

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

Complaint no. : 1544 of 2023
Date of Decision: 10.10.2025

Bharat Bajaj and Anr.

Address: - Flat no. 601, Tower-03,
Orchid Petals, Sector 49, Sohna Road,
Gurugram-122018

Complainants

Versus

M/S Vatika Limited

Address: - A-002, INXT City Centre Ground Floor,
Block A, Sector-83

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Abhijeet Gupta
Venket Rao

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant 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 allottee as per the agreement for sale executed inter se.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Professional Point", Sohna Road, Gurugram
2.	Project area	2.11 Acres
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	Not Available
5.	Rera registered/ not registered and validity status	Un-Registered
6.	Unit no.	1113, 11 th Floor [Page 21 of complaint]
7.	Unit Admeasuring	500 sq. ft. [Page 21 of complaint]
8.	Allotment Letter in favour of the original allottee i.e., Sunita Dhar	04.11.2009 [Page 16A of complaint]
9.	Date of endorsement in favour of the complainants	11.01.2011 [Page 43 of complaint]
10.	Builder-Buyer's Agreement	04.11.2009 [Page 18 of complaint]

11.	Possession clause and assured return clause	<p>2. <i>The Developer undertakes to complete the construction of the complex/Building within 2 (two) years from the date of execution of this Agreement. Since the Allottee has paid full sale consideration on signing of this Agreement, the Developer further undertakes to make payment of Rs.70/- (Rupees Seventy Only) 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 as mentioned herein until the building is ready for possession.</i></p> <p>[Page 22 of complaint]</p>
12.	Return on completion of the project and letting out of space	<p>N(j) j. Return on completion of project and letting out of space</p> <p>That on completion of project, the space would be let-out by the Developer at his own cost to a Bonafide lessee at a minimum rental of Rs. 70/- per sq. ft. per month less income tax at source. In the event of the Developer being unable to finalize the leasing arrangements, 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 project or till date the said unit/space is put on lease, whichever is earlier...</p> <p>[Page 33 of complaint]</p>
13.	Total Sale Consideration	<p>Rs. 17,50,000/-</p> <p>[Page 21 of complaint]</p>

14.	Total amount paid	Rs. 17,50,000/- [Page 21 of complaint]
15.	Occupancy Certificate	29.10.2013 (page 25 of reply)
16.	Offer of possession	Not Offered
17.	Legal possession given to the complainant on	04.09.2014 [As alleged by the respondent on page 3 of reply intimating that the unit is put on lease to M/s Emergent Ventures India Pvt. Ltd.]
18.	Assured return amount paid by the respondent till September 2017	Rs.27,97,379/- [Annexure R2, page 29 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That, in pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the former allottee considered booking of the commercial space in the project of respondent company named as "vatika professional point", situated at Sector-66, Gurugram.
- ii. That, relying upon the respondent's representations and being assured that the respondent would abide by their commitments, the former allottee purchased a unit bearing no. 1113, ad-measuring 500 sq. ft. located on 11th floor of the project.
- iii. That the Unit bearing No. 1113, ad-measuring 500 sq. Ft. located on

11th floor in the project of the respondent company was allocated to the former allottee vide allotment letter dated 04.11.2009. That vide clause iv) of the allotment letter, the respondent promised that the flat would be completed and ready for the lease by 31.10.2011.

- iv. That thereafter, the former allottee and the respondent executed a builder-buyer agreement dated 04.11.2009, wherein the rights and duties of both the parties were explicitly assigned.
- v. That it is pertinent to mention that the total sale consideration of the unit bearing no. 1113, ad-measuring 500 sq. ft. located on 11th floor was Rs. 17, 50,000.00/-.
- vi. That the Former Allottee paid the total amount of sale consideration vide two cheques, Cheque No. 911252 dated 06.10.2009 drawn on SBI of Rs. 1,00,000.00/- and Cheque No. 911253 dated 21.10.2009 drawn on SBI of Rs. 16,50,000.00/-.
- vii. That thereafter, upon the request from the former allottee, the respondent vide letter dated 11.01.2011, endorsed the builder-buyer agreement in favor of the complainants. It is pertinent to mention that the all rights and duties of the said unit was shifted from the former allottee to the complainants, after the necessary approvals from the respondent and payment of the amount.
- viii. That the respondent failed to complete the construction of the unit by 31.10.2011, as promised in the allotment letter. That the respondent continued paying the committed return to the complainants as per the clause 2 on page 5 of the builder buyer agreement. It is pertinent to mention that the construction work of the Unit was not completed on time.

