

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

Complaint No. :4358-2023

Date of Decision: 10.08.2026

1. Sushma Sharma wife of Prabodh Praveen,
2. Prabodh Praveen son of Sh. R. P. Sharma, both residents of EPP-26-0102, Emerald Floors Premier, Sector-65, Gurugram, Haryana-122018.

..... Complainants.

Versus

M/s Vatika Limited At: Unit No. A-002, INXT City Centre, Ground Floor,
Block-A, Sector-83, Vatika India Next, Gurugram, Haryana- 122012.

..... Respondent.

APPEARANCE

For Complainants: Mr. Geetansh Nagpal, Advocate.
For Respondent: Mr. Venket Rao, Advocate.

ORDER

This is a complaint filed by Ms. Sushma Sharma and Mr. Prabodh Praveen (allottees), under section 31 of The Real Estate (Regulation and Development) Act 2016 (in brief "Act of 2016") against M/s Vatika Limited (promoter).


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2. Brief facts of complainants' case are that on 26.03.2018, they (complainants) booked a floor No.HSG-026-West End-6-501 in the project "Turning Point" at Sector-88B, Gurugram, being developed by the respondent and paid booking amount of Rs.1,50,000/-. That from 26.03.2018 to 12.11.2018, they (complainants) paid an amount of Rs.8,14,534/-. Despite taking such amount by the respondent, no Builder Buyer's Agreement was executed between the parties and the respondent kept on delaying the matter. Total sale consideration of the floor was agreed as Rs.1,19,09,340/-. Due date of possession was agreed as 15.03.2025.

3. That they (complainants) kept on pursuing the matter with the representatives of the respondent as to when will they deliver the project and why the construction is going on at such a slow pace, but to of no avail. They (complainants) never received offer of possession and till now, the area looks far from completion and uninhabitable. The respondent's failure to execute the BBA after accepting more than 10% of the sale consideration is in direct contravention of Section 13(1) of the Act of 2016.

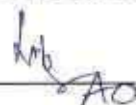
4. That being aggrieved with the acts of the respondent, they (complainants) filed a complaint before the Authority seeking refund of

the total amount paid along with interest. The Authority vide its order dated 15.03.2023 directed the respondent to refund the paid-up amount i.e. Rs.8,14,534/- received from the allottees along with interest at the prescribed rate of 10.70% per annum from the date of each payment till the date of actual realization.

5. Contending all this, the complainants have prayed for following reliefs:

- i) to direct the respondent to pay a sum of Rs.11,80,000/- to the complainants as compensation towards loss of rent;
- ii. to direct the respondent to pay a sum of Rs.10 lakhs to the claimants as compensation for immense mental agony, harassment and trauma suffered by them;
- iii. to direct the respondent to pay a sum of Rs.2,50,000/- to the complainants towards the cost of litigation; and
- iv. to direct the respondent to pay interest on the aforesaid amounts from the date of filing of the complaint till the date of actual realization.

6. The respondent contested the complaint by filing a written reply. It is averred that it (respondent) sent letter for execution of Builder

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Buyer Agreement, which the complainants failed to sign. The complainants along with refund of full paid-up amount is also receiving interest, which is equal to compensate them (complainants) for non-possession of the unit.

7. That the unit in question was to be delivered to the complainants till 15.03.2025 and therefore, there is no loss has been occurred to the complainants, as the question of delay in possession does not arise. The refund has been allowed to the complainants three years prior to due date of possession and the due date itself has not been arrived till date, therefore, there is no question of loss of rental income occurred till date.

8. That the project has been delayed due to various hindrances in the construction, which were unavoidable and beyond its (respondent) control.

9. Denying all averments, the respondent prayed for dismissal of complaint.

10. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

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11. During arguments, learned counsel for respondent raised an objection that when complainants have already been allowed refund of the amount by the Authority, same have no locus standi to approach this forum, seeking compensation.

12. Admittedly, the complainants had filed a complaint (No. 5440 of 2022) before the Authority seeking refund of the amount. It was allowed by the Authority vide order dated 15.03.2023. The copy of such order is on the record. Through said order, respondent/promoter has been directed to refund the paid-up amount i.e. Rs.8,14,534/- received from the complainants along with interest at the prescribed rate of 10.70% per annum from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules of 2017. A period of 90 days was given to the respondent to comply with these directions. The Authority noted in said order as: -

"It is proved from the facts and not rebutted by the developer that the project has already been abandoned and there was no progress at the spot. The developer used the monies of the allottees for a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. Though, while filing reply, the developer took a plea that the project is taking up, but which is otherwise false and against the facts on record. So, in such situation besides refund of the paid-up amount given by the

complainants to the developer with interest at the prescribed rate of interest i.e. 10.70% P.A., he may file complaint separately seeking compensation before the Adjudicating Officer having powers under section 71 of the Act of 2016”.

