

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

Complaint no.: 6102 of 2024
Date of filing of complaint: 18.12.2024
Date of Order: 06.01.2026

1. Rajneesh Mahajan
2. Richa Mahajan

Complainants

Both R/o: - A-41, Sushant Apartments, Sushant Lok-1,
Gurugram-122001

Versus

M/s Vatika Limited.

Respondent

Regd. office at: Unit A-002, INXT City Centre,
Ground Floor, Block A, Sector-83, Vatika India
Next, Gurugram- 122012

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Akhil Agarwal(Advocate)
Shri Vikram Bhaskar (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana.
2.	Nature of project	Commercial Complex
3.	unit no.	1004, 10 th floor, Tower-D in "Vatika Next City Centre" (As per page no. 35 of the complaint)
4.	Unit area (in super area)	495.89 sq. ft. (As per page no. 35 of the complaint)
5.	Application of booking	15.09.2016 (As mentioned in BBA on page no. 35 of the complaint)
6.	Date of execution of buyer's agreement	28.02.2019 (Only signed by the complainant) (As per page no. 33 of the complaint)
7.	Completion Clause	7.1 Schedule for possession of the said commercial space/unit <i>Subject to timely payment of amounts due by the allottee to the promoter per agreed payment plan, as given in schedule D of the agreement and clause 18 of the present agreement, the promoter agrees and understands that timely delivery of possession of the commercial space/ unit to the allottee(s) and the common areas</i>

		<i>to the association of Allottee(s) or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017 is the essence of this agreement.</i> (As per page no. 42 of the complaint)
8.	Due date of Possession	To be ascertained
9.	Total sale consideration	Rs.84,50,392/- (As per SOA on page no. 27 of the complaint)
10.	Amount paid by the complainants	Rs.90,42,330 /- (As per SOA on page no. 28 of complaint)
11.	Intimation for possession	03.01.2018 (As per page no. 229 of the complaint)
12.	Occupation certificate	05.01.2021 (As per page no. 116 of the complaint)
13.	Intimation of Termination	18.06.2019 (As per page no. 115 of the complaint)
14.	Legal notice for possession	18.10.2024 (As per page no. 118 of the complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions:
 - I. That the present complaint is being filed by Rajneesh Mahajan and Richa Mahajan. That the complainants have spent their life long earnings in the project on the basis of tall assurances, promises and claims of the respondent which has proved to be false, misleading and fraudulent.
 - II. That the respondent approached the complainants and sold a palace of dreams to the complainants in order to lure them into investing



in the project by claiming the project to be an “*iconic and shining landmark*” in New Gurgaon. The respondent informed the complainants that all the shops in the retail shopping complex i.e., Block A, B and C of the Vatika Town Square are already sold out and the commercial spaces in the project were being sold for which the construction was in full swing and was likely to be completed soon. The respondent further assured the complainants of huge return on investment of the project by making the following claims/assurances/promises:

- i. The project was claimed to be situated at the entrance hub of the 700 acre “*Mega Integrated Township – Vatika India Next*”. Vatika Town Square is situated at the main entrance to commercial and residential hub on the junction of National Highway and Dwarka express way and is prime location.
 - ii. By the end of June, 2016, construction of Dwarka Expressway Road shall also be complete.
 - iii. By the end of June, 2016, Kherki Dhoola toll will be shifted by 8 kms. towards Manesar and the project, resultantly, shall have a better access since toll payment and traffic shall be avoided.
 - iv. The respondent itself shall occupy three floors of the project for its own use.
- III. That based on the tempting and magnificent claims, assurances and proposals of the respondent, the complainants were lured into buying a unit in the project. The respondent made the complainants pay the huge amount of Rs.8,66,953/- as booking amount and earnest money at the time of booking. Under the threat of forfeiting the booking amount, the respondent kept on making several demands from the complainants.
- IV. That the complainants had booked the unit no. D-1004 located on 10th floor of the building block no. D admeasuring 838 sq. ft. (super area). The sale price of the above-mentioned unit as agreed between

the parties was Rs.83,80,000/- and the complainants, under your undue influence, misrepresentations and fraudulent practices, have paid a total amount of Rs.90,42,330/- till date.

