

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

Complaint no.:	7303 of 2022
Date of filing:	21.11.2022
Date of Order:	09.12.2025

1. Kawaljit Singh Nandra
2. Satinder Kaur Nandra

**Both R/o - WZ-126, First Floor, G- Block, Hari Nagar,
New Delhi-110058.**

Complainants

Versus

1. M/s Vatika Ltd.
2. Gautam Bhalla (Managing Director)
3. Anjali Agrawal (Authorised Signatory)

All having Regt. Office address: Vatika Limited/ Next India Centre, Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram, Haryana-122012.

4. Ashwani Kumar Verma (Proprietor Divine Developer)

Regt. Office at: 140, Sector-27, Gurugram, Haryana.

Respondents

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Navneet Sharma (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondent No.1

ORDER

1. The present complaint has been filed by the complainants/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 as provided under the provision 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. Project and unit related details

2. The particulars of the project, the amount 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 India Next, Sector 82, Gurugram
2.	Project area	19.70 acres
3.	Nature of Project	Residential plotted colony
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.08 Valid up to 31.05.2010
5.	RERA registered/ not registered and validity status	Registered 359 of 2017 dated 17.11.2017 Valid up to 30.04.2021
6.	Unit no.	7, block - D-3 (page 38 of complaint)
7.	Unit area admeasuring	360 sq. yards. (as per BBA page 37 of complaint)
8.	Builder buyer agreement	17.05.2012 (page 36 of complaint)
9.	Possession Clause	10. The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete development of the said Residential Plot within a period of 3 (Three) years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee (s) to pay in time the price of the said

		<i>Residential Plot along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-II or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i>
10.	Due date of possession	17.05.2015 (Note: The due date of possession is calculated three (3) years from the date of execution of this agreement)
11.	Re-allotment letter	24.12.2016 (as per page no.56 of complaint)
12.	Total Sale Consideration	Rs.1,95,61,140/- (as per BBA page 37 of complaint)
13.	Amount paid by complainant	Rs.99,20,291/- (as per receipt at page no. 47-55 by of complaint)
14.	Completion certificate	Not obtained
15.	Offer of possession	Not offered
16.	Email from respondent w.r.t offer of refund without interest & without deductions, as the respondent was unable to handover the unit due to GAIL corridor	25.02.2022 (as per page no.57 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - i. That the complainants are law abide citizens and are residing at WZ-126, 1st Floor, G Block, Hari Nagar, New Delhi-110058.
 - ii. That the respondent no. 1 is an infrastructure company and engaged in developing of land/ plots and construction of apartments/business parks and commercial building under the different project names. One of such projects namely "Vatika India Next" was launched by the respondent no. 1 on the plot of land in the sector 82, 82A, 83, 84 & 85 Gurugram licensed by the Directorate of Town and Country Planning,

Govt. of Haryana for development of the residential plots to be sold to the prospective buyers.

- iii. That respondent no. 2 is the managing director of respondent no. 1 and is responsible for day-to-day affairs of respondent no. 1. The respondent no. 3 is authorised signatory of respondent no. 1 and is duly authorised by respondent no.1 to sign and execute all necessary agreements and receipts on behalf of respondent no.1. The respondent no.4 is an authorised agent of respondent no.1.
- iv. That to promote the said project, the respondent no.1 came out with various advertisements and put up hoardings at various places and also approached the prospective buyers through its authorised representatives/marketing agents. That believing the truth of the claims in the advertisements/ representations, complainants got induced and as such by such inducement they came in contact with the respondent no.4 who is the authorised representative of the respondent no.1 and whose phone number was duly published in the advertisements as the person to be contacted.
- v. That the respondent no.4 who is the authorised agent of the respondent no.1, sent one of the employee/ representatives to the above stated address of the complainants to elaborate and to discuss the details of the above-mentioned project namely "Vatika India Next". The said employee/representative of the respondent no.4 elaborated and presented the above said project in such a fanciful manner and quite a rosy picture was painted by him about the future prospects of the said project related to growth and development of the area with unparalleled facilities and in particular about the credibility of the respondent no.1 as the company. That the complainants having believed the misrepresentations about the credibility of the respondent no. 1, got

induced to purchase a plot of 360 sq. yards at the rate of Rs.50,136.50/- per sq. yards, amounting to Rs.1,95,61,140/- plus IFMSD charges of Rs.54,000/-.

