

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

Complaint no.: 3438 of 2024
Date of filing: 29.07.2024
Order pronounced on: 12.08.2025

Naresh Kumar

R/o:- Flat no. 302, Hanuman Temple, Ashok Vihar
Phase-2, Gurugram, Haryana-122001

Complainant

Versus

M/s Vatika Limited

Regd. Office at: - Unit no. A-002, INXT City
Centre, Ground Floor, Block-A, Sector-83,
Vatika India Next, Gurugram

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri Harshit Goyal (Advocate)
Shri Dhruv Dutt Sharma (Advocate)

Complainant
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	"Emilia floors at Vatika India Next", Sector-83, Gurgaon.
2.	RERA Registered/ not registered	Un-Registered
3.	Allotment letter	15.11.2010 [pg. 17 of complaint]
4.	Unit allotted as per allotment letter	37, ground floor, street 4, block E [pg. 17 of complaint]
5.	Old plot no.	13, ground floor, block E admeasuring 781.25 sq. ft. [pg. 23 of complaint]
6.	Buyer's agreement	23.03.2011 [pg. 20 of complaint]
7.	Possession clause	10.1 3 years from date of agreement
8.	Due date of possession	23.03.2014 (Note: The due date of possession is calculated from the date of execution of buyer's agreement.)
9.	Total sale consideration	₹ 24,78,733/- [pg. 23 of complaint]
10.	Amount paid by complainant	₹8,69,698/- [as per SOA dated 19.06.2015 pg. 62 of complaint]
11.	Letter by respondent for change in area and no. of the allotted unit	09.01.2012 [pg. 64 of complaint]
12.	New plot no.	37, Emilia, GF, Street 83E-4 admeasuring 929.02 sq. ft.

		[pg. 64 of complaint]
13.	Termination letter	14.11.2018 [pg. 73 of reply] Due to GAIL pipeline
14.	Mail by respondent for initiating refund	08.06.2024 [pg. 75 of reply]
15.	Completion certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - a. The respondent issued Welcome Letter dated 31.10.2009 in respect of the booked unit in favour of complainant. The respondent company issued Allotment Letter dated 15.11.2010 in respect of the booked in favour of complainant. The Floor Buyer Agreement was duly executed between Complainant and Respondent on 24.03.2011 in respect of booked unit bearing ST. 83E-4, Plot No 37-Ground Floor, Emilia measuring 929.02 sq ft (Final Unit No and Area as per letter dated 09.01.2012) at 4th Street, Block E of real estate project namely 'Emilia Floors' at Vatika India Next situated at Sector 83, Gurugram.
 - b. As per clause 10.1 of the Floor Buyer Agreement dated 24.03.2011, the Respondent Company was liable to deliver possession of the booked unit within a period of 3 years from the date of execution of this Agreement. Therefore, the due date of delivery of possession is calculated as 24.03.2014 which has already expired.
 - c. The Respondent Company has failed to complete construction and obtain Occupation Certificate & Completion Certificate in respect of booked unit till date. The Respondent Company has failed to deliver possession of the booked unit along with Occupation Certificate & Completion Certificate to

the complainant till date. The Respondent Company has also failed to pay accrued Delayed Possession Charges in respect of the booked unit till date. The Respondent Company has also failed to execute and register Conveyance Deed in respect of booked unit in favour of complainant till date.

- d. The complainant had also sent email dated 16.12.2014 regarding request for updation of latest address of complainant in records of respondent company along with proof of address for purpose of all kinds of communication. As per agreed payment plan and demands issued by respondent company, the complainants had duly deposited Rs 8,69,598/- out of total agreed Sale consideration of Rs. 24,78,733/-.
- e. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at the time of booking in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the Floor Buyer Agreement duly executed between both the present parties.
- f. Therefore, the present complainant is forced to file present complaint before this hon'ble authority under Section 31 of Real Estate Regulation and Development Act, 2016 read with Rule 28 of Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent company.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. To direct the respondent to pay delay possession charges at the prescribed rate to the complainant for the period of delay accrued from the due date

of possession to the date of offer of possession along with occupation certificate by respondent.

- b. To direct the respondent to deliver possession of the booked unit along with occupation certificate.
- c. To direct the respondent to execute and register sale deed in the concerned sub registrar office in favour of complainant of the booked unit.
- d. To impose penalty upon respondent for non-registration of the project in question with this authority.

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 complaint filed by the complainant before the Ld. Authority, besides being misconceived and erroneous, is untenable in the eyes of law. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- b. That it has been categorically agreed between the parties that subject to the allottees having complied with all the terms and conditions of the floor buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 3 years from the date of execution of the agreement.

