BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4406 of 2023**
Date of complaint	:	**22.09.2023**
Order pronounced on:		**14.08.2026**

Krishan Chandra Gupta
Resident of: K-352, 6/B, Near Friday Market, K- Block, Mahipalpur, South West Delhi, Delhi – 110037. **Complainant**

Versus

M/s Vatika Limited
Registered office at: Vatika Triangle, 4th Floor, Sushant Lok, Phase 1, Block -A, Mehrauli – Gurugram Road, Gurugram – 122002. **Respondent**

CORAM:

Shri Arun Kumar **Chairman**

APPEARANCE:

Shri Gagan Kataria, Advocate Complainant

Shri Pankaj Vivek, Advocate Respondent

ORDER

1. The present 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 provisions of the Act or the Rules and regulations made

thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details.

2. The particulars of the unit, project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"TOWN SQUARE 2", Sector 82, Vatika India Next, Gurugram.
2.	Project area	**1.6 Acres** out of total licensed area 326.032 Acres
3.	Nature of project	Commercial Complex/ Commercial High Rise
4.	DTCP License	• 113 of 2008 dated 01.06.2008 Valid up to 31.05.2018 • 71 of 2010 dated 15.09.2010 Valid up to 14.09.2018 • 62 of 2011 dated 02.07.2011 Valid up to 0.07.2024 • 76 of 2011 dated 07.09.2011 Valid up to 06.09.2017
5.	Name of license	M/s Vatika Limited
6.	RERA Registered/ not registered	**Registered** 40 of 2021 dated 10.08.2021 Valid up to **31.03.2022**
7.	Unit no.	123, Ground Floor, Block A (Commercial unit) (As mentioned in Clause 1 of BBA at page no. 27 of complaint)
8.	Unit admeasuring	430 sq. ft. (super area) (As mentioned in Clause 1 of BBA at page no. 27 of complaint)
9.	Date of builder buyer agreement	07.01.2016

		(As per page no. 24 – 55 of complaint)
10.	Possession clause	***17. Handing over possession of the commercial unit*** *The Developer based on its present plans and estimates and subject to all just exceptions contemplates* ***to complete construction of the said Building/said Commercial Unit within a period of 48 months from the date of execution of this Agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said commercial unit along with all other charges and dues in accordance with the schedule of payments.* ***[Emphasis supplied]*** (As per page no. 39 of complaint)
11.	Due date of possession	**07.01.2020** (Note: Due date of possession is calculated 48 months from the date of execution of agreement i.e., 07.01.2016)
12.	Basic sale consideration	Rs.66,65,000/- (As mentioned in Clause 2 of BBA at page no. 28 of complaint)
13.	Total sale consideration	Rs.76,04,120/- [As per SOA dated 21.12.2023, annexure R-10, page 39 of reply]
14.	Amount paid by the complainant	Rs.12,00,000/- ***Last payment was made on 30.03.2017*** [As per SOA dated 21.12.2023, annexure R10, page 39 of reply]
15.	Payment plan	

Sr. No.	Milestone	Instalment to be paid

	1.	At the time booking	10% of BSP
	2.	Within 90 days of booking	10% of BSP
	3.	Within 180 days of booking	10% of BSP
	4.	On start of excavation	10% of BSP + 20% of EDC/ IDC
	5.	On commencement of 1st Floor Roof Slab	20% of BSP + 20% of EDC/ IDC
	6.	On commencement of 2nd Floor Roof Slab	20% of BSP + 20% of EDC/ IDC
	7.	On completion of brickwork with plaster	15% of BSP + 20% of EDC/ IDC
	8.	On offer of possession	5% of BSP + 20% of EDC/ IDC + 100% of PLC + 100% of IFMD + Electricity & Water Meter Charges + Piped Gas Supply Charges + STP Charges + Water & Sewage Connection Charges + Stamp Duty & Registration Charges + Escalation in Construction Cost (if any)
	(As per page no.47 of complaint)		
16.	Demand & Reminder letter ***[Within 90 days of booking]***		11.06.2015 & 14.07.2015 (page 89 & 79 of complaint)
17.	Demand & Reminder letter ***[Within 180 days of booking]***		31.08.2015, 27.11.2015, 22.12.2015, 25.03.2016 & 24.05.2016 (page 92, 84, 74, 69 & 64 of complaint)
18.	Demand letter ***[On start of excavation]***		10.09.2015 (page 91 of complaint)
19.	Demand & Reminder letter ***[On commencement of 1st Floor Roof Slab]***		27.10.2016 & 16.12.2016 (page 88 & 60 of complaint)
20.	Demand & Reminder letter ***[On commencement of 2nd Floor Roof Slab]***		10.01.2017 & 02.02.2017 (page 87 & 56 of complaint)
21.	Demand letter ***[On completion of brickwork with plaster]***		30.08.2017 (page 125 of complaint)

