

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

**Complaint No.532 of 2024
Date of Decision: 14.11.2025**

Ms. Rita Sharma D/o Sh. Sanwal Singh Mudgal, R/o H. No. 212,
Village Munirka, PO-JMU, New Delhi-110067.

Complainant.

Versus

M/s. Vatika Limited, having its office at Ground Floor, Tower-A,
India Next INXT City Centre, Vatika Road, Sector-83, Gurugram-
122004. Haryana

Respondent.

APPEARANCE

For Complainant: Ms. Ritu Bhalla, Advocate

For Respondent: Mr. Dhruv Dutt Sharma, Advocate

ORDER

1. This is a complaint filed by Ms. Rita Sharma (allottee) under section 31 read with section 71 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) against M/s. Vatika Limited, (promoter as per section 2(zk) of Act 2016).

2. According to complainant, on 31.05.2010 she booked an independent floor in the project namely "**Vatika India Next**" at Sector 82-83, Near Toll Plaza, Gurugram and paid an amount of

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Rs.3,20,238/- to the respondent against which a priority number Primrose/FF/156 was issued by the respondent. Thereafter, the respondent issued an offer of allotment of unit in favour of the complainant on 20.01.2011.

3. That on 09.02.2011 the respondent issued a letter of allotment of unit of an independent floor relating to Plot No. 20, Primrose, FF, 17th St., Sector-83E on 09.02.2011. A Builder-Buyer Agreement dated 23.03.2011 was executed between the parties. Thereafter, she (complainant) paid all the instalments as per the demands of the respondent.

4. That she (complainant) received a letter from the respondent on 11.01.2012 regarding change of numbering system and area, change of floor in VATIKA INDIA NXT without the consent of the complainant. The area was extended by the respondent from 1094.21 sq. ft to 1263.16 sq. ft and she (complainant) had not raised any objection to it as she wanted her unit as soon as possible.

5. That on 28.01.2013 the respondent issued an allotment letter where the plot number was changed by the respondent by 33, 1st Floor, St. No. 83-E5, demanding an extra amount of Rs.3,60,000/- as PLC charges.

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6. That the respondent executed Addendum to Builder Buyer Agreement on 31.01.2013 in favour of the complainant. The respondent had received a sum of Rs.13,19,119/- till 25.01.2012, against the old allotted floor.
7. Again, the respondent changed the floor unit of the complainant on 15.01.2018 in an illegal and unlawful manner without obtaining consent of the complainant and issued a new floor bearing No. Plot No. 4, St. J-1.5, Level-2, Sector-83, Gurugram after 8 years from allotting the unit.
8. That the respondent now increased the area of the unit of the complainant from 1263.16 sq. ft to 1325 sq. ft and also revised the basic sale price of the unit from Rs. 36,96,839.85 to Rs. 44,11,167.85.
9. That on 10.05.2017 the respondent ~~herself~~ sent a reply of a mail sent by the complainant wherein she demanded the possession of her floor and in reply, the respondent stated that *"we shall like to apprise you that currently we have option in our ready to move in project-Life Style Home and City Homes"* but never gave any option to the complainant.
10. That on 31.07.2021, she (complainant) again received a notice of cancellation of unit on the part of the respondent giving

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"reasons of unforeseen eventualities" and as per the agreement, the total sale amount of the unit is Rs. 45,02,418/- and till date, the complainant has paid Rs. 13,19,119/- as partial consideration of her unit and also stated that the respondent refunded the same with simple interest of 6% per annum for the period such amount was lying with the respondent and the respondent would further not pay any other compensation whatsoever.

11. That the complainant filed a complaint before the ADC, Gurugram where the officials of the respondent promised the complainant to refund the amount but failed. On 22.12.2023 the complainant through her counsel sent a legal notice dated 22.12.2023 to the respondent in which the respondent was called upon either to hand over the physical possession of the flat/unit of the complainant on the ~~agreed~~ [✓] rates as agreed by the respondent at the time of booking or refund the total amount paid by the complainant with interest @ 24% per annum to the complainant within 15 days. In response to the legal notice, the respondent neither paid any amount nor replied to it.

12. That the officials of the respondent handed over statement of refund of Rs.22,41,955.13/- after deducting the TDS to the complainant and further said that they will pay said amount

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in instalments, which is quite illegal and against the business principles.

13. That the respondent has flouted a project and has violated the terms and conditions of the Buyer's Agreement and has caused mental and financial agony. Hence, the respondent is liable to refund the amount paid by the complainant along with interest as defined and provided by the proviso of Section 18 of the Act of 2016 and compensation of harassment provided by the provision of Sections 71 and 72 of the Act. ²⁰¹⁶.