- c. Further, it had been also agreed and accepted that 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. further the company may also suspend the project for such period as it may consider expedient.
- d. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below: -
- Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and the respondent was forced to reevaluate its construction plans which caused a long delay.
 - Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
 - Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.
- e. That the respondent had already terminated the floor buyer agreement dated 24.03.2011 vide termination letter dated 14.11.2018 and confirmed

vide E-mail dated 03.03.2021 sent from the respondent to the complainant, 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. It is submitted that as per clause 11.5 of the agreement, it has been agreed that in the event of failure to handover the possession, the company shall be entitled to terminate the agreement and refund the amount. It is pertinent to mention here that the respondent also offered to refund the amount to the complainant along with 6% interest p.a.

f. It is submitted that it was due to the opposite reasons which were beyond the control of the respondent the unit of the complainant became non-deliverable and thus as per the terms and conditions of the agreement the respondent can only be held liable to refund the amount along with interest at the rate 6% per annum. That the present complaint is liable to be dismissed as the same as hopelessly time.

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. To direct the respondent to pay delay possession charges at the prescribed rate to the complainant for the period of delay accrued from the due date of possession to the date of offer of possession along with occupation certificate by respondent.

F.II. To direct the respondent to deliver possession of the booked unit along with occupation certificate.

12. In the present matter the complainant was allotted the unit in Emilia Floors at Vatika India Next, Sector 83 on ground floor, block E at sector 83,

Gurugram vide buyers agreement dated 23.03.2011. As per the builder buyers' agreement executed between the parties the total sale consideration for the allotted unit was fixed for ₹24,78,733/-. As per clause 10.1 of the said agreement the respondent was obligated to deliver the possession of the unit within 3 years from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 23.03.2014. The respondent re-allotted the above said unit of the complainant without his consent vide letter dated 09.01.2012 and was allotted a new plot bearing no. 37, Emilia, GF, Street 83E-4 admeasuring 929.02 sq. ft. super area. The payment plan was revised as per the increased area.

13. The complainant has instituted the present complaint seeking possession of the newly allotted villa, along with delay compensation in accordance with the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act. The respondent, however, vide cancellation letter dated 14.11.2018, unilaterally cancelled the allotment of the subject unit on the ground that the same was no longer deliverable due to a change in the alignment of the GAIL pipeline, and expressed readiness to refund the amount received along with simple interest at the rate of 6% per annum by invoking clause 11.5 of the BBA.
14. However, the authority observes that the GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 mtrs. to 20 mtrs. vide letter dated 04.03.2011 as submitted by respondent in his reply. GAIL notification and permission letter was prior to the execution of the buyers' agreements. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same to the complainant. It is

further noted that both the said GAIL notification and permission predate the execution of the Agreement dated 23.03.2011. Accordingly, if any impediment existed which could potentially affect the timely delivery of possession of the subject unit, it was incumbent upon the respondent to extend the due date of possession under the original BBA being subsequently signed. No such extension was incorporated either in the original BBA or in the subsequent Addendum Agreement.

15. In view of the above, the unilateral cancellation of the subject unit by the respondent is found to be arbitrary, without legal justification, and contrary to the terms of the agreement. Therefore, the said cancellation is declared to be void and is hereby set aside.
16. Further the complainants in the present matter are seeking delay possession charges along with interest and possession of the unit. As per clause 11.1 of the said agreement the respondent was obligated to deliver the possession of the unit within a period of three (3) years from the date of execution of this agreement. Accordingly, the due date of possession comes out to be 23.03.2014.
17. **Admissibility of delay possession charges at prescribed rate of interest:**
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]

(1) 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.

18. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules 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 the cases.
19. 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., 12.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
20. The definition of term 'interest' as defined under section 2(za) 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. 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—
(i) 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;
(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, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.

On consideration of the documents available on record and submissions made regarding contravention of 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 10.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 3 years from the date of execution of agreement i.e., by 23.03.2011.

22. The complainant is also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession after receipt of the occupation certificate from the competent authority of the allotted unit to the complainant as per the terms and conditions of the builder buyer agreement dated 23.03.2011 executed between the parties. And as per the reasonings as stated above the authority has set aside the termination letter dated 14.11.2018.
23. 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 Authority observes that the complainant is willing to continue in the said project and therefore, the respondent is directed to hand over the possession of the subject unit and if the same cannot be delivered then allot an alternate unit similarly situated, of similar size and at similar price within 60 days from the date of this order.
24. The respondent is further directed to pay delayed possession charges on the amount paid by the complainant, from the due date of possession i.e., 23.03.2014 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., 10.90% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.III. To direct the Respondent to execute and register Sale Deed in the concerned Sub Registrar office in favour of complainant of the booked unit.

25. With respect to the conveyance deed, clause 13 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.
26. 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."
27. 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. To impose penalty upon Respondent for Non-Registration of the project in question with this authority.

28. The planning branch of the Authority may take necessary action against the respondent.

G. Directions of the authority

29. 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 hand over the possession of the subject unit and if the same cannot be delivered then allot an alternate unit similarly situated, of similar size and at similar price 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 this order and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- b. The respondent is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.90 % p.a. w.e.f. due date of possession i.e., 23.03.2014 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- c. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the valid offer of possession after the receipt of

the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.

- d. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
 - e. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
 - f. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
30. Complaint stands disposed of.
31. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 12.08.2025