22.	Intimation of possession	18.10.2018 (annexure R2, page 26 of reply)
23.	Reminder for Intimation of possession	01.11.2018 (page 104 of complaint)
24.	Final opportunity for intimation of possession	06.12.2018 (page 106 of complaint)
25.	Notice for termination	18.01.2019 (page 33 of reply)
26.	Final opportunity for intimation of possession	12.03.2020 (Page 34-35 of reply)
27.	Notice for termination / Letter for cancellation of BBA cum recovery notice	24.02.2021 and 20.05.2021,08.06.2021 [Page 36 & 37 of reply]
28.	Notice termination letter to remit the outstanding within 10 days otherwise the allotment stands cancelled with immediate effect	08.06.2021 (Annexure R-9, page 38 of reply)
29.	Occupation certificate	**17.02.2022** [For Wing – A, Part – 1 & Wing - A, Part – 2 including Basement 2] (As per copy of part OC uploaded at HARERA Official Website)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint: -

a. This complaint is preferred by the complainant under the enabling provisions of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

b. The respondent had always advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects

as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing project always commit and promise to the targeted consumers that his dream home will be completed and delivered to him within the agreed timeline initially in the agreement while selling the dwelling commercial unit to him. The respondent also assured the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

c. The respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling commercial unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his dream home. Therefore, the respondent used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the instalments of home loan like in the case of other builders in market.

d. That, somewhere in the year 2015, the respondent through its marketing executives had advertisement done through various medium and means approached the complainant with an offer to invest and buy a commercial unit in the proposed project of respondent, which the respondent was going to launch the project under the name and style of "Town Square–2" situated at Sector-82, Village Shikohpur, Gurugram.

The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of commercial and commercial project and in case, the complainant would invest in the project of respondent then they would deliver the possession of proposed commercial unit on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing those to be true had agreed to the proposal of the respondent to book the commercial unit in the project of respondent. The representative of the respondent had also shown the brochures to the complainant.

e. The respondent arranged the visit of its representatives to the complainant and they also assured the same as assured by the respondent to the complainant, wherein it was categorically assured and promised by respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the commercial unit in the name of complainant immediately upon booking. Relying upon those assurances and believing those to be true, the Complainant

booked a commercial unit no. RET-007, Level 1–A1-123, measuring an area of 430 Sq. ft. located on Ground Floor, Block No. A in project Town Square–2 at Sector-82, Gurugram situated within the revenue estate of Village Shikohpur, Tehsil & District Gurugram, for a basic sale consideration of Rs.66,65,000/- @ Rs.15,500/- per sq. ft. with preferential location charges (PLC) is Rs.7,09,500/-, by paying an amount of Rs.3,00,000/- through cheque No.697753 dated 06.08.2015 drawn on State Bank of India.

f. That, while booking the said unit, it was represented by the respondent that the respondent has already secured all necessary permissions, sanctions and approvals from the competent authorities and since the complainant has booked the unit, the complainant was assured by the respondent that it would allot the said unit in favour of the complainant well within a period of maximum one week. However, the respondent miserably failed in issuing any allotment letter to the complainant despite repeated requests made by complainant in this regard.

g. Thereafter, respondent started raising the demand of instalments from the complainant as per the agreed timelines and complainant as on today had paid Rs.12,00,000/- which is very much evident from the receipts duly issued by the respondent, the complainant is still ready and willing to pay the remaining sale consideration to the respondent subject to the timely handing over the apartment.

