

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

**Complaint No. :2692-2024  
Date of Decision: 07.04.2026**

1. Mr. Vinay Kumar son of Mr. Dilbagrai,
2. Mrs. Shalini Kumari wife of Mr. Vinay Kumar, both residents of H.No. 139, C/28, Jyoti Park, near Aashirwad Marriage Garden, Gurugram- 122001.

..... **Complainants**

**Versus**

M/s Vatika Limited (Through its Managing Director), Registered Office at Flat No. 621 A, 6<sup>th</sup> Floor, Devika Towers, 06, Nehru Place, New Delhi-110019.

..... **Respondent**

**APPEARANCE**

**For Complainants: Complainants in person with  
Mr. Kuldeep Kumar Kohli, Advocate.**  
**For Respondent: Mr. Dhruv Dutt Sharma, Advocate.**

**ORDER**

1. This is a complaint filed by Mr. Vinay Kumar and Mrs. Shalini Kumari (allottees), under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016)

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against M/s Vatika Limited (promoter) as per section 2 (zk) of Act 2016.

2. According to complainants, on 18.02.2010, they approached the respondent for booking of Unit/Plot No. 10, 6<sup>th</sup> court street, Sector-85B Vatika India Next, admeasuring 240 Sq. Yds. in Block No. 85-B, in its Project 'Vatika India Next Sector-82A, Gurugram, Haryana. The respondent allotted said unit to them (complainants) on 17.03.2010. The Plot Buyer's Agreement (PBA) was executed between the parties on 27.07.2010. The due date of possession as per PBA was 27.07.2013. The total sale consideration of the said unit was Rs.62,76,000. The total amount paid by the complainants till date was Rs.34,32,000. The delay in handing over possession till date of fling complaint is 10 years and 8 months.

3. That the respondent took the money from them (complainants) and utilized the same for some other purposes/ making investments in some other properties but not executing the project for which the money was collected from the allottees. This has caused them (complainants) and their family members physical torture, mental stress, pain and anxiety issues because of the uncertainty in the delivery of the unit, emotional trauma and pain

to the entire family, the torture of not staying in their own dream house. Neither offer of possession has been given till date nor has an alternate plot been given to them (complainants). Hence, the cause of action is a continuous cause of action. There has been a delay of 10 years and 8 months as on date and the delay is a continuous process.

4. 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 the Act of 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 Act and rules and regulations made thereunder.

5. Citing facts as mentioned above, the complainants have prayed for following relief: -

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- I. to award compensation towards mental agony, physical torture and emotional pain suffered by the complainants at the hands of the respondent, to the tune of Rs.15,00,000/-.
- 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 period of delay Rs.76,80,000/-.
- IV. to pass any other order/reliefs as it may deem fit.

6. The respondent contested the complaint by filing a written reply. It is averred that each and every averment and contention as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of costs. The complaint filed by the complainants before this Court, besides being misconceived and erroneous is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Court as the relief being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Court.

7. That it has<sup>2</sup> 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 promoter contemplates to complete the development of the said Township or the sector/part thereof where the said plot is proposed within a period of 3 years from the date of execution of this Agreement unless there is a delay or there is a failure of the allottee to pay in time the price of the said plot. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the promoter, then the promoter shall be automatically entitled to the extension of time for delivery of possession. Further the promoter may also suspend the project for such period as it may consider expedient.

8. Further that as per clause 13 and 14 of the Plot Buyer's Agreement, it had been also agreed and accepted that in case of failure to deliver the possession by the promoter due to non-approval of layout & other plans or if after all the plans are approved, the promoter is not in a position to implement the same then the promoter shall not be liable to pay any compensation whatsoever.

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9. That alleged delay has been occasioned due to various reasons but not limited to change in the layout plan due to initiation of the GAIL Corridor and non-acquisition of sector roads by HUDA for which the respondent cannot be held liable.

10. Denying all claims made by the complainants, the respondent has prayed for dismissal of complaint.

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

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

13 Admittedly, the present complainants filed a complaint before the Authority i.e. Complaint No.2948/2020. During proceedings of that matter, a local Commissioner was appointed by the Authority with the direction to visit the site i.e. the project and submit report, about the project with respect to changes made in it (project) in contravention to the original layout plan. Admittedly, the Local Commissioner visited the project on 22.11.2021 and again on 07.12.2022. He filed report, copy of which has been put on the file in this case also. About status of the project, the Local Commissioner stated that the allotted plot No.10,6<sup>th</sup> Court Street,

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Sector-85B, Gurugram was nowhere mentioned in the layout plan. Therefore, the allotted plot had not been approved by the concerned department. Further, the respondent had made an addendum on 10.06.2013 and reallocated a new plot, which was approved and demarcated on the layout plan. But when District Town and Country Planner approved revised layout plan for the project area measuring 489.71625 acres, the reallocated plot to the complainants stood deleted from the location, where it was located in the layout plan approved for the area. The Local Commissioner inspected the area and observed that no development had been done by the respondent in that area and the land was lying vacant as a raw land.

14. Even learned counsel for the respondent did not deny the fact that there was no construction as per layout plan of his client, where the unit in question was situated. The Authority while deciding the complaint filed by the present complainants as referred above, on 11.01.2024 directed the respondent to offer possession of an alternative plot, as may be agreed between the parties, at the same rate and specifications, at which rate unit was earlier purchased, within two months from the date of said order.