- vi. That in furtherance of such inducement and misrepresentation made by the respondent no.1 through its authorised agent i.e. the respondent no.4 and his employee/ representative, a meeting was fixed by the respondent no.4 i.e. the authorised represented with the complainants at the residence of the complainants as mentioned above to get the application form signed along with booking amount of Rs.9,02,466/- paid through draft no. 175134 dated 01.09.2011 drawn on standard chartered bank and on the same day plot buyer agreement was also executed between the respondent no.1 and the complainants.
- vii. That after the signing of the application form and the agreement and issuing of draft for the booking amount the respondent no. 1 through its managing director i.e. the respondent no.2 and its authorised agent i.e. respondent no.4 assured the complainants that the said agreement shall be delivered in 15 days from the date of filling of the application and clearance of draft issued by the complainants which were duly cleared and credited into the bank account of the respondent no.1. But the said agreement was not delivered to the complainants even after the expiry of 15 days from the clearance of the abovesaid draft. As such the complainants made various calls to the office of the respondent no.1 and respondent no.2 and also the respondent no.4, but all efforts of the complainants proved futile and ultimately the complainants personally approached the office of the respondent no.1 and the respondent no. 2 and met the customer care department officials of the respondent no.1 & 2 and made complaint regarding the non-delivery of the agreement but they assured the complainants that due to the non-availability of the

signing authority i.e. respondent no.3, they could not deliver the agreement and they assured the complainants that the agreement shall be delivered to the complainants in a month time and as such those employees again misrepresented for the same to the complainants on behalf of the respondent nos.1 & 2.

- viii. That the complainants under the genuine belief and in part under the inducement and misrepresentation by the respondent no.1 to 4, made the payments as per the schedule given to them at the time of signing of the agreement and application by the complainants i.e. on 1.09.2011 and eventually the complainants ended up in paying up Rs.46,02,466/- till 08.02.2012 without receiving any agreement even after four months from the date of submitting application form and signing the agreement but the complainants did not receive the agreement duly executed by the signing authority i.e. respondent no.3 of the respondent no.1 & 2.
- ix. Similarly, whenever the complainants approached customer care department officials of the respondent no.1, they also gave false assurances that said Agreement shall be delivered after some time as the same is in the process of their system and complainants should not worry about the Agreement, meanwhile my client had already paid Rs.46,02,466/- as per the Schedule provided by the respondent no.4. Authorised Agent on behalf of the respondent no.1, through its director i.e. respondent no. 2. That complainants have booked the abovesaid flat on 01.09.2011 and the agreement was signed and executed on 01.09.2011 only but the same was delivered to the complainants in the month of July 2012 only by the respondents and mentioned the date of execution of the agreement as 17.05.2012.
- x. That by this misconduct on behalf of all the respondents i.e., from respondent nos.1 to 4 and deliberate delay in delivery of the agreement

has resulted in delay of approximately eight months in delivery of the possession of the plot where as per the agreement it is stated that the plot shall be delivered in three years from the date of agreement. That the misconduct of all the respondents that such delay of eight months was deliberate on part of the respondent no.1 to 4 and they all acted in collusion resulting in delay of the delivery of the plot and as such using the money of the complainants for their own use and disposal and resulted into the irreparable injury to the complainants in as much as the complainants have availed the loan from the bank for abovesaid payment and are regularly paying the monthly interest on loan amount.

xi. That in the month of July 2012, when the complainants received the agreement, approximately after nine months after booking of the plot, the complainants were intimated that they have been allotted the plot bearing no. 7, Street No. 82, D-3 Block D, Sector 82 admeasuring 360. Sq. Yards, Vatika India Next as stated in the Agreement. That it is pertinent to mention herein that if the Agreement had been delivered to the complainants in due time, they would have been entitled to the plot eight months earlier. Moreover, no reasonable justification for this delay has been given by the Respondents at any point of time which clearly shows that the malafide intention of all the respondents as they acted in collusion with each other resulting in wrongful loss to the complainants and wrongful gain to all the respondents. That the respondent no. 3 is the employee of respondent no.1 which in itself is represented by the respondent no.2, who is the director of the respondent no.1 and is directly involved and responsible for day to day affairs of the respondent no.1 and the respondent no.4 is the authorised agent of the respondent no.1 engaged by the respondent no.1 through the respondent no.2 and to represent and work on behalf of the respondent no.1. As such the

respondent no.1 & 2 both are liable for the acts and conduct and misrepresentation by the respondent no.4.

