unit was agreed at ₹99,36,747.50/- and any other charges or taxes EDC, IDC, stamp duty, registration charges, service tax, VAT, labour cess any other tax imposition, cess, fee, charges, etc were not included in the basic sale price and were addition to the price of unit. The total sale consideration for the unit was fixed at ₹1,07,93,903.50/- and the Complainants opted for special payment plan. Further the parties agreed that IFMSD @ Rs.50.00/- per sq. ft. of super area, electricity connection charges, sewage connection charges, water connection charges, cable connection charges and gas connection charges, gas meter, electricity meter and water meter charges, STP charges, club membership charges, legal and administrative charges were to be payable additionally by the Complainant (Clause 1 of the BBA).
- e. That the Complainants were aware of terms and conditions under the agreement and post being satisfied with every clause of the agreement and also with the payment plan and total sale consideration, agreed to sign upon the same at their own judgment and investigation. It is pertinent to note that Clause 8 of the BBA, the Complainants were responsible for making timely payments as per the agreed payment schedule, which the Complainants failed to do. Thus, the Complainant

have come before this Hon'ble Authority with unclean hands as the Complainants have wilfully and intentionally breached the terms of the BBA and also Section 19 of the Act of 2016.

- f. Further, as per Clause 13 of the BBA, the possession of the unit was proposed to be handed over subject to force majeure conditions within a period of 48 months from the date of execution of the BBA unless there shall be delay or there shall be failure due to reasons beyond the control of developer or due to government rules, orders, etc or due to failure of allottee to pay in time the price of the residential unit along with all other charges and **dues in accordance with the schedule of payment**. That the date of offering of possession was to be calculated from the date of execution of the BBA and the Respondent herein shall be entitled for extension for such period of delay caused due to *force majeure* circumstances, which were beyond the control of the developer.
- g. That according to Clause 16 of the agreement, if there are unforeseen circumstances faced by the Respondent in the mid-way of the development of the subject project, then extension time would be granted for the completion of the project. The factors which materially and adversely affect the project are being set out herein under: -
- The company was facing was facing umpteen road blocks in construction and development works in project in its licensed lands comprised of the township owing to the initiation of unexpected introduction of new National Highway being an NH352W, proposed to run through the project of the Respondent. Initially HUDA has to develop the major sector road for the connectivity of the project on the licensed land but no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for a long time. Later on, due to change in the master plan for the development of

Gurugram, the government decided to make an alternate highway passing through between Sector 87 and Sector 88 and further Haryana government has transferred the land to new highway 352 W. Therefore, in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 meters.

- That the respondent has already laid down its facilities before such a placement. As a result, the respondent was constrained to uplift the project land and re-align the facilities. Thereafter, GMDA handed over the position of the land properties/land under the NH 352 to NHAI for construction and development. All this process has caused considerable amount of delay and thus hampered the project in question; these delays were beyond the control and ambient of developer thus resulting in in evitable change in layout plans.
- The Haryana government in alliance with town and country planning department in exercise of Power vested under section 45(1) of Gurugram Metropolitan development authority act, 2017 (GMDA Act, 2017), transferred the properties following within the ambient of NH 352W to the national high authority of India (NHAI). It is important to note that the construction of the National Highway is still under process resulting in a warranted delay in completion of the project.
- Also, the construction was affected due to rerouting of high-tension lines passing through the lines resulting in inevitable change and layout plans.
- That developmental work of the side project was slightly decelerated due to the reasons beyond the control of the respond due to the impact of Goods and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effects in various industrial, construction, business areas even 2024.

- The respondent was bound to adhere with the orders and notifications of the courts and the government. The details of the ban on construction activities why the various directions of National Green tribunal or the statute authorities etc
- h. That though the allotment for units admeasuring 1700 sq. ft. were issued by Vatika Ltd and payments were received, however the same were only tentative and subject to final approval of plans as provided in the BBA. It is pertinent to submit that Vatika Ltd later due to market dynamics and other reasons discontinued the units admeasuring 1700 sq. ft. The allottees were duly informed over call and were suggested for re-allotment and completion of formalities for the same, however they did not turn up as they are residing in Dubai. Necessary follow ups were also made however; the re-allotment could not happen. It is pertinent to note that the complainants have not filed on record any email/letter seeking status of the unit and all of a sudden without any intimation to the Respondent has chosen to approach the Authority with a claim of DPC, even though they are already aware of the lack of availability of any vacant floor and at best the R4espondent can give refund along with interest.
- i. It is pertinent to submit that the Complainants who have breached the terms of the BBA by failing to make payment in terms of the agreed Payment -Plan, cannot pray for possession after 9 years of non-payment. It is an established law, that if one party to the agreement defaults in its obligation under the agreement, he cannot expect the other party to fulfil its obligation in a timely manner. A defaulter under the agreement cannot seek remedy for default against the other for delay. Needless to say, that obligation for payment of the consideration was first on the Complainants' and then the obligation of the Respondent was to complete

and hand over the apartment. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the Complainants and against the Respondent and hence, the complaint deserves to be dismissed.

j. That, it is evident that the entire case of the Complainants is nothing but a web of lies and the false and frivolous allegations made against the Respondent are nothing but an afterthought, hence the present complaint filed by the Complainants deserves to be dismissed with heavy costs.

k. That the various contentions raised by the Complainants are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the Complainants are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

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. The respondent is liable to pay a sum of ₹8,17,423/- towards the delay caused, calculated at the rate of 11.10% from the due date of possession, i.e., 28th April, 2021 till 31st December, 2024.

F. II. Direct the respondent to complete the development of the project along with all facilities and amenities like water, electricity, roads, green belts etc. immediately.

F.III. Direct the respondent to handover the possession of the floor complete in all respect.

12. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges

as provided under the provisions of 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"

13. As per Clause 13 of the Builder Buyer Agreement (BBA) dated 28.04.2017, the respondent assured possession of the commercial unit within 48 months from the date of execution of this agreement. Accordingly, the due date of possession comes out to be 28.04.2021.

14. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges. Proviso to 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 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]

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"

15. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 09.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

16. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(z) 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.
17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
18. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 BBA executed inter-se parties, the possession of the said unit was to be delivered within a period of 48 months from the date of execution of this agreement. Therefore, the due date of handing over possession comes out to be 28.04.2021. In the present case, the respondent has not yet offered possession of the subject unit to the complainant.
19. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the allotment letter to hand over the possession within the stipulated period. 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. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it, from the due date of possession i.e., 28.04.2021 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of

interest i.e., 10.85% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

20. The respondent is directed to handover the possession of the unit, after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 within two months from the date of obtaining of occupation certificate and thereafter, the complainant is obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.

F. IV. Direct the respondent not to charge anything which is not mentioned in the agreement.

21. The respondent shall not charge anything from the complainant which is not the part of BBA.

F.V. Direct the respondent to execute the conveyance deed in favour of the complainants.

22. With respect to the conveyance deed, clause 20 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
23. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate"

24. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

F.VI. Legal cost-₹1,00,000/-.

25. 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

26. 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 is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 28.04.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority 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.

- b. The respondent is directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate.
 - c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - d. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - e. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - f. The respondent shall not charge anything which is not the part of BBA.
27. Complaint stands disposed of.
28. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 09.09.2025