

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

Complaint no. : 6419 of 2024
Date of filing of complaint: 27.12.2024
Date of Order: 27.01.2026

Vivek Khandelwal
R/o: B-10 FF, New Krishma Park, Vikas Puri,
New Delhi-110018

Complainant

Versus

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

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Sh. Himanshu Gautam (Advocate)
Sh. Aayush Rai (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	Vatika India Next Sector-83, Gurugram, Haryana
2.	Nature of project	Residential Township
3.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 71 of 2010 dated 15.09.2010 62 of 2011 dated 02.07.2011 76 of 2011 dated 07.09.2011 66 of 2014 dated 15.07.2014
4.	Rera registered/ not registered and validity status	Registered (for Vatika India Next Phase-II) Vide no. 36 of 2022 dated 16.05.2022 Valid upto 31.03.2029
5.	Unit no.	Booth no.70, Iris Avenue, Multi-purpose Booth in Sector-83. (As per allotment letter at page no. 19-20 of complaint as well as mentioned in clause 1 of BBA page 23 of complaint)
6.	Unit Size	296 sq. ft. (As per allotment letter at page no. 19-20 of complaint as well as mentioned in clause 1 of BBA page 23 of complaint)
7.	Date of booking	09.05.2014 (As per page no. 12-18 of complaint)
8.	Allotment letter	27.05.2014 (As per page no. 19-20 of complaint)

9.	Date of buyer's agreement	28.10.2015 (As per page no. 21-43 of complaint)
10.	Possession clause	16. "The developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the developer contemplates to complete development of the said retail booth, within a period of 48 (Forty Eight) months from the date of execution of this Agreement, unless there shall be delay or there shall be failure due to reasons mentioned in clauses herein or due to failure of Applicant(s) to pay in time the price of the said retail booth along with all other charges and dues in accordance with the schedule of payments 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) (As per clause 16 of BBA at page 28-29 of complaint)
11.	Due date of possession	28.10.2019 [Note: Due date of possession is calculated from the date of execution of buyer's agreement i.e., 28.10.2015.]
12.	Total sale consideration [BSP + IFMS]	Rs.20,96,864/- (As per clause 2 of BBA at page no. 23 of complaint)
13.	Amount paid against the allotted unit	Rs.8,69,825/- (As per receipts at page no. 44-46 of complaint)
14.	Payment plan	Possession linked payment plan At the time of booking 10% of BSP

		Within 60 days	15% of BSP
		Within 180 days	15% of BSP
		On offer of possession	60 % of BSP + other charges
		(As per allotment letter at page no. 19-20 of complaint as well as per Schedule of payments (Annexure-I A) with BBA at page 37 of complaint)	
15.	Completion certificate/ Occupation certificate	Not obtained	
16.	Offer of possession	Not offered	

B. Facts of the complaint:

3. The complainants have made the following submissions:

- I. That on 03.03.2014, the complainant Mr. Vivek Khandelwal booked a multipurpose booth/ retail booth by making a payment of Rs.2,25,000/- vide cheque dated 20.02.2014 in the respondent's project named as 'Vatika India Next' situated in Sector 83, Gurugram. Accordingly, a multipurpose booth bearing unit no. 70 having super area of 296 sq. ft. situated at Iris Avenue, Vatika India Next, Sector 83, Gurugram, was allotted to the complainant.
- II. That further on 28.10.2015, a builder buyer's agreement was executed between the parties wherein as per clause 16, possession of the said multipurpose booth was to be handed over within 48 months from the date of execution of the builder buyer's agreement.
- III. That the complainant opted for the possession linked payment plan which is annexed with the builder buyer's agreement, according to this plan complainant was to make payments in the following manner:

SCHEDULE OF PAYMENT PLAN (Possession Linked)

At the time of booking	10% of BSP
Within 60 days	15% of BSP
Within 180 days	15% of BSP
On offer of Possession	60% of BSP + 100% of IFMS + Electricity Meter Charges+ Gas Pipeline Charges + (STP + Water+ Sewerage + Electric Connection Charges) + Stamp Duty & Registration Charges + Escalation in Construction Cost (if any) + Other charges as applicable

- IV. That the complainant has made all the payments on time as and when demanded by the respondent as per the above-mentioned payment plan and has paid Rs.8,69,825/- in total out of the total sale consideration of Rs.20,96,864/- to the respondent company till the present date and the balance amount is to be paid at the time of offer of possession.
- V. That as per clause 16 of the builder buyer's agreement, physical possession of the said multipurpose booth was to be handed over within 48 months of the execution of the builder buyer's agreement, but despite making all the payments on time, the respondent company failed to handover possession of the multipurpose booth in question to the complainant.
- VI. That complainant visited multiple times to see the construction status of the said booth and also took multiple follow-ups through repeated calls and meetings with the respondent, but no definite commitment was shown for timely completion of construction of said booth and no appropriate action was taken to address the concerns and grievances of the complainant.
- VII. That multiple calls and meetings with the respondent and multiple visits to know the actual construction status not only caused loss to

the complainant in terms of time, money and energy but also caused mental agony to him.