- ix. That after a substantial delay, vide letter dated 04.09.2014, the respondent informed the complainants that they have successfully executed a lease deed of the 11th floor of the project including their unit. The Monthly Lease Rental was Rs. 75/- per Sq. Ft.
- x. That the respondent vide letter dated 20.11.2014, informed the complainants that the copies of addendum to builder buyer agreement dated 21.11.2014 has been sent to their address for execution, increasing the total sale consideration of the unit, in terms of the rental achieved over and above the committed return.
- xi. That it is pertinent to mention that the first lease rental was paid to the complainant was on 15.05.2015. Thereafter, the lease termination intimation was sent by the respondent on 29.12.2016, informing that the lease arrangement will be terminated with effect of 31.07.2017. That to the utter dismay of the complainants, the last lease rental paid by the respondent was for the month of October-2017.
- xii. That the respondent was charging the complainants on the head of maintenance charges and electricity bill, despite the lease was terminated with the former leasee. The complainants got frustrated with the conducts of the respondent and sent the letter dated 29.11.2018 regarding waiver of maintenance charges and electricity bill along with a request of continuation of rental after leasing the unit.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
 - i. To handover the actual, physical, vacant possession of the commercial space above said project.
 - ii. To direct the respondent to execute the sale deed in favor of the

complainants of the office space in above said project.

- iii. To direct the respondent to pay the assured return/lease rental as per the BBA.
 - iv. To direct the respondent to pay the delay penalty charges with interest as per RERA Act.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. It is submitted that the present complaint is hopelessly barred by law of limitation. The subject unit was put on lease on 04.09.2014, which is legal possession of the unit as per the builder buyer agreement dated 04.11.2009 and the occupation certificate was received on 29.10.2013 by the respondent. Therefore, the cause of action, if any, accrued either on 29.10.2013 or 04.09.2014. However, the present complaint has been filed only on 30.03.2023. There is a delay of more than 7 years 6 months from the execution of lease deed of the subject unit, in filing of the complaint. It is clear that the present complaint has only been filed as an afterthought without any basis and with malafide intent on behalf of the complainants to take undue advantage at the expense of the respondent and is liable to be dismissed being an abuse of the process of law.
 - ii. That the respondent has obtained occupation certificate on 23.10.2013 and also gave legal possession to the complainants on 04.09.2014. The complainants have also enjoyed the benefits of the lease rentals also for

a period of 3 years i.e. till year 2017. The respondent was also ready to execute the conveyance deed but it is the complainants who were delaying the payment of stamp duty for the execution of the same. The complainants have filed this complaint in the year 2023 which is after the delay of 7 years from the date of legal possession of the unit, which is beyond the limitation period.

- iii. The present complaint is filed after the expiry of 3 years from the date of receiving legal possession and obtaining of occupation certificate. It is pertinent to mention herein that since more than 3 years has elapsed, the present complaint is not maintainable before the Ld. Authority and the same shall be dismissed.
- iv. That it is an established fact herein that the Complainants booked the Unit with the Respondent for investment purposes. The said Complainants herein are not an "Allottee", as the Complainants approached the Respondent with an investment opportunity in the form of a steady rental income from the commercial units.
- v. Initially in the year 2009, Mrs. Sunita Dhar, being in search of investment opportunities, learned about the Project launched by the Respondent, titled as "Vatika Professional Point". That after having dire interest in the Project constructed by the Respondent, the Original Allottee decided to invest and thus, booked a Unit under the assured return scheme, vide Application Form dated 06.10.2009.
- vi. The respondent vide allotment letter dated 04.11.2009, allotted the unit bearing no. 1113 at 11th floor, admeasuring 500 sq. ft. to the original allottee in the aforesaid project. It is pertinent to note that as per clause iv of the allotment letter, the respondent speculated that the unit shall

