

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

Complaint no.: 5193 of 2024
Date of filing: 05.11.2024
Date of decision: 04.11.2025

Sheetal Kadyan

Regd. Address at: H. No. CW-33, 2nd Floor,
Malibu Town, Sector 47, Gurugram-122001

Complainant

Versus

M/s Vatika Limited.

Regd. office: Flat No. 621 A, 6th Floor, Devika
Tower, Nehru Place, New Delhi-110019

Respondent

CORAM:

Shri Ashok Sangwan
Shri Phool Singh Saini

Member
Member

APPEARANCE:

Sh. Sunil Kumar (Advocate)
Sh. Shridutt proxy counsel

Counsel for complainant
Counsel for respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provisions of the Act or the Rules and regulations made there under 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 Professional Point", Sector-66, Gurgaon.
2.	Nature of the project	Commercial township
3.	RERA Registered/ not registered	Un-Registered
4.	Project Area	2.11 acer
5.	DTCP license No.	57 of 2008 dated 19.03.2008
6.	Unit no. and area admeasuring	1033, 10 th floor, admeasuring 500 sq. ft. (page 26 of complaint)
7.	Buyer's agreement	12.10.2010(As per page no.24 of complaint)
8.	Possession clause	<p>2.</p> <p><i>The Developer undertakes to complete the construction of the complex/building within 2 years from the date of execution of this agreement.</i></p> <p>(Emphasis Supplied)</p>
9.	Due date of possession	12.10.2012
10.	Assured return clause	<p><i>Clause 2</i></p> <p><i>Since the allottee paid full consideration on the signing of this agreement, the developer further undertakes to make payment of Rs.70/- per sq. ft. super area per month by way of committed return during construction period, which the allottee duly accepts. In the event of a time over run, the allottee shall continue to receive the same assured return as mentioned herein until the building is ready for possession.</i></p> <p><i>(As per page no.27 of complaint)</i></p>
11.	Leasing arrangement	<p>(K) Return on completion of the project and letting out of space</p> <p><i>That on the completion of the project, the space would be let out by the developer at his own cost to a Bonafide lessee at a</i></p>

		<p><i>minimum rental of Rs. 70/- per sq. ft. per month less income tax at source.</i></p> <p><i>In the event of the developer being unable to finalize the leasing arrangement, it shall pay the minimum committed return at Rs. 70/- per sq. ft. per month to the allottee for the first 36 months after the date of completion of the project or till the date the said/space put on lease, whichever is earlier.</i></p> <p><i>(page no. 30 of complaint)</i></p>
12.	Total sale consideration	Rs.20,00,000/- (As mentioned in BBA at page no. 26 of complaint)
13.	Amount paid by complainant	Rs.20,00,000/- (As mentioned in BBA at page no. 26 of complaint)
14.	Occupation certificate	29.10.2013 [pg. 77 of reply]
15.	Offer of possession	Not offered
16.	Lease Deed	18.11.2014 (page 50 & 51 of reply)
17.	Notice of termination of lease	12.01.2018 (page 52 of reply)
18.	Second lease deed	26.09.2018 (page 54 & 55 of reply)
19.	Amount received by complainant as lease rentals	Rs.22,51,678/- till February, 2021 (page 22-23 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the respondent "M/s Vatika Limited" company incorporate under Company's Act, 2013 or earlier applicable law having its registered office at flat no. 621 a, 6th floor, Devika Tower, Nehru Place, New Delhi-110019, Launched "Vatika Professional Point" situated at Sector 66, Gurugram, Haryana for commercial project for develop and maintain commercial offices/shops/cyber park/IT

Park on said land, which is mentioned in clause A of agreement vide.

- b. That the respondent company advertised a sanctioned plan, model, map, lay out, specifications and designs etc. of the project and apartments/ shops to be built for delivery to buyers/allottees through various advertising means, prospectus and modes to public at large and invited applications from public to invest and buy the shops/office etc. in said project
- c. That on above statements and documents produced by respondent company the complainants impressed by glitz advertisement of the project contacted to company office to get more information about the project, its prospective, future beneficial and other terms and conditions. The allottee met to a company agent/nominee at company office in year 2010. During this meeting, company representatives produced, displayed and disclosed the sanctioned plan of the said commercial project and also sanctioned layout, design, map and specifications etc. of ground floor shop/unit bearing number 1033 admeasuring super area 500 sq. ft. having long, 10th floor. The total sale consideration of the unit is Rs.20,00,000/- as mentioned in clause 2 of builder buyers' agreement.
- d. Further, committed return vide B.B.A under clause 2 of the agreement states that the developer undertakes to complete the construction of the complex/building within 2 years from the date of execution of agreement, since the allottee has paid full sale consideration on signing the agreement, the developer further undertakes to make payment of Rs. 70/- sq. ft. of super area per

month by way of committed return during construction period, which the allottee duly accept. Further, as per clause k of BBA, the respondent pay minimum rental of Rs. 70/- sq. ft. per month of super area after the date of completion of the project for first 36 months or till the date the unit is put on lease.