xii. That in the month of December, 2016, the respondent no.1 through the respondent nos.2 & 3 sent a letter dated 24.12.2016 stating that they are re-allotting the plot which has already been allotted through the agreement to the complainants, citing the various vague and frivolous reasons stating as "there has been revision in the Master Layout plan due to certain fine tunings and amendments in the master lay out necessitated due to architectural and other related considerations. it submitted that vide said letter dated 24.12.2016 the respondents called upon the complainants to appear and to remain present on 04.06.2017 to accept the re-allotment of the plot as such without any discretion to choose the site or plot or location. Moreover, the complainants, due to the pre decided schedule and appointment could not appear or made themselves present on such date and due to this conduct of the respondents, complainants' right to be heard and to present the memorandum of grievances was lost as the Respondent no.1 through the respondent no.2 re-allotted the plot with his own discretion, whims and fancies and without considering the location and situation of the previously allotted plot. That the complainants along with some other allottees requested the respondent no.1 and respondent no.2 through customer care officials and made the representations to them about the re-allotment as the site at which the re-allotment of the plot was to be made is very poorly located in comparison to the site on which the earlier plot was allotted to the complainants and other customers of the respondent no.1.

xiii. That after the several meetings and representations made by the complainants to the customer care officials of the respondent nos.1

& 2, the complainants were assured that a meeting would be fixed at the site/ location on which the said plot was to be allotted to the complainants and there itself, all the queries and doubts of the complainants would be answered by the concerned officials of the respondent nos.1 & 2.

xiv. That on such meeting having been held with the officials of the respondent no.1 & 2 and the complainants at the abovementioned site, the complainants have clearly communicated to the above said concerned officials of the respondent nos. 1 & 2 that the present site is very disadvantageously located in comparison to the previous site on which the earlier plot was allotted and located. That the site to be re allotted was very far away from the main road and most importantly as per the new plans/ layout plans the roads were narrower in comparison to previous plan. Thus, it can be clearly said that the new lay out plan is poorly designed and selected at vary inferior site /location in comparison to the previous site where the plot was allotted earlier. Not only that even the security concerns were not properly addressed in the said plain in as much as the original/earlier allotment of plot was in the gated society that was having a boundary all around providing the fulltime security from the unauthorised and unwanted entrants/trespassers even if no guard is there. But now in the re allotment, the plot that was allocated to the complainants by the respondent nos.1 & 2 is on the sub lane across which the village is located and traffic run through it day and night on such road.

xv. That the complainants had booked the plot for residential purpose having some expectation and images of the residence in their mind and which was promised and assured to be fulfilled by the respondent no.4 i.e. the authorised agent of the respondent nos.1 & 2, but now after the

new layout plan all the expectations and dreams of the complainants have got shattered and what was being offered is something which the complainants never wished for was never contemplated by the complainants. As such the respondent having miserably failed to honour its commitments under the agreement, is in violation of the principal terms of the agreement and as such the complainants were constrained to rescind the agreement and seek the refund of the amount paid by them towards the sale price of the plot booked initially.

- xvi. That on the persuasion of the complainants, on 25.02.2022 a mail was received by the complainants on behalf of the respondent no.1 stating that the "we will offer you refund without interest and without deductions". It is in itself clearly indicates that respondents are jointly and severally responsible and liable to pay the principal amount paid by the complainants along with the interest @18% per annum or any other penalties that may be imposed on them.
- xvii. That the complainants are entitled for delayed interest @18% per annum at the same rate as charged by the respondent no.1 for delayed payment. That the respondents have misappropriated the money paid by the complainants towards the sale consideration of the plot in issue. As such the respondents are jointly and severally are liable to return the entire amount paid by the complainants i.e., Rs.99,20,291/- along with the interest on the said amount @18% per annum which comes out to be Rs.1,77,91,663/- calculated up to 30.09.2022. As such a total sum of Rs.2,77,11,954/- is to be returned to the complainants by the respondents jointly and severally.

C. Relief sought by the complainants:

- 4. The complainants have sought following relief(s):

- a. Direct the respondents to refund the entire amount of Rs.99,20,291/- paid by the complainants along with the prescribed rate of interest @ 18% per annum till realisation.
5. On the date of hearing, the authority explained to the respondent/ promoters 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 contested the complaint on following grounds:
 - i. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
 - ii. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.05.2012 as shall be evident from the submissions made in the following paragraphs of the present reply.
 - iii. That the complainants are not "allotees" but investors who has booked the said unit in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
 - iv. That the complainants approached the respondents and expressed interest in booking of a residential plot in the residential group housing colony developed by respondents known as "Vatika India Next" situated in Sector 82-85, Gurgaon, Haryana. Prior to the booking, the

complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondents, to book the unit in question.