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The Authority noted that it was satisfied that the respondent was in contravention of Section 11(4)(a) of the Act, by not handing over possession of subject unit as per PBA.

15. It is pointed out by learned counsel for the complainants that despite filing execution petition, said order could not be executed as according to present respondent, same had no other project or unit which could be spared to be allotted to the present complainants. Said order was thus unexecutable.

16. Apart from directing the respondent to offer possession of some alternative plot, as may be agreed between the parties, the Authority directed the respondent to pay interest at the prescribed rate of 10.85% per annum from the due date of possession i.e. 27.07.2013 till actual handing over of possession or offer of possession plus two months, whichever is earlier.

17. According to Section 18(1) if promoter fails to complete or is unable to give possession of an apartment/plot or building-

(a) In accordance with the terms of agreement for sale or, as the case may be, duly completed by the date specified therein: or

(b) .....

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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----- including compensation in the manner as provided under this Act.

18. Proviso added here makes it clear that where an allottee does not intend to withdraw from the project, he shall be paid interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. It is worth mentioning here that by filing the aforementioned complaint before the Authority, the allottees i.e., the complainants did not wish to withdraw from the project rather sought handing over of possession of their unit and to pay interest for delay in delivery. When they (complainants) have already been allowed delay possession compensation, it agitates in the mind of undersigned that in such a circumstance, can the complainants be allowed any compensation.

19. As described earlier, the respondent was directed to offer of possession of some alternative plot and as contended by learned counsel for the complainants, the respondent expressed its

inability to allot any alternative plot having no other project or available plot with it, the order has become unexecutable. Similarly, when possession of subject unit, which is not in existence, cannot be given, other part of order is also unexecutable. Stating that when their unit/plot is not in existence, they have no option but to withdraw from the project, the complainants submit that they do not want to continue with the project. In the peculiar facts of this case and also considering the fact that the order passed by the Authority has become unexecutable, the complainants have no option but to withdraw from the project. In these circumstances and in view of Section 18(1) of the Act, 2016, the complainants are entitled for refund of the amount paid by them as well as compensation.

20. Sub section 3 of Section 18 of the Act, gives jurisdiction to this Forum, to entertain a complaint seeking compensation. Apparently, the promotor in this case failed to discharge obligations imposed upon it in accordance with the terms and conditions of agreement for sale. The complainants are thus held entitled for compensation.

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21. Section 72 of the Act of 2016 prescribes the factors which are to be taken into account by the Adjudicating Officer, while adjudging quantum of compensation and the same are: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

22. Admittedly, the respondent received sale consideration but failed to deliver plot to the complainants. Even the site plan was not approved showing unit allotted to the complainants. It was not possible to handover that unit. The respondent thus achieved disproportionate gain and unfair advantage causing consequential loss to the complainants.

23. The complainants have prayed for compensation in the form of rental loss of Rs.76,80,000/- for ten years and eight months. Due date of possession as promised by the respondent is stated to be 27.07.2013. Present complaint was filed on 03.06.2024. The unit

in question is stated to a plot measuring 240 square yard in Sector 82A of Gurugram. It is not disputed that the complainants paid a sum of Rs.31,20,000/- to the respondent out of total sale consideration of Rs.62,76,000/-. Although no reliable evidence has been adduced by the complainants to calculate the amount of compensation or rental loss, when the complainants are found entitled for compensation, their case cannot be thrown away simply for want of conclusive evidence in this regard. According to AI overview, the residential properties in Sector-85, Gurugram, experienced a massive appreciation from year 2013 (due date of possession being 27.07.2013) to 2024 (filing of present complaint), with apartment prices arising from approximately Rs.3500-5000/- per square feet in year 2013 to over Rs.10,000-14000/- per square feet in mid-year 2024. This represents total price appreciation of over 140%-150% over the last decade driven by infrastructure improvements and connectivity to the Dwarka Express Way.

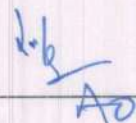
24. The complainants paid Rs.31,20,000/-. ~~Even if~~ this amount <sup>would have</sup> ~~was~~ appreciated @ 100% (taking at some lower end) <sup>if</sup> same was invested in some other similar project by them, ~~it would have~~ appreciated to at least Rs. 62,40,000/-. The respondent is directed

to pay Rs. 62,40,000/- as compensation, including Rs.31,20,000/- already paid to respondent.

25. The complainants have also prayed for compensation of Rs.15 lakhs as compensation for mental agony, emotional pain and physical torture etc. Apparently, when the respondent received considerable part of sale consideration, but the unit allotted to them was not even in layout plan and hence could not be constructed. When this fact came to the knowledge of the complainants, the same would have suffered mental agony and emotional pain. Rs. 15 lakhs appear to be highly excessive, the complainants are allowed a sum of Rs.2 lakhs as compensation in this regard.


26. The complainants have further prayed a sum of Rs.3 lakhs as legal fees. No court fee is required to be paid to the Authority, while filing any such complaint. Even then, it is evident that the complainants were represented by a lawyer during the proceedings of this case, same are allowed a sum of Rs.50,000/- as litigation expenses.

27. The respondent is directed to pay said amounts of compensation along with interest at the rate of 10.85% per annum from the date of this order, till realization of amount.

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28. This complaint stands disposed of accordingly. File be  
consigned to the record room.

Announced in open court today i.e. **on 07.04.2026**

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