- e. That as per the reply of RTI filed by the complainant, the respondent company already obtained Occupation Certificate dated 29.10.2013.
- f. That unfortunately the respondent by way of cheating, false promises, unfair trade practices making false commitment to the complainants and the complainant booked that unit with this hope that she could get leasing arrangement and committed returns as promises made by the respondent. Till date there is no leasing rental income received, no committed income received and no physical offer of valid possession offered by the respondent. The complainant paid an amount of Rs.20,00,000/- way back in 2010.
- g. That the respondent violates Section 11, 13, 14 and 18 of the RERA Act, 2016. Therefore, the complainant has filed the present complaint before this Authority for compensate the loss by way of failing promises on assured return, leasing arrangements and failure of offer of legal and valid offer of possession till date and along with delay possession interest as per RERA Act, 2016 and requested to make such inquiry by depute or appoint the local commission along with professional who admeasuring the carpet area and possession of unit. As there is grave deficiency of service on the respondent's part so the complainant also wants compensation from the respondent so after the judgment of this

Authority the complaint must be reserved the rights to appeal before Hon'ble Adjudicating officer for compensation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to offer legal and valid possession along with basic amenities as committed in the brochure/agreement of unit as per section 18(1) of the Act, 2016.
 - b. Direct the respondent to pay monthly interest on deposited principal amount as per section 18(1) read with section 2(za) of Act, 2016.
 - c. Direct the respondent to pay the assured return along with delay interest.
 - d. Direct the respondent to pay leasing arrangement as promised.
 - e. To revoke the demand in lieu of maintenance charges levied for holding and maintenance.
 - f. Direct the respondent to pay litigation cost of Rs.21,000/-.

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 complaint filed by the complainant is barred by limitation and therefore the complainant is not entitled to any relief from this Authority. By way of present complaint, the complainant has prayed for revocation of the alleged demand letters issued by the respondent. The complainant has failed to place on record any

such demand letter and in absence of any demand letter, the prayer of revocation of demand letter is not maintainable. The complainant has placed on record a letter dated 12.10.2010 which was issued to the complainant along with the builder buyer agreement. The said letter clarified that the maintenance shall be payable by the lessee directly to the developer and no maintenance charges shall be charged from the complainant for the period the property is leased out. However, the maintenance shall be payable by the complainant in case the lease terminates, or the property is lying vacant.

- b. That the complainant is challenging the letter dated 12.10.2010 as no other letter has been placed on record, the complainant herein cannot challenge the said letter as the same is barred by limitation as the same was issued almost 15 years back. If the complainant had any issue with payment of maintenance, the complainant ought to have challenged the said letter within the limitation period. Moreover, the prayer with respect to revocation of holding charges is not maintainable and baseless as the complainant has failed to show or place on record any document to show that the respondent has demanded holding charges or any holding charges have been paid by the complainant.
- c. That the letter dated 12.10.2010 placed on record by the complainant is allotment letter vide which the complainant was allotted unit no.1033 in the project "Vatika Professional Point". Vide letter dated 12.10.2010 it was made clear to the complainant that no maintenance shall be charged for the period up to which the property is leased out and the charges shall be recovered from

incoming leases and in case of termination of lease, the maintenance was payable by the complainant. No complaint or whatsoever was raised by the complainant till the time the complainant was receiving the rentals and it is only when the lease was terminated, the complainant filed a frivolous complainant seeking revocation of the maintenance and holding charges.

- d. That from bare perusal of the letter dated 12.10.2010 and builder buyer agreement dated 12.10.2010, the complainant was well aware of the fact that maintenance shall be deducted from the rentals and in case of termination of the lease, the complainant was under an obligation to pay the maintenance charges.
- e. That the complainant with malafide intentions has deliberately not disclosed the fact that the complainant till date has received an amount of Rs.22,51,678.63/- as lease rentals and no objection or whatsoever was raised by the complainant and it only when the property is not leased out, the complainant in order to harass and achieve dishonest goals has approached the Authority raising false and frivolous allegations against the respondent. The complainant last paid lease rental on 01.02.2021 and thereafter the unit of the complainant has not been leased out and no lease rentals has been paid to the complainant. Since the last lease rental was paid in the year 2021, the complainant ought to have approached the Authority within a period of three years from 01.02.2021 i.e. on or before 01.02.2024. However, the complainant has approached this Authority in October 2024, therefore the present complaint is barred by limitation.