- v. That thereafter the complainants, vide an application form dated 01.09.2011 applied to the respondents for provisional allotment of the unit. Pursuant thereto, unit tentatively bearing no TWN-003/Plot No. 7/ST.82D3-4/360 sq. yards, Plot No. 7, Block D, Sector-82, admeasuring 360 sq. yards (tentative unit and area) was allotted to the complainants. The complainants opted for a construction linked payment plan and further represented to the respondents that they shall remit every instalment on time as per the payment schedule. That the copy of the application form dated 01.09.2011 issued by the respondents for provisional allotment of the unit along with the schedule of payment.
- vi. Thereafter, a buyer's agreement dated 17.05.2012 was executed between the complainants and the respondents. That the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- vii. That pursuant thereto, due to some changes or modifications as per the approved sanctioned plans in the said project, the complainants were called upon vide letter dated 24.12.2016 for re-allotment of their unit in the said project. That the said position was explained and understood by the complainants. The said re-allotment of the said unit is within the terms and conditions of the agreement and within the permissible limits as per the Model RERA Agreement and hence no contention/allegation in regard to the same can be accepted.

- viii. That as per clause 10 of the agreement, the due date of possession was subject to the complainants having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That the rights and obligations of the allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect. That the respondents have completed its part of obligations well within time by handing over the possession of the said unit within the stipulated time.
- ix. Furthermore, the delivery of possession was also subject to the force majeure circumstances as under clause 13, 15, and 36 of the agreement.
- x. That from the facts indicated above and documents appended, it is comprehensively established that a period of 347 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement.
- xi. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondents/ builder. That it must also be noted that the respondents had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants, however, despite all the hardships faced by the respondents, the respondents did not

suspend the construction and managed to keep the project afloat through all the adversities.

- xii. That there is no intentional delay on part of the respondents in adhering to the terms and conditions of the agreement. That due to force majeure conditions and events outside the power of the respondents, are the cause of the present delay. That there arose no cause of action whatsoever, in the present instance. That the respondents have not defaulted the agreement or the Act, in any manner whatsoever as the respondents are not in control of the Force Majeure conditions. That the Hon'ble Real Estate Regulatory Authority, Gurugram had granted the Registration Certificate to the project of the respondent bearing No. 359 of 2017 dated 17.11.2017 which was valid for a period of 41 months i.e., 30.04.2021.
- xiii. That no such agreement, as referred to under the provisions of 2016 Act and 2017 rules, has been executed between the parties. Rather, the Agreement that has been referred to for the purpose of getting the adjudication of the complaint though without jurisdiction is the builder buyer's agreement, executed much prior to coming into force of 2017 Rules.
- xiv. That the adjudication of the complaint for refund and interest as provided under Sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 rules and no other agreement. This submission of the respondents inter alia, finds support from reading of the provisions of 2016 Act as well as 2017 rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to them.

xv. That it has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the 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 contemplated to complete construction of the said building/ said apartment unit within a period of 3 years from the date of execution of the agreement and which period would automatically stand extended. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond its control, then it would be automatically entitled to the extension of time for delivery of possession. Further the respondents may also suspend the project for such period as it may consider expedient.

xvi. 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:

- a. 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 constrained it 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 it was forced to re-evaluate its construction plans which caused a long delay
- b. 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.
- c. Re-routing of High-Tension lines passing through the land resulting in inevitable change in the lay out plans and causing unnecessary delay in development.
- d. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were ban imposed on construction activities for a total period of 70 days between November 2016 to December, 2019.
- e. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labour regularly travelling away from Delhi-NCR to avail benefits of the

scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain labour for longer and stable periods of time and complete construction in a smooth flow.