h. That, as a confirmation of the allotment of the said unit by the respondent, the respondent executed a builder buyer agreement dated 07.01.2016 in favour of the complainant. It is submitted that the complainant was not agree with some certain condition of the builder buyer agreement, as the builder buyer agreement was unilateral one

and when complainant refused to sign the same, the respondent threatened the complainant to sign the same, otherwise the payment made by complainant to the respondent shall be forfeited by respondent and the said unit shall also be cancelled by the respondent. Under such threats, the complainant was left with no other efficacious remedy available but to sign the unilateral agreement. The biased terms and conditions of the builder buyer agreement can easily be verified from the fact that the builder buyer agreement was executed on 07.01.2016 and whereas the stamp paper was already purchased by the respondent on 03.06.2015 and this fact is suffice to prove the dishonest intention and malafide act and deeds of the respondent.

i. That, as per clause – 17 of the builder buyer agreement, the respondent was required to handover the possession of the said unit to the complainant within 48 (forty) months from the date of agreement, which was executed by respondent on 07.06.2016 thus, the respondent was obligated to handover the possession of the unit to the complainant maximum by 06.06.2020 and in case, the developer fails to deliver the possession of the said unit to the complainant well within stipulated time period, in that eventuality, the respondent shall pay Rs.5/- per sq. ft. of the super area per month along-with applicable service tax for the period of such delay.

j. The date of possession was 06.06.2020 and respondent miserably failed in delivering the possession of the said unit to the complainant and has therefore, miserably defaulted in fulfilling its commitment as per the terms of the agreement.

k. The respondent raised various demands for payments from time to time, which were duly paid by the complainant as per the schedule because the complainant has opted for the construction linked plan.

l. From the date of booking and till today, the respondent had raised various demands for the payment of installments on complainant towards sale consideration of the said unit and the complainant has duly paid and satisfied all those demands without any default or delay on his part and has also fulfilled otherwise also his part of obligations but the respondent having fraudulent intention never started.

m. In order to enable himself to pay the sale consideration of the said unit, the complainant many a times requested the respondent to provide /handover him all the documents pertaining to this project so that he could avail the facility of loan, but respondent did not provide all the documents pertaining to the project. The complainant has tried his level best to reach at the desk of respondent so that his loan could be passed and the respondent may handover all the documents to complainant pertaining to the project but respondent did not provide same to the complaint.

n. That, it is pertinent to mention here that the complainant visited many financier /bank/financial institution including but not limited to Piramal Housing Finance and Aditya Birla Housing Finance etc. so that his loan could be passed but his loan could not be sanctioned on account non-availability of the required documents to the complainant.

o. On 18.10.2018, the respondent issued a letter bearing Ref. No. VL/CRM/2018-2019/15-03-0228396/19 dated 18.10.2018, intimation of possession for the Unit No. RET-007 in Town Square –2, vide which the complainant was made aware that address of his unit is A1, 123,

Level 1, Town Square–2, 16, Primrose Avenue, Vatika India Next, Gurgaon–122004 and the complainant was advised to inspect the property.

p. That, thereafter, the respondent issued another letter bearing Ref. No. VL/CRM/2018-2019/15-03-0228396/20 dated 01.11.2018, whereby issued a reminder for intimating of possession for the site /unit and the respondent has demanded an amount Rs.90,99,945/- immediately from complainant and through the said letter dated 01.11.2018, the respondent has threatened the Complainant that STP/Gas pipeline charges will be levied.

q. That, thereafter, the respondent issued another letter bearing Ref. No. VL/CRM/2018-2019/15-03-0228396/21 dated 06.12.2018, whereby issued a reminder for intimating of possession for the site /unit and the respondent has demanded an amount Rs.92,60,321.09/- immediately from complainant and through the said letter dated 01.11.2018, the respondent has threatened the complainant that STP/Gas pipeline charges will be levied.

r. The complainant stood shocked and astonished when respondent issued another letter dated 18.01.2019 bearing Ref. No. VL/CRM/2019-2020/15-03-0228396/30 with the subject notice for termination of the Unit No. RET-007–Level 1–A1–123 in Town Square–2, vide which the complainant was threatened to deposit the demanded amount of Rs.93,99,659.86/- to the respondent with immediate effect otherwise the unit of the complainant shall be terminated.

s. That, thereafter, the respondent issued another letter bearing Ref. No. VL/CRM/2020-2021/15-03-0228396/21 dated 12.03.2020, with subject final opportunity for intimation of possession for