be completed and ready for lease by 31.10.2011, and if the it is not ready by that date, the respondent shall be paying rentals till the unit is put on lease. It can be interpreted from the said clause that the date of completion was tentative rather than being fixed date for completion. It is also submitted that the promised rentals shall only be paid till the unit is put on lease.

- vii. That on the same date, the builder buyer agreement dated 04.11.2009, was executed between the original allottee and the respondent for the unit, for a total sale consideration of Rs.17,50,000/- in the project. However, upon knowing the assured return of Rs. 17,50,000/- for making monthly returns.
- viii. That for the reason best known to him, the original allottee approached the respondent with an application dated 22.12.2010, to endorse/transfer/assign the unit in favour of the complainants. And, upon receiving the said request of the respondent vide assignment letter dated 11.01.2011, transferred unit no. 1113, in favour of complainants.
- ix. Hence, it can be established from the above Clauses that the lease rental of Rs. 70/- per sq. ft. per month has to be paid till completion of construction or till the unit is put on lease only. After the completion of construction, when unit is put on lease, the Respondent obligation to pay the assured return ceases from that day onwards. It is to note that the subject unit was already put on lease by the Respondent on 04.09.2014.
- x. That the respondent was able to complete the construction in due time and applied for occupation certificate with the concerned authority. The concerned authority after following due procedure, granted occupation certificate to the respondent for the aforesaid project on 29.10.2013.

After receiving the occupation certificate, the respondent requested the complainants to visit the office of the respondent for the execution of conveyance deed, but the complainants failed to do so.

- xi. It is submitted that the complainants were well aware of the fact that the unit in question being commercial in nature was subject to be leased out upon completion and the same was evidently mentioned and agreed by the complainants in the agreement dated 04.11.2009.
- xii. It is a matter of fact, that the unit in question was deemed to be leased out upon completion. As the complainants had mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.
- xiii. That the respondent vide letter dated 04.09.2014, through Lincoln Developers Pvt Ltd., the company to which the managerial rights of the project has been given, informed to the complainants that the subject unit of the complainants is given on lease to M/s Emergent Ventures India Pvt. Ltd. at a monthly lease rental of Rs. 75/- per sq. ft., which is the higher than the lease rent promised by the respondent in the agreement. It is pertinent to note that as the subject unit was put on lease, the respondent obligation to pay the assured return at Rs. 70/- per sq. ft. per month, ceased from that day onwards. Also, as the respondent was able to lease the unit at a higher rate, the complainants were obligated to pay an additional sale consideration as per the agreement.
- xiv. That the Complainants are trying to hoodwink the Ld. Authority by concealing facts which are detrimental to this complaint at hand. Therefore, the said Allotment of the said Commercial Unit contained a "Lease Clause" which empowers the Developer to put a unit of

- Complainants along with other commercial space unit on lease and does not have "Possession Clauses", for physical possession.
- xv. That the agreement, clearly stipulated provisions for "lease" and admittedly contained a "leasing clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants are not "Allottee" but investors who have invested the money for making steady monthly returns.
- xvi. As the respondent has leased out the subject unit at Rs. 75/- per sq. ft per month, the complainants were obligated to pay the additional sale consideration for the unit. Therefore, the addendum was sent for signing but the complainants in order to escape its liability of paying the additional sale consideration, refused to sign the addendum or pay the requisite amount.
- xvii. It is also to bring to the knowledge of the Ld. Authority that the Complainants were paid the assured return at Rs. 70/- per sq. ft per month until the completion of construction of the unit and till the unit was put on lease. If the Ld. Authority allows the relief of delay interest than it shall allow the same after deduction of the amount already paid as assured return from the due date of possession till the unit is put on lease.
- xviii. That the respondent vide letter dated 29.12.2016, intimated the complainants that the lessee shall be vacating the premises w.e.f. 31.07.2017, and the lease rentals shall cease and requested the complainants to refund the security deposit before 20.01.2017. It is pertinent to mention herein that the Respondent as per the statement of account annexed with the Complaint as Annexure G, has paid