- V. That despite having received this huge amount from complainants, the respondent has till date not returned signed copy of the unit buyers' agreement to complainants. In this regard it is pertinent to note that initially the respondent sent a draft agreement to complainants in 2017 which was never returned despite repeated emails issued by complainants and their broker in this regard.
- VI. That to the surprise of complainants, the respondent sent an entirely new set of agreement on 23.04.2019. However, the same has also not been returned to complainants by the respondent with signatures till date despite various emails issued by complainants which have also not been responded to till date.
- VII. That without even entering into agreement, the respondent continued to raise demands and received the above-mentioned sum of money from complainants by adopting illegal practices and abusing your dominant position. As apparent from the record, elaborated herein below as well, the respondent's sole intention has been to play fraud on complainants and also to usurp their hard-earned money and make financial gains at the cost of complainants.
- VIII. That as per the form submitted by respondent to the Hon'ble Authority as well, the due date of possession was stated to be 30.07.2018. However, till date no offer of possession has been made by the respondent to the complainants.
- IX. That the respondent illegally issued letter dated 16.11.2017 to the complainants despite having not even completed the project and the question of obtaining occupation certificate at this date did not arise

when the construction at the project was far from completion. The issuance of intimation of possession letter without even obtaining the occupation certificate is prima facie illegal and fraudulent and therefore, the same does not tantamount to valid and legal offer of possession in any manner. It is reiterated that such an attempt by respondent was to usurp the hard-earned money of the complainants and make wrongful gains at the cost of complainants.

- X. That having received the said intimation of possession letter without even completing the unit in question, the complainants even objected to the same and issued multiple emails to the respondent stating project to be incomplete. The complainants have been repeatedly requesting for signed copies of the agreement. But no response was ever made by respondent.
- XI. That on the contrary, the respondent illegally levied heavy interest on the complainants without even obtaining occupation certificate and with malafide intentions of the respondent and in blatant disregard of all laws and authorities, the respondent resorted to threatening complainants vide termination letter dated 18.06.2019 while falsely claiming the project to be ready for possession. The intimation of possession by respondent and threatening the complainants of termination which amounted to heavy deductions by the respondent was a clever and well thought strategy by respondent to take unfair advantage and abuse its dominant position over complainants so as to cheat the complainants into paying the money without even completing the project. The respondent successfully made complainants pay the entire amount using such illegal tactics without even completing the unit and without even obtaining the occupation certificate as per law.

- XII. That even till date no legally valid offer of possession has been made by the respondent. However, despite this respondent has resorted to its illegal practice of issuing threatening letter of termination as mentioned above to complainants.
- XIII. That the occupation certificate was obtained by the respondent only 05.01.2021 i.e., much later after the respondent had illegally issued the notice for termination dated 18.06.2019 to the complainants in an attempt to usurp their hard-earned money. The complainants became aware of the same only at the time of issuance of legal notice dated 18.10.2024 as mentioned below. The complainants were shocked to know that the respondent had constructed the project in blatant violation of laws and statutory approvals as the tower was constructed up to G+15 floors against the sanctioned G+14 floors. It was due to this fact that the occupation certificate was an in-principal approval and subject to respondent obtaining approval of 2/3rd allottees of the project. However, let alone taking approval of complainants with respect to change in the layout plan of the entire project, the respondent with fraudulent intentions hid the factum of occupation certificate from the complainants so that by way of threats the respondent could usurp the complete sale consideration from complainants and after which complainants would be forced to dance to respondent's tunes.
- XIV. That the above-mentioned occupation certificate clearly establishes that intimation of offer of possession given by the respondent was wholly illegal and the respondent could not have done the same without obtaining the occupancy certificate.
- XV. That having known that the respondent had not obtained either the occupancy certificate or the completion certificate while offering

possession and later that the respondent had constructed the project in violation of the sanctioned plan without taking approval of the complainants and the respondent failing to demarcate the unit of the respondent till date, the complainant sent a legal notice dated 18.10.2024 through its counsel to the respondent and sought refund of amount paid by the complainants to the respondent along with the interest of 18% while withdrawing from the project. The respondent has not replied to the said legal notice even till date.

XVI. That such an act of false claims and misrepresentation by the respondent is in absolute violation of law and shows how the respondent, by abusing its dominant position, is making a fraudulent attempt of misappropriating the hard-earned money of the complainants. Hence, the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to withdraw the complainants from the project.
 - ii. Direct the respondent to refund the entire amount of Rs.90,42,330/- paid by the complainants to the respondent.
 - iii. Direct the respondent to pay an interest of 18% per annum from the date of receipt of the payment from the complainants till the date of refund.
 - iv. Direct the respondent to pay Rs.2,00,000/- towards legal costs incurred by the complainants.
5. The authority issued a notice dated 19.12.2024 to the respondent by speed post and also on the given email address at mahajan.rajneesh@gmail.com, vatika.rera@vatikagroup.com and advakhil.ala@gmail.com for filing of reply and putting up appearance on the date fixed for hearing. The delivery

reports have been placed in the file. Despite given ample opportunities vide hearings dated 26.03.2025, 23.07.2025, 01.10.2025 and 26.11.2025 the respondent did not file any reply to the complaint within the stipulated period. Therefore, vide proceedings of the day dated 26.11.2025 the authority has struck off the defence of the respondent.