- f. Disruptions caused in the supply of stone and sand aggregated, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- g. Disruptions caused by unusually heavy rains in Gurgaon every year.
- h. Due to the slum in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- i. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- j. Declaration of Gurgaon as a Notified Area for the purpose of groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- k. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- l. Additionally, imposition of several partial restrictions from time prevented the Respondents from continuing construction work and ensuring fast construction. Some of these partial restrictions are: Construction activities could not be carried out between 6 p.m. to 6 am. for 174 days, The usage of Diesel Generator Sets was prohibited for 128 days, The entries of trucks into Delhi were restricted, Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers, Stringently enforced rules for dust control in construction activities and close non-compliant sites.

xvii. That the imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondents with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondents were continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondents would have to disband the group of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.

- xviii. That the respondents submits that the plot in question cannot be handed over at this stage as approach road was not constructed.
- xix. No cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. That the project got delayed due to reasons beyond the control of the respondents. Therefore, there is no default or lapse on the part of the respondents and there in no equity in favor of the complainants.
- xx. That of the total sale consideration of Rs.1,96,54,540/- only a sum of Rs.99,20,291/- has been paid by the complainants.
- xxi. That in light of the bona fide conduct of the respondents, delay cause is beyond the control of the respondents, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with costs in favor of the respondents.

7. All other averments made by the complainants denied in total.
8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the Authority

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

11. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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 complainant at a later stage.

13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down 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. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objection raised by the respondents.

F.I Objection regarding maintainability of complaint on account of complainant being investor.

15. The respondent took a stand that the complainants are investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through

sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

16. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondents to refund the entire amount of Rs.99,20,291/- paid by the complainants along with the prescribed rate of interest @ 18% per annum till realisation.

17. In the present case, the complainants booked a unit/ plot in the project of the respondent namely "Vatika India Next" by Vatika India Next, Gurgaon. They were allotted a unit no. Plot no. 7 in Block - D3, admeasuring 360 sq. yds. vide a builder buyer agreement was executed between the complainants-allotees and the respondent-promoter on 17.05.2012. thereafter, vide re-allotment letter dated 24.12.2016, the complainants were re-allotted the subject unit. Subsequently, on 25.02.2022, the respondent no.1/ promoter sent an email to the complainants w.r.t offer of refund without interest & without deductions, as the respondent was unable to handover the unit due to GAIL corridor. In the present complaint, the complainants intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,- in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided 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 the possession, at such rate as may be prescribed."

(Emphasis supplied)

18. Clause 10 of the buyer's agreement dated 17.05.2012 provides the time period of handing over possession and the same is reproduced below:

10 Schedule for possession of the said residential plot

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete development of the said Residential Plot within a period of 3 (Three) years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee (s) to pay in time the price of the said Residential Plot along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-II or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.

(Emphasis Supplied)"

19. As per clause 10 of the plot buyer agreement dated 17.05.2012 the unit/plot was to be offered within a period of 3 years to the complainants-allottees. As per clause 10 of the builder buyer agreement the due date of possession comes out to be 17.05.2015. The completion certificate of the project where the unit is located has still not been obtained by the respondent-promoter. The Authority is of the view that the allottee(s) cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo**

Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.

“...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

20. It has come on record that against the sale consideration of Rs.1,95,61,140/-, the complainants have paid an amount of Rs.99,20,291/- to the respondent-promoter. However, the complainants contended that the due date of possession has been lapsed and No completion certificate has been obtained against the said project by the respondent and subsequently, on 25.02.2022, the respondent has sent an email to the complainants by submitting that the unit was not available due to passing of GAIL pipeline through the project and is unable to give deliver the project. Hence, in case if allottee(s) wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner

provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. This is without prejudice to any other remedy available to the allottee(s) including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under Sections 71 & 72 read with Section 31(1) of the Act of 2016.
23. **Admissibility of refund along with prescribed rate of interest:** The Section 18 of the Act read with Rule 15 of the Rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided 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]

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."

24. The legislature in its wisdom in the subordinate legislation under the provision of 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.

25. 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., 09.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

26. The definition of term "interest" as defined under Section 2(za)(ii) of the Act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. 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—

... (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, ...

27. Therefore, The Authority hereby directs the promoter/ respondent no.1 to return the amount received by it i.e., Rs.99,20,291/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules ibid.

H. Directions of the Authority:

28. 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 no.1/promoter is directed to refund the entire amount i.e., Rs.99,20,291/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
- b. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

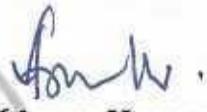
29. Complaint stands disposed of.

30. File be consigned to the registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram



(Arun Kumar)
Chairman

Dated: 09.12.2025



HARERA
GURUGRAM