commitment charges and lease rentals till September, 2018. The Respondent on regular basis is marketing the units of the Project for leasing purposes and as soon as the unit of the Complainants will be put on lease, the lease rentals of the Complainants shall also commence.

- xix. That the complainants vide letter dated 29.11.2018, threatened the respondent by stating that the respondent shall either waive off the maintenance charges and pay rentals @ 75 per sq. ft. till date of leasing out or the complainants shall move to the court on humanitarian grounds. it is pertinent to mention herein that the respondent has no obligation to pay the lease rentals at its own expense as per the agreement and the respondent obligation to pay assured return has ceased on the date the unit was first put on lease i.e. 04.09.2014.
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 submission made by the parties.

E. Jurisdiction of the Authority

8. The authority observed that it has territorial as well as 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 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 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 of 2016 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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I To handover the actual, physical, vacant possession of the commercial space above said project.

F.II To direct the respondent to execute the sale deed in favor of the complainants of the office space in above said project.

F.III To direct the respondent to pay the assured return/lease rental as per the BBA.

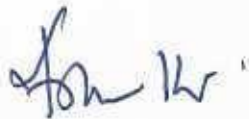
F.IV To direct the respondent to pay the delay penalty charges with

interest as per RERA Act.

12. It is an admitted position on record that the Complainants was allotted Unit No. 1113, 11th floor admeasuring 500 sq. ft. in the project "Vatika Professional Point", Sohna Road, Gurugram, developed by the Respondent. The allotment was made in the favour of original allottee vide allotment letter dated 04.11.2009 and the buyer agreement was executed between the parties on 04.11.2009. Thereafter, the original allottee endorsed the said unit in the favour of the complainants on 11.01.2011. The total sale consideration of the said unit was ₹17,50,000/-out of which the Complainant has already paid a sum of ₹17,50,000/- to the Respondent.
13. It is further established from the record that the Occupation Certificate (OC) for the project were issued by the competent authority on 29.10.2013. These documents demonstrate that the project has since attained completion status.
14. The present complaint was instituted on 03.04.2023, nearly ten (10) years after the occupation certificate dated 29.10.2013. Such an extraordinary delay has neither been satisfactorily explained nor justified by the Complainant at any stage of the proceedings. The material available on record reflects prolonged and complete inaction on the part of the Complainant for more than a decade from the date of occupation certificate until the filing of the present complaint. The Complainant did not take any steps to assert or pursue the alleged rights nor approached any appropriate forum during this entire period. This unexplained and inordinate delay defeats the very object of timely redressal contemplated under the Act.

15. While the Act aims to safeguard the interests of allottees, such protection cannot be extended to revive claims that have remained dormant for years, particularly when the occupation certificate is already obtained by the Competent Authority. Entertaining such stale claims would run contrary to well-settled principles of equity, limitation, and jurisprudence.
16. One such principle is that delay and laches 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.
17. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. 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.

18. In view of the facts noted hereinabove and the principles applicable thereto, the Authority is of the considered view that the present complaint is not maintainable. The Complainant has remained dormant for an unduly long period without asserting his rights, and the law does not come to the aid of those who sleep over their rights for an unreasonable length of time.
19. It is a settled principle of natural justice that no person's right should be prejudiced due to the unexplained inaction or negligence of another. In the present matter, the Complainant has failed to offer any justification for the inordinate delay of nearly a decade. In these circumstances, the complaint is held to be non-maintainable, and the reliefs prayed for cannot be granted.
20. Complaint as well as applications, if any, stands disposed off accordingly.
21. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2025