6. 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 submissions made by the complainant.

D. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial Jurisdiction

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

D.II Subject-matter Jurisdiction

9. 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. 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. (Supra)*** 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."*
12. 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.

E. Findings on the relief sought by the complainants:

E.I Direct the respondent to withdraw the complainants from the project.

E.II Direct the respondent to refund the entire amount of Rs.90,42,330/- paid by the complainants to the respondent.

E.III Direct the respondent to pay an interest of 18% per annum from the date of receipt of the payment from the complainants till the date of refund.

13. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
14. The complainants have booked a unit in 'Vatika INXT City Centre', vide application of booking dated 15.09.2016. A buyer's agreement was executed between the parties on 28.02.2019, vide which a unit bearing no. 1004, 10th Floor, admeasuring 495.89 sq. ft. (super area) was allotted to them. They have paid an amount of Rs.90,42,330/- against the total sale consideration of Rs.84,50,392/-. The complainants have opted for an instalment link payment plan as per 10% of the sale consideration has to be paid at the time of booking, next 10% within 03 months from the date of booking, next 20% within 6 months of booking and remaining 60% on offer of possession.
15. The respondent has offered the possession on 03.01.2018 and then sent an intimation of termination on 18.06.2019 on account of failure to pay the outstanding dues of Rs.27,54,781/- and it was mentioned in the said letter that pursuant to the termination, the refund of the paid-up amount after necessary deductions would be processed on further sale of the unit. Now, the question before the authority is whether this cancellation is valid or not?
16. It is matter of record that the complainant booked the subject unit under the instalment link payment plan and paid an amount of Rs.90,42,330/- towards total sale consideration of Rs.84,50,392/- which is more than the

total sale consideration and they have paid the last payment only on 19.06.2020. The respondent has intimated the complainants to take possession on 03.01.2018 and terminated the unit on 18.06.2019. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 05.01.2021 and as per the opted payment plan, the complainants have to pay 60% of the consideration on offer of possession after obtaining occupation certificate. But the complainants have paid the total sale consideration way back on 19.06.2020 which is much prior to obtaining of occupation certificate.

17. Thus, the Authority is of the view that the complainants have abided the agreed payment plan and made almost 100% sale consideration on 19.06.2020 prior to obtaining of occupation certificate on 05.01.2021. Thus, the cancellation letter dated 18.06.2019 is invalid and hereby quashed.
18. Now, the complainants herein are seeking refund of the entire amount along with interest under the provisions of the Act, 2016 and the Rules 2017 made thereunder. The question arises before the Authority whether the complainants are entitled to refund the entire amount paid by the complainants with or without deduction of earnest money?
19. On consideration of all the documents placed on record and submissions made by the parties, the Authority is of the view that the complainants have abided by the agreed payment plan and paid more than the entire sale consideration on 19.06.2020 which is prior to obtaining of occupation certificate on 05.01.2021, thus, the complainants are entitled to refund of the entire paid-up amount. However, the complainants have made the refund request by way of filing of this complaint on 18.12.2024 which is 3 years after the occupation certificate has been obtained by the respondent, thus the interest on the paid-up amount is to be allowed from the date of

cancellation i.e., 18.06.2019. Thus, the Authority directs the respondent to refund the paid-up amount of Rs.90,42,330/- received by it along with interest at the rate of 10.80% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 18.06.2019 till the actual realization of the amount.

E.IV Direct the respondent to pay an interest of 18% per annum from the date of receipt of the payment from the complainants till the date of refund.

E.V Direct the respondent to pay Rs.2,00,000/- towards legal costs incurred by the complainants.

20. The complainants are seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

F. Directions of the authority:

21. 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):
- The respondent is directed to refund the paid-up amount of Rs.90,42,330/- received by it along with interest at the rate of 10.80% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 18.06.2019 till the actual realization of the amount.

- ii. 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.

22. Complaint stands disposed of.

23. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 06.01.2026


HARERA
GURUGRAM