

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

Complaint No.4496-2024

Date of Decision: 12.01.2026

1. Mr. M. Ramanathan, 2. Mrs. M. Kannupriya, both R/o F-502, Gurgaon One Apartment, Sector 84, Gurugram, Haryana-122004 (Earlier R/o H. No. 559, Sector 22B, Gurugram 122015).

Complainants

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-122002, Haryana.

Respondent

APPEARANCE

For Complainants:

In person.

For Respondent:

Mr. Shivaditya Mukherjee, Advocate.

ORDER

1. This is a complaint, filed by Mr. M. Ramanathan and Mrs. M. Kannupriya (allottees), under section 31 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.

*Sub
Ad*

2. According to complainants, they are law abiding citizens of India, who booked a residential apartment bearing plot no. 12 on the second floor of Block-F, having total built-up area of 781.25 Sq. Ft. in the project developed by "Vatika Limited" at 7th Court Street, Sector 82 Gurugram (Haryana). Subsequently they (complainants) entered into a Floor's Buyer Agreement (FBA) on 24.09.2009 with the respondent for Plot No. 12 having total sale consideration of INR 21,46,955/- along with IFMSD charges @ INR 50/- per Sq. Ft. amounting to INR 39,063/- thereby totaling INR 21,46,696/-. Thereafter, the respondent through addendums on various occasions i.e. 6th August 2013, 6th July 2017, 11th October 2017, changed the area of the plot multiple times. In all addendums, it was clearly stated that all the addendums were integral parts & parcels of the original FBA dated 24.09.2009 and all other terms and conditions of the FBA remained unaltered and effective.

3. That finally on 11.04.2023, the respondent sent an email to them (complainants) through one Mr. Shubham Sheoran from the CRM team of the respondent company, whereby for the first time offered the possession of their unit. The respondent offered possession of their flat, which was booked by them on 24.09.2009 i.e. after a lapse of almost 11 long years. In the said offer of possession, the respondent informed them

File
AO

(complainants) that 26.04.2023 will be the last date for getting the possession of Flat. Accordingly, they (complainants) approached the respondent on 20.04.2023 for the taking the possession of their Unit on 21.04.2023. It was confirmed by Mr. Shubham of the respondent company.

4. That as per the agreed schedule, the complainants went to take the physical possession of the Unit/Plot, however, the respondent asked them (complainants) to sign certain documents before issuing Possession Letter and handing over the keys of Unit. That to the utter surprise of the complainants, on perusal of the documents, it was revealed that the same is a conditional letter. The respondent has with its unlawful intention wants to condone the penalty with respect to the delay of almost 13 years in construction, which they (complainants) immediately refused, resultantly the respondent refused to give the possession letter/ hand over the possession of the unit.

5. That being aggrieved, the complainants preferred a complaint before the Hon'ble Haryana RERA Authority, Gurugram for adjudication of their grievance and dispute seeking delay penalty from the respondent and the Authority while observing that the respondent was in violation of the provisions of the RERA Act 2016 and Rules 2017, was pleased to award delay penalty in favour of the complainants.

hnb
A.O

6. That main grievance of the complainants in the present complaint is that they (complainants) made all the payments against the demand raised by the respondent as and when demanded by it, however despite making the said payments the respondent has failed to offer possession of the unit to the complainants causing huge financial loss as well as mental harassment. They (complainants) have suffered from acute financial losses.

7. Contending all this, the complainants have sought following compensation: -

(a) to direct the respondent to pay compensation for the rental cost/loss of Rs.54,00,000/- from 23.09.2012 (due date of possession till physical handover of the unit);

(b) to direct the respondent to pay compensation of Rs.5,00,000/- for causing mental agony;

(c) to direct the respondent to pay compensation of Rs.5,00,000/- for financial loss and agony;

(d) to direct the respondent to pay litigation cost of Rs.1,00,000/-;

(e) for any other relief which this Authority deems fit in favour of the complainants.

8. The respondent contested claim of complainants by filing a written reply. It is averred that the complainants inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project. The

complainants were well aware of terms and conditions of the application form and had agreed to sign it without any protest and demur.

9. That upon not receiving the instalments, respondent had issued instalment reminder dated 19.04.2010. The complainants failed to pay the instalment against the unit in question. Upon not receiving the instalment, the respondent was constrained to issue payment instalment due letter dated 30.12.2010. That it (respondent) at times duly intimated the complainants regarding the change in the unit number and the complainants had accepted the revised area and number of the floor with increased charges, without any protest and demur. Further, the complainants signed the Addendum dated 06.08.2013.

10. That the delay in project was beyond the control of the respondent. It (respondent) has already offered the possession to the complainants but the latter did not come ahead to take the possession rather decided to file complaint under reply to make unlawful gains.

11. That the complainants along with delayed possession charges on the paid-up amount are also receiving interest, which is to compensate the complainants for non-possession of the unit. The complainants voluntarily determined the rental loss and the property prices of the said

Sub
AO

unit. That the evidence for legal expenses is not reliable, as no invoices are annexed.

12. Citing reasons stated above, the respondent prayed for dismissal of this complaint.

13. Both of parties filed affidavits in evidence in support of their claims. I have heard complainants in person and learned counsel appearing on behalf of respondent and perused the record on file.

14. According to complainants, due date of possession as per FBA was 24.09.2012 but respondent failed to deliver possession ⁱⁿ at agreed time, causing loss to them. During deliberations, it is agreed by the complainants that they approached the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority, vide order dated 29.05.2024, copy of which has been put on file. The respondent in that case has been directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% per annum for every month of delay from due date of possession i.e. 24.09.2012 till the expiry of 2 months from the date of valid offer of possession or actual handover of possession, whichever is earlier, apart from some other reliefs.

Sub
AO

15. It is contended by the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016.

16. This Forum (AO) has jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Complainants claim that the respondent (promoter) failed to discharge its obligation of handing over possession, in agreed time as per terms and conditions of FBA and hence, liable to pay compensation.

17. Similarly, section 19 provides for the compensation in case promoter fails to complete or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with terms of agreement for sale or due to discontinuance of the business on account of suspension or revocation of registration under this Act.

18. In this way, when the complainants claim that promoter/respondent failed in this case to discharge its obligations under Builder Buyer Agreement, the Adjudicating Officer gets jurisdiction to

adjudge compensation but as it was mandated by the Hon'ble Apex Court in *M/s Newtech Promoters and Developers Private Limited versus State of UP & Ors. etc.*, it is for the Authority to entertain a complaint seeking delay possession compensation (DPC). Relevant portion of the Apex Court order is reproduced here as under: -

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint.

19. Further, it is worth mentioning here that complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides that where an allottee does not intend to withdraw from the

✓
Ad

project, he shall be paid by the promoter interest for every month of delay till handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

20. Following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra"** Appeal No. 70 of 2023 decided on 20.04.2023-----;

"13.9. If we were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

21. When complainant has already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate


24
AO

compensation for same cause of action i.e. delay in delivering of possession.

22. The complainants did not adduce any evidence to prove that the respondent forced them to sign some document before handing over possession of their unit, which they were not liable to sign. Complaint in hands is thus dismissed.

23. File be consigned to record room.

Announced in open court today i.e. on **12.01.2026**.


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

Present: Complainant in person.
Mr. Shivaditya Mukherjee, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
12.01.2026