13. Section 18 (1) of Act 2016 provides that if the 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; or

(b) -----,

he shall be liable on demand to the allottee, 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.**

14. From this provision, it is abundantly clear that in case promoter failed to complete the project or to give possession of an apartment, plot etc. in agreed time, the allottee is entitled for refund of the amount along with interest as well as compensation, determined in the manner as provided under this Act. The complainants were thus

entitled for refund of the amount as well as compensation from the promoter i.e. respondent.

15. As described earlier, complainants have sought compensation of Rs.11,80,000/- for the rental loss caused to them, Rs.10,00,000/- on account of mental and physical agony, mental harassment and mental illness. The complainants further prayed for a sum of Rs.2,50,000/- as compensation to pursue the case before the Authority as well as before the Adjudicating Officer.

16. Section 72 of the Act provides the factors, which are to be taken in account while determining amount of compensation. Apparently, when respondent received sale consideration but failed to complete the project, it gained undue profit from money of complainants. However, complainants did not adduce any reliable evidence to prove as what loss of appreciation has been caused to them. According to them (complainants), though the due date of possession was 12.11.2018, but possession was never handed over to them. Ultimately after filing a complaint before the Authority, they got an order for refund. **As per AI Overview, property prices in Gurugram witnessed substantial appreciation between November 2018 and March 2023, particularly accelerating post-pandemic due to high demand for luxury housing,**

improved infrastructure (like the Dwarka Expressway), and limited supply. During this roughly 4.5-year period, average capital values in many parts of Gurgaon increased significantly, with some areas seeing over 50-70% appreciation.

17. The project where the complainants had booked their unit i.e. Turning Point, Sector 88B, Gurugram, is near to Dwarka Expressway. It is presumed that the amount invested by the complainants in booking subject unit i.e. Rs.8,14,534/- was invested in some other similar project in that area, same would have appreciated ^{atleast} to Rs.12,21,801/-(50%).

18. As mentioned above, the Authority has allowed refund of amount Rs.8,14,534/-. Considering all this, the complainants in this case are allowed a sum of Rs.4,07,267/- as loss of appreciation of money.

19. From record of this case, it is well established that despite receiving Rs.8,14,534/- out of total sale consideration of Rs.1,19,09,340/- i.e. 14.6%, respondent did not execute builder buyer agreement, which is in violation of Section 13 of Act of 2016. Although, it is claimed by the respondent that the complainants failed to sign BBA, despite sending draft of it, but this fact is not proved on file. According to Section 13 (1), a promoter shall not accept a sum more than then per cent of cost of apartment, plot or building as the case may be, as an advance payment or

an application fee,....., without first entering into a written agreement for sale. Section 18 (3) provides that if promoter fails to discharge any other obligations imposed upon him under this Act or rules....., or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottee in the manner as provided under this Act. Considering all this, complainants are entitled for compensation for the promoter having failed to execute BBA, despite receiving more than 10% of sale consideration. The complainants are thus allowed a sum of Rs.1,00,000/- as compensation in this regard to be paid by the respondent.

20. When complainants could not get their dream unit despite making payment of about 50% of sale consideration, all this apparently caused mental harassment and agony to them (complainants). Same are allowed a sum of Rs.1,00,000/- as compensation for mental agony and harassment. Amount of Rs.10,00,000/- as claimed by the complainants appears to be excessive. Similarly cost of litigation of Rs.2,50,000/- is also excessive. No court fee is required to be paid to the Authority, while filing a complaint. It is apparent from record that the complainants were represented by an advocate during proceedings of this case, same are thus allowed a sum of Rs.50,000/- as cost of litigation.

21. The amounts mentioned above be paid by the respondent to the complainants along with interest at rate 10.85% per annum from the date of this order till realization of amount.

22. Complaint is thus disposed of. File be consigned to the record room.

Announced in open court today i.e. on 10.08.2026.


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

Present: Mr. Geetansh Nagpal, Advocate for complainants.
Mr. Venket Rao, Advocate for respondent.

Complaint is disposed of vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
10.08.2026