

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

Complaint No. 5301-2023

Date of Decision: 27.03.2026

1. Mr. Chaturbhuj Singla S/o Narotam Prasad,
2. Mrs. Tripti Agarwal W/o Chaturbhuj Singla, both Rs/o 741/2, Patel Nagar, near Hanuman Mandir, Gurugram, Haryana.

Complainants

Versus

M/s Vatika Limited, registered office at A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012.

Respondent

APPEARANCE

For Complainants:

Mr. Kuldeep Kumar Kohli, Advocate

For Respondent:

Mr. Venket Rao, Advocate

ORDER

This is a complaint, filed by Mr. Chaturbhuj Singla and Mrs. Tripti Agarwal (allottees) under section 18 (3) and 19 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s. Vatika Limited (promoter) as per section 2(zk) of Act 2016.

2. According to complainants, they approached the respondent for booking of Unit/Plot No. 11/240/Simplex/28D1-4, residential

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township project- Villas (Signature 2 Villa), admeasuring 1527 sq. yds. and booked on 27.12.2009. The respondent allotted the said unit to them (complainants) on 27.12.2009. The builder's buyer agreement (BBA) was executed between the parties on 06.09.2010 and addendum dated 02.02.2012. The total sale consideration of the said unit was Rs.77,23,300.00. The total amount paid by the complainants till date was Rs.17,53,333.00. The delay in handing over possession till date of fling complaint is 10 years and 02 month. The due date of possession as per BBA was 06.09.2013.

3. That the respondent is in violation of Section 11 (4) of the Act. The respondent company has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of Section 12 of Real Estate (Regulation and Development) Act, 2016. The respondent has failed to provide the requisite facilities, amenities and services as agreed at the time of booking. The respondent by using its dominant position is dictating its unreasonable demands to the complainant without showcasing any proficient progress. The respondent had substantially failed to discharge its obligations imposed upon them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

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4. Citing the facts as mentioned above, the complainant prayed for following relief: -

- I. To award compensation towards mental agony, physical torture and pain suffered by the complainant at the hands of the respondent, to the tune of Rs.5,00,000/-.
- II. To award compensation towards legal fees and expenses for prosecution, to the tune of Rs.3,00,000/-.
- III. To award compensation towards the loss of rent for a period of Rs.54,90,000.00.
- IV. To pass any other order/reliefs as it may deem fit.

5. The respondent contested the complaint by filing a written reply. It is plea of the respondent that the claim of complainants seeking compensation is not maintainable. It is further plea of the respondent that the construction of project was obstructed due to reasons beyond the control of the respondent. As per the order dated 08.08.2023 the complainants have already been allowed to delay interest of 10.75% p.a. for every month of delay from due date of possession till offer of possession + 2 months whichever is earlier. The complainants are allowed interest, which is to compensate the complainants for loss/injury suffered by the complainants due to delay in possession of the unit. The complainant's claim of compensation is contradictory and without jurisdiction. The complainants have wrongly claimed the cost of litigation

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and the evidence for the same are not reliable as the invoices raised are unsigned. The balance of convenience to be maintained.

6. Stating all this, respondent prayed for dismissal of complaint.

7. Both of the parties filed affidavits in support of their claims.

8. I have heard learned counsels appearing for both of parties and perused the record.

9. According to learned counsel for complainants, due date of possession as per BBA was 06.09.2013 but respondent failed to deliver possession at agreed time, causing loss to his clients i.e. complainants. During deliberations, it is agreed by learned counsel for complainants that his clients approached the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority vide order dated 08.08.2023, copy of which has been put on file. The respondent in that case has been directed to pay interest at the prescribed rate of 10.75% per annum for every month of delay from the due date of possession i.e. 15.01.2023 till the actual handing over of possession or offer of possession + 2 months whichever is earlier, apart from some other reliefs.

10. It is contended by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to

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allow compensation for delay in handing over possession, in view of section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that respondent (promoter) failed to discharge its obligation of handing over possession, in agreed time as per terms and conditions of BBA and hence, liable to pay compensation.

11. True, as per section 71, the Adjudicating Officer has been appointed for the purpose of adjudging compensation under sections 12, 14, 18 and 19 of the Act. There is no denial that in case, promoter fails to discharge his obligation imposed upon him under this Act or rule & regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he is liable to pay compensation to the allottee as prescribed under this Act.

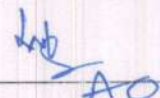
12. In this way, when the complainants claim that promoter/respondent fails in this case to discharge its obligations under

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Builder Buyer Agreement, the Adjudicating Officer gets jurisdiction to adjudge compensation but as it was mandated by the Hon'ble Apex Court in *M/s New-tech Promoters and Developers Private Limited versus State of UP & Ors. etc.*, it is for the Authority to entertain the complaint seeking DPC. Relevant portion of the Apex Court order is reproduced here as under: -

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

13. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, -
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----, 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

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return the amount received by him in respect of that apartment, plot or 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.**

14. It is worth mentioning here that complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

15. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case "**Greater Noida Industrial Development Authority vs. Ranjan Misra**" Appeal No. 70 of 2023 decided on 20.04.2023-----;

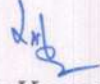
"13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly

provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

16. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

17. File be consigned to record room.

Announced in open court today i.e. on 27.03.2026.


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