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

Complaint No. 3648-2025
Date of Decision: 30.09.2026

1. Mrs. Shashi Agarwal, 2. Mrs. Payal Rakyan, 3. Mr. Chavi Agarwal, Rs/o J-117C, Lane W-19, Western Avenue, Sainik Farms, New Delhi-110062.

....Complainants

Versus

M/s Vatika Limited, Registered Office At: A-002, INXT City Centre, Ground Floor, Block A, Sector-83, Vatika India Next, Gurugram, Haryana-122012.

....Respondent

APPEARANCE

For Complainants: **Mr. Kanish Bangia, Advocate**
For Respondent: **Ms. Ankur Berry, Advocate.**

ORDER

This is a complaint, filed by Mrs. Shashi Agarwal, Mrs. Payal Rakyan and Mr. Chavi Agarwal, (allottees), under Section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016), against M/s. Vatika Limited (promoter).

2. Briefly stated, according to complainants, they approached the respondent for booking of Unit No. 615, 6th Floor, Block F, measuring 500

sq. ft., in its commercial Project namely 'Vatika INXT City Centre' Sector-83, Gurugram, Haryana. The respondent allotted the said unit to them (complainants) on 16.06.2011. The Builder Buyer Agreement (BBA) was executed between the parties on 16.06.2011. The due date of possession as per BBA was 16.06.2014. The delay in handing over possession till date of fling complaint is 10 years and 6 months. The total sale consideration of the said unit was agreed to be Rs.24,37,500/-. The total amount paid by the complainants till date was Rs.25,25,860/-.

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 allottee. This has caused the 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 even till date nor has an alternate plot been given to the complainants. The cause of action is a continuous cause of action. There has been a delay of 10 years and 6 months as on date and the delay is a continuous process.

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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 Act of 2016. The respondent has failed to provide 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 of 2016 and rules and regulations made thereunder.

5. That as per Section 18 (3) of said Act, if the 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, it is liable to pay such compensation to the allottees in the manner as provided under this Act and as per Section 71 of Act, 2016, an adjudicating officer is empowered to adjudge compensation under Section 12,14,18 & 19 of the Act.

6. Citing the facts as mentioned above, the complainants prayed for following reliefs: -

I. To award compensation towards mental agony, physical torture and pain suffered by the complainants 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 to the complainants on account of appreciation of the property comes to Rs.28,000.00 X 126 months = Rs.35,28,000.00;
IV. To pass any other order/reliefs as it may deem fit.

7. The respondent contested the complaint by filing a written reply. It is averred that the nothing contained in the preliminary objections and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainants in the complaint.

8. That the present compensation complaint is bereft of material information and does not disclose any cause of action or any grievance which entitles the complainants to seek compensation from respondent which is circumscribed by Section 72 of RERA Act.

9. That the respondent duly paid Assured Return (AR) to the complainants from 16.06.2011 till September, 2018 and a total of Rs.30,90,750/- was duly paid to the complainants on account of AR. The complainants thereafter in 2022 filed complaint CR/7623/2022 before the Authority for reliefs of physical possession, delayed possession charges, payment of AR, restraint from creation of third-party rights etc. The said complaint was decided by the Authority on 24.09.2024 duly noting that the constructive possession of the unit is to be handed over to the

complainants after obtaining OC, since the complainants intended to retain the commercial unit.

10. That the complainants have enjoyed the benefits of AR for over 8 years and have been protected by the return which is more than the consideration amount paid for the commercial unit.

11. That the complainants have already been given the order for payment of AR, which is much higher than DPC, per month at the agreed date till three years after completion of construction or till leasing of the commercial unit, whichever is earlier. The AR arrears have also been granted with addition interest @ 9.10% and the complainants intend not to exit the Project and thus the present case for claiming compensation stems out of greed and mischief and has no grounds to substantiate the claims as raised.

12. Stating all this, respondent prayed for dismissal of the complaint.

13. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and gone through the evidence adduced by the parties.

14. At the outset, it is contended by learned counsel for respondent that complainants are not entitled to any compensation as the Authority has already allowed DPC to them. Admittedly, the complainants

approached the Authority by filing complaint no. 7623 of 2022, which has been allowed by the Authority vide its order dated 24.09.2024 and the respondent has been directed to pay the amount of assured return at the agreed rate i.e., @ Rs.71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of completion of the building and thereafter, Rs.65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease.

15. 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 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**.

16. It is worth mentioning here that the complainants did not wish to withdraw from the project but prayed for direction to respondent to deliver possession of subject unit, delayed possession compensation and amounts of monthly assured returns by filing a complaint with the

Authority. The said complaint has already been allowed. The Authority has directed the respondent to pay amounts of assured return as claimed, to hand over possession of subject unit vide order dated 24.09.2024. 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. Moreover, provision for payment of amount of assured return was nothing but to compensate an allottee till unit is complete & handed over to the allottee.

17. 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 we 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."

18. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

19. Considering all this, there is no reason to allow compensation for rental loss, depreciation, loss of interest and for causing financial loss for delay in handing over possession of subject unit. Request in this regard is declined.

20. Complaint in hands is thus dismissed. File be consigned to the record room.

Announced in open Court.
today i.e. **on 30.09.2026.**

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

Present: Mr. Kanish Bangia, Advocate for complainants.
Ms. Ankur Berry, Advocate for respondents.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
30.09.2026