14. Contending all this, the complainant has sought the following compensation:-

- i. to direct the respondent to pay the compensation of Rs. 10,00,000/- for harassment and breach of trust by taking a sum of Rs. 13,19,119/- without raising any construction or without developing the project and;
- ii. to direct the respondent to pay sum of Rs. 10,00,000/- on account of travel expenses and without pay leave from her office (as interim relief).

15. The respondent contested claim of complainant by filing a written reply. It is denied that the subject matter of the instant claim falls within the jurisdiction of the Adjudicating Officer. According to it (respondent), present complaint is not

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maintainable and is an abuse and misuse of process of law and as such, it (complaint) is liable to be dismissed.

16. It is claimed by respondent that all the terms and conditions of the BBA were complied with by it (respondent) and have not been defaulted under any provisions of said agreement. The delay in handing over the possession of the unit to the complainant was beyond the control of the respondent.

17. That it has been clearly mentioned in clause 9.2 of the Buyer's Agreement that upto 15% change in the Built-up area of the unit is permissible and which has been agreed by the complainant. The complainant has already filed another complaint bearing no. 518/2024 against the respondent before Hon'ble Authority for refund of amount.

18. Respondent denied that it (respondent) usurped hard-earned money of complainant or that the latter has suffered huge economic loss. It is also denied that the complainant has suffered mental pain and agony. According to it, delay has been occasioned due to various reasons but not limited to change in the layout plan due to initiation of the Gas Authority of India Limited (GAI) Corridor and non-acquisition of sector roads by HUDA.

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19. That the complainant is a real estate investor, who has made the booking with the respondent only with an intent to make profit in a short span of time. The complainant has filed present complaint on absolutely false and frivolous grounds. In view of the facts stated above, the complainant does not deserve to get any sort of compensation as prayed and the complaint deserves to be dismissed with costs.

20. Both of parties filed affidavits in evidence in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

21. Following facts, as claimed by complainant, did not remain in dispute during deliberations that after receipt of part of sale consideration, complainant was given priority no. i.e. Primrose/FF/156, copy of receipt in this regard is Annexure C1. The respondent offered allotment of unit through letter dated January 20, 2011 (Annexure C2). A specific unit i.e. Plot No. 20 Primrose/FF, 17th St. Sector-83E VIN was allotted to her, copy of allotment letter dated 09.02.2011 is Annexure C3. A Floor Buyer Agreement (FBA), copy of which is Annexure C4, was executed between the parties in respect of aforesaid plot i.e. Plot no. 20, 17th Floor, Block E, Sector 83, built-up area 1094.21 sq ft for a total sale

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price of Rs.32,02,382/- . The respondent informed the complainant about changing in number system. A new number allotted to the complainant was plot No. 20 Primrose/FF, St. 83-E 17th sector 83E VIN. Revised area of the floor was 1263.16 sq. ft. The respondent asked the complainant to remit an amount of Rs. 1,73,211/- apart from service tax etc copy of letter dated 11.01.2012 in this regard is Annexure C5. The respondent again informed the complainant about allotment of her unit through letter copy of which is Annexure C6. Now the unit allotted to complainant was Plot No. 33, Flor FF St. 83 E-5, area 1263.16 sq. ft along with PLC of Rs. 3,60,000/- copy of this letter is Annexure C-6A. Addendum to FBA was got signed in this regard, copy of which is Annexure C7. Ultimately, unit allotted to the complainant was cancelled by respondent through letter (Annexure C9) stating that the company (respondent) has been facing various unforeseen eventualities, which have impacted development works in various projects in its licensed lands.

22. It is contended by learned counsel for respondent that Gas Authority of India Limited (GAIL) decided to lay down its gas pipeline after layout plans were sanctioned. A writ petition filed by his client (respondent) was dismissed by Hon'ble Punjab &

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Haryana High Court. The unit in question could not be handed over to the allottee/complainant due to reason that Haryana Urban Development Authority (HUDA) acquired land to lay down sector road for connecting the project and again high-tension lines of electricity were re-routed through the project land. All this was beyond the power of respondent and hence, same was constrained to terminate the Buyer's Agreement through letter dated 31.07.2021. Learned counsel for respondent requests to dismiss the complaint alleging that his client was nowhere at fault.

23. It is further plea of learned counsel for respondent that when Plot Buyer Agreement was entered between the parties, the Real Estate (Regulation & Development) Act of 2016 had not come in force and hence, provisions of this Act are not applicable here. Even if unit allotted to the complainant was changed, it was done with the consent of the allottee/complainant herself.

24. Learned counsel representing the complainant denied vehemently that his client ever consented for change of the unit, or area of her unit or the sale price. According to him, it was unilateral act of the respondent, and his client had no option but to sign the documents as put forward by the promoter/respondent.

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Learned counsel relied upon several correspondence (e-mails) exchanged in this regard, copies of which have been put on file.

25. According to learned counsel for complainant, if unit in question was handed over to his client, price of same would have increased three-times till now.

26. As mentioned above, learned counsel for respondent did not dispute facts of the case and even e-mails exchanged between the parties. I find force in the plea of the complainant that the latter had no option but to accept the change of unit or other modifications done by the respondent. The respondent was in a dominating position. The complainant has reason not to deny signing of documents, like re-allotment or addendum to FBA.

27. Even if Act of 2016 had not come in force, at the time when FBA was entered between the parties, [✓] There is no denial that it was an on-going project. Same was not completed even after Act of 2016 came into force. In this way, the provisions of this Act are very much applicable in this case. Even otherwise, as mentioned above, FBA was entered between the parties through which the complainant was allotted particular plot i.e. Plot No. 20, First Floor 17th Street, Secor-83. The respondent unilaterally changed and re-allotted [✓] [✓] ~~the~~ same other unit with different

specifications and price. The complainant had no option but to accept the same. Ultimately, no unit was handed over to her (complainant) and the FBA was cancelled despite respondent having accepted sale consideration, in part.

28. I am not convinced with the plea of learned counsel for respondent alleging that all this was not within the powers of his client. When a contract i.e. FBA was entered between the parties, it could be presumed that respondent had every right to sell that unit without any change. Similarly, allottee could not have been compelled to accept some other unit on higher value. Moreover, when GAIL decided to lay gas pipeline, the respondent refused to pay any compensation to the allottee. Even otherwise, respondent failed to prove that same was not able to construct ^{power} _{hub} subject unit, despite GAIL having decided to lay its pipeline crossing project land.

29. I do not find much weight in plea taken by the respondent. Same is thus held liable to compensate the complainant.

30. So far as quantum of compensation is concerned, section 72 of Act of 2016 prescribes following factors, which are to

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be taken into consideration by the Adjudicating Officer while determining the amount 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.

31. As stated above, the respondent accepted the sale consideration from the complainant and used the same but did not fulfil its promise. In this way, the respondent gained undue benefit causing similar loss to the complainant.

32. According to complainant, same paid a total of Rs. 13,19,119/- out of total sale price of Rs. 45,02,418/-. This amount was paid starting from 31.05.2010 (when the unit in question was booked by paying an amount of Rs. 3,20,238/-) upto 25.01.2012. This fact is also not denied by respondent.

33. The complainant has prayed for compensation of Rs.10.00 lacs for harassment and breach of trust and again Rs.10.00 lacs on account of travel expense etc. It is contended that plot allotted to the complainant for a sale consideration of Rs.45,02,418/- would have fetched Rs.1.5 crore at this time, due to appreciation of prices. The complainant did not adduce any

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reliable evidence to prove aforesaid contention. Despite all this, a judicial notice can be taken of the fact that prices of houses in Gurugram have increased manifold, specially in last decade.

34. On being searched about the appreciation of value in residential property in Gurugram from 2012 (date of last payment by the complainant) to 2025, it is shown by 'AI Overview' that key areas in Gurugram like Dwarka Expressway and Golf Course Road experienced 100-120% growth in the decade leading to 2025, driven by infrastructure, corporate influx and demand for quality housing, leading to a seller's market with high capital appreciation and robust demand. Project in question is stated to be near Dwarka Expressway.

35. It is presumed that from 25.01.2012 (date of last payment of the complainant), the prices of houses/plots in Gurugram would have increased ^{at least} _{by} 100% till now. Complainant had paid Rs.13,19,119/- If the complainant had made this investment in some other similar project, same would have increased to Rs.26,38,238/-. This amount of Rs. 26,38,238/- is allowed to the complainant as compensation in this regard. ^(including amount already paid)

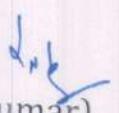
36. The complainant has also sought a compensation of Rs.10.00 lacs in the name of travelling expenses. All this is

remotely connected to the present case. However, from the record, it is clear that complainant was represented an advocate during proceedings of this case. Same is allowed a sum of Rs.50,000/- as litigation cost.

37. Complaint is thus allowed. Respondent is directed to pay said amounts along with interest at 10.85% per annum from the date of this order till realization of amount. Rule 15 of The Haryana Real Estate (Regulation and Development) Rules, 2017 provides that "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. At this time, the highest marginal cost of lending rate of State Bank of India is stated to be 8.85% per annum and hence interest is allowed @ 10.85% PA.

38. File be consigned to record room.

Announced in open Court today i.e. 14.11.2025.


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