- f. That as per the terms and conditions of the BBA, the complainant has been paid the rental charges as and when the unit was put on lease. Each time the complainant was informed as to whom the unit is leased out and at what rate and no objection or whatsoever was ever received from the complainants with regard to the same. Since, the respondent has abided with the terms and conditions of the BBA, no case is made out against the respondent.
- g. That there has been no delay in construction of the project and the same is evident from the occupation certificate dated 29.10.2013 issued by DTCP, Haryana. After receiving the occupation certificate, the respondent made arrangements to put the property on lease and the lease rentals were paid to the complainant. The complainant accepted the lease rental without any objections and demur and therefore the complainant is now barred from raising false and frivolous issues claiming deficiency or non-adherence of terms and condition of the BBA by the respondent.
- h. That from bare perusal of the BBA executed between the parties, the complainant was never promised any assured returns. The no clause or whatsoever in the BBA states that assured returns shall be payable to the complainant. As per the BBA executed between the parties, the complainant was only entitled to payment of rentals as and when the unit was put on lease and that the complainant has received an amount of Rs.22,51,678/- as rentals which the complainant has failed to disclose before the Authority.
- i. That no offer of possession was required to be issued to the complainant as the unit booked by the complainant is a

commercial unit and as such virtual possession of the unit has been handed over to the complainant.

- j. That as clause N(d) of the BBA dated 12.10.2010, the allottee was deemed to have legally possess the allotted unit in case the unit is leased out. The unit allotted to the respondent was first leased out in the year 2014 and the respondent has been enjoying the lease rental from 2014 itself and therefore as per clause N (d) of the BBA dated 12.10.2010, the complainant is deemed to be in possession of the unit since 2014 and the sane is evident from the letter dated 22.07.2014 issued to the complainant informing the complainant that her unit has been leased out to M/s Rebus Code Information Solutions Pvt. Ltd.
- k. That the complainant herein has failed to disclose the most important fact that the complainant herein till date has received an amount of Rs.22,51,678/- as lease rentals and no objection or whatsoever was raised by the complainant.
- l. That the present complaint under reply 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 record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The Authority 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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) The promoter shall-

(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 complainants.



F.I. Direct the respondent to offer legal and valid possession along with basic amenities as committed in the brochure/agreement of unit as per section 18(1) of the Act, 2016.

F.II Direct the respondent to pay monthly interest on deposited principal amount as per section 18(1) read with section 2(za) of Act, 2016.

F.III Direct the respondent to pay the assured return along with delay interest.

F.IV Direct the respondent to pay leasing arrangement as promised.

F.V To revoke the demand in lieu of Maintenance charges levied for holding and Maintenance.

F.VI Direct the respondent to pay litigation cost of Rs.21,000/-.

12. On consideration of the circumstances, documents, submissions made by the parties, the Authority observes that the unit in question was allotted to the allottee vide allotment letter dated 12.10.2010 and buyer's agreement was executed on 21.10.2010. As per clause 2 of the buyer's agreement, the possession of the subject unit was to be offered within 2 years i.e. 21.10.2012. However, Occupancy Certificate was issued by Competent Authority on 29.10.2013.
13. The respondent submitted that the complaint is barred by limitation as Occupancy Certificate was issued by Competent Authority way back on 29.10.2013 i.e. much prior to the enactment of Act, 2016, thus the Authority does not have jurisdiction to entertain the present complaint.
14. The complainant remained dormant of their rights for more than 12 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. Further the last lease rent was paid on 01.02.2021 and the present complaint was filed on 05.11.2024 i.e. after the delay of 3 year & 9 months. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.

15. One such principle is that delay and latches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the Authority to exercise their powers under the Section 37 read with section 35 of the Act nor it is that there can never be a case where the Authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the Authority to refuse to exercise their extraordinary powers of natural justice provided under Section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
16. Further, as observed in the landmark case i.e., ***B.L. Sreedhar and Ors. Vs. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.
17. In the light of the above stated facts and applying aforesaid principles Authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's

right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.

18. Complaint stands disposed of.
19. File be consigned to registry.



(Phool Singh Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.11.2025



HARERA
GURUGRAM