VIII. That failure to deliver possession within the stipulated time constitutes a deficiency in service and non-disclosure of the actual status of construction and false assurances of timely delivery constitute an unfair trade practice on part of the respondent company.

IX. That the cause of action arose in favour of the complainant and against the respondent from the date of booking of the said unit and it further arose when respondent failed/neglected to deliver possession of the said unit within a stipulated time period. The cause of action further arose when the respondents has not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents has still not rectified his defects and not fulfilled their obligations as per the builder buyer's agreement. Hence, the present complaint is being filed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay interest at the prescribed rate for every month of delay since 28.10.2019 (due date of possession) till the date of actual possession handover as per the Act, 2016 and Rules, 2017.
 - ii. Direct the respondent to complete the construction of the unit in question in an expeditious manner and offer the physical possession of the said unit along with all the promised amenities and facilities and to the satisfaction of the complainant.

- iii. Direct the respondent to execute the conveyance deed in favour of the complainant with respect to the unit in question.
 - iv. Direct the respondent to commit a date for offering the possession by way of filing an affidavit in this regard.
5. On the date of hearing, the authority explained to the respondent/promoter 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.
 6. The respondent/promoter put in appearance through its Advocate and marked attendance on 03.04.2025, 17.07.2025, 21.08.2025 and 30.10.2025 and sought short adjournment for filing of the reply. Despite a lapse of more than a year since the notice has been issued to the respondent to file reply, it failed to file the reply. It shows that the respondent was intentionally delaying by avoiding filing of written reply. In view of the above, the Authority has struck off the defence of the respondent vide proceedings of the day dated 27.01.2026.
 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 submissions made by the complainant-allottee.

D. Jurisdiction of the authority:

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

D.I Territorial jurisdiction

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

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) 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.

9. 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.

E. Findings on the relief sought by the complainant:

- E.I Direct the respondent to pay interest at the prescribed rate for every month of delay since 28.10.2019 (due date of possession) till the date of actual possession handover as per the Act, 2016 and Rules, 2017.**
- E.II Direct the respondent to complete the construction of the unit in question in an expeditious manner and offer the physical possession of the said unit along with all the promised amenities and facilities and to the satisfaction of the complainant.**

10. The above-sought reliefs by the complainants are taken together being inter-connected and finding of one relief will definitely affect the other.
11. The above sought relief(s) by the complainant are taken together being inter-connected.
12. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

“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, —

*.....
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.”*

13. The flat buyer’s agreement was executed between the parties. As per clause 16 of the agreement, the possession was to be handed over within 48 months from the date of execution of agreement i.e., 28.10.2015. The clause 16 of the buyer’s agreement is reproduced below:

*16. “The developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the developer contemplates **to complete development of the said retail booth, within a period of 48 (Forty Eight) months from the date of execution of this Agreement.**, unless there shall be delay or there shall be failure due to reasons mentioned in clauses herein or due to failure of Applicant(s) to pay in time the price of the said retail booth along with all other charges and dues in accordance with the schedule of payments 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)

14. **Due date of handing over possession:** As per the possession clause, the respondent/promoter has proposed to hand over the possession of the subject unit within 48 months from the date of execution of buyer’s agreement. Thus, the due date of possession comes to 28.10.2019.

15. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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 possession, at such rate as may be prescribed and it has been prescribed 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]

(1) 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.

16. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 27.01.2026 is 8.80%. Accordingly, 10.80%.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. 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—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (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, and the interest payable by the*

allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

18. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 48 months from date of execution of buyer's agreement i.e., 28.10.2015. As such the due date of handing over of possession comes out to be 28.10.2019. The respondent has failed to handover possession of the subject unit till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 28.10.2015 executed between the parties. It is pertinent to mention over here that even after a passage of more than 10 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.
19. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation

certificate. In the present complaint, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 28.10.2019 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.

20. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 28.10.2019 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

E.III Direct the respondent to execute the conveyance deed in favour of the complainant with respect to the unit in question.

21. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

22. Thus, the respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

E.IV Direct the respondent to commit a date for offering the possession by way of filing an affidavit in this regard.

23. As per clause 16 of the buyer's agreement dated 28.10.2015, the respondent has committed that the possession of the unit would be offered on or before 28.10.2019. Therefore, the above-sought relief by the complainant has become redundant. Thus, no direction to this effect.

F. Directions of the Authority:

24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 28.10.2019 till offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondent shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.
- iii. The respondent is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

- v. The arrears of such interest accrued from due date of possession i.e., 28.10.2019 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

25. The complaint stand disposed of.

26. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 27.01.2026