BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM

Complaint No.4745-2023
Date of Decision: 10.11.2025

Sharwan Kumar r/o I-111, Ashok Vihar, Phase-1, New Delhi-110052.

Complainant

Versus

M/s. Vatika Limited, 4th Floor, Vatika Triangle Sushant Lok :1, Block A, Mehrauli, Gurugram Road, Gurugram-122001.

Respondent

APPEARANCE

For Complainant:	**In person**
For Respondent	**Mr. Harshit Batra, Advocate**

ORDER

1. This is a complaint, filed by Sh. Sharwan Kumar (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 approached the respondent for booking of Unit No. HSG-028, Sector-88B, Plot 12 ST, H-32 at Level-1, admeasuring 1350 sq. ft on 12.08.2015. The total sale consideration of the unit was Rs. 93,73,903/-. The respondent allotted the said unit to him

(complainant) on 09.02.2015. The builder's buyer agreement was executed on 20.04.2016 between the complainant and respondent, after having taken a sum of Rs. 16,63,231/- from him (the complainant). The amount paid by the allottee till date is Rs. 32,62,511/-.

3. That the delay occurred in handing over possession till date of filing complaint was for one year and four months. The respondent has violated the term of clause 13 of Builder's Buyer Agreement 20.04.2016. The complainant has prayed for compensation on following grounds: -

i. That the respondent is in 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 this Act or the Rules and regulations made thereunder to the allottee as per the agreement for sale executed inter se.

ii. That the respondent company has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of Section 12 of The Real Estate (Regulation and Development) Act, 2016.

iii. That the respondent has failed to provide the requisite facilities, amenities and services as agreed at the time of booking and has violated the provision of Section 12 of Real Estate (Regulation and Development) Act, 2016.

AO

iv. That the respondent by using its dominant position is dictating its unreasonable demands to the complainant without showcasing any proficient progress.

v. That the respondent had substantially failed to discharge its obligations imposed them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

4. Contending all this, the complainant prayed for a compensation of Rs. 81,26,097/- for appreciation of price of plot, Rs.5,00,000/- for mental agony, physical torture and pain resulting to him and his family members by behaviour of respondent. The complainant further prayed for a sum of Rs.3,00,000/- as compensation to pursue the case before the Authority as well as before the Adjudicating Officer.

5. The respondent contested the complaint by filing a written reply. It is averred by the respondent: -

6. That complaint of complainant is not maintainable. As per order dated 10.11.2022 in complaint No. 3075 of 2021, the complainant has already been granted refund of the paid-up amount along with interest of 10.25% per annum.

7. It is further plea of the respondent that the construction of the project was delayed due to reasons beyond its control. It is further submitted that the respondent has to undergo huge obstacles due to

adverse effects of demonetization and implementation of GST. The construction activities have also been hit by repeated bans by the Courts/Tribunals,/Authorities to curb pollution in Delhi-NCR region.

8. As per respondent, Covid-19 pandemic has resulted in serious challenges for the project with no available labours, contractors etc for the construction of the project.

9. That the complainant preferred to file a complaint bearing No. 3075 of 2021, before the Learned Authority, wherein the learned Authority vide order dated 10.11.2022 rectified on 11.07.2023, had allowed relief of refund along with interest @ 10.25% per annum with effect from date of each payment till the date of actual realization.

10. That the complainant has sought compensation for legal expenses by placing invoices but have shown no proof of payment. In this way, it (respondent) has not committed any violation or caused any deliberate delay in the execution and timely handing over of the subject project.

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

12. Both of the parties filed affidavits in support of their claims. I have heard complainant in person and learned counsel appearing for respondent and perused the record. However, defence of respondent has already been struck off vide order dated 20.03.2025.

13. The factual matrix of complaint is not in dispute. It is not denied that the complainant booked unit in question in the Project namely "Xpressions by Vatika" Sector 88B, Gurugram, being developed by the respondent. It was a residential unit measuring 1350 sq. ft., booked on 12.08.2015. The builder's buyer agreement (BBA) was executed between the parties on 20.04.2016. As per clause 13 of BBA, respondent agreed to deliver possession till 20.04.2020. Possession was not handed over in time, rather delayed by one year and four months. Out of total sale consideration of Rs.93,73,903/-, complainant paid a total sum of Rs.34,62,511/-. When respondent failed to deliver possession in agreed time, the complainant was constrained to approach the Authority by filing a complaint seeking refund of the amount, which was allowed by the Authority vide order dated 10.11.2022. The respondent has been directed to refund the paid-up amount received from allottee/complainant along with interest at rate of 10.25% per annum from the date of each payment till the date of actual realization of amount.

14. The Authority held respondent responsible for its default for delay in handing over possession of subject unit. I did not find much weight in the plea of respondent alleging that the construction was delayed due to reasons beyond its control. Same (respondent) had undergone huge obstacles due to adverse effects of demonetisation and implementation of

GST. The construction activities had been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR region. None of these plea was accepted by the Authority. As stated earlier, the respondent was bound by agreement to deliver possession till 20.04.2020. It is pointed out that due to Covid-19, first lock-down was imposed in March 2020. In this way the plea of respondent that construction could not be completed due to Covid, carries not much weight.

15. 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 aliottees, 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 abundantly clear from this provision that when promoter fails to complete or unable to give possession of a unit and on being demanded by the allottee, same (promoter/builder) is liable to return the

amount and also to pay compensation as provided under this Act. The respondent is thus, liable to pay compensation booked from return of the amount which has already been allowed by the Authority. Complaint in this regard has already been allowed by the Authority.

17. Section 72 of the Act of 2016 provides following factors to be taken into account by the Adjudicating Officer, in adjudging quantum of compensation: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

18. As stated earlier, the complainant paid a total sum of Rs. 34,62,511/-. Said money was used by the respondent/promoter but failed to fulfil its duty i.e. to complete the project. In this way the respondent earned disproportionate gain by using money of a buyer i.e. complainant causing consequential loss to the latter. It is not plea of complainant that respondent committed default repeatedly.

19. The complainant has claimed a sum of Rs.81,26,097/- alleging that price of unit in question at the time of booking was Rs.93,73,903/- while after appreciation of immoveable properties, current rate of same

was about Rs.1,75,00,000/- leaving a difference of Rs.81,26,097/-. It is alleged by learned counsel for complainant that his client invested his hard-earned money by buying a flat for the benefit of his family and children and to provide them a good status of living but due to inordinate delay by respondent, same could not fulfil his dreams. All this caused huge loss to him.

20. To substantiate his plea about appreciation in value of house in Gurugram, the complainant has put on file a screen shot from real estate site 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 value of similar houses. Even otherwise, there is great variation in the prices ranging from 161 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 in Gurugram from 2021 (due date of possession in this case) to 2025, it is shown by 'AI Overview' that residential property in Gurugram has been significantly appreciated between 2020 and 2025, some reports show increase of 84% in average of residential prices from Q1 2020 to Q1 2025. Some other sources suggested a 67% rise in average prices over two previous years.

AO

21. 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 from 2020 to 2025. Even after taking at lower end, there is appreciation of 30% in the prices. Even if, the booking amount of unit in question was Rs.93,73,903/-, the complainant paid a sum of Rs.34,62,511/-, 30% of which comes to Rs.10,38,753. By rounding up this figure, complainant is allowed a sum of Rs.10,39,000/- as compensation for loss in this regard, to be paid by the respondent.

22. The complainant has claimed a sum of Rs.5,00,000/- towards mental agony, physical torture and pain suffered by him and his family members. Apparently when respondent failed to hand over possession in agreed time, despite making payment of substantial amount by an allottee/complainant, the latter suffered mental agony and pain. Rs.5,00,000/- appears to be excessive. The complainant is allowed a sum of Rs.1,00,000/- for mental agony, physical torture and pain.

23. The complainant has again prayed for litigation expenses i.e. Rs.3,00,000/- in pursuing this matter. A receipt of fee charged by his advocate for an amount of Rs.3,00,000/- has been put on file. Apparently,

AO

the complainant was represented by a lawyer during proceedings of this case. A sum of Rs.50,000/- is allowed as litigation expenses.

24. The complaint is thus, allowed. The respondent is directed to pay amounts of compensation detailed above, along with interest at rate of 9.5% per annum from the date of this order, till realization of this amount.

25. File be consigned to the record room.

Announced in open court today i.e. on 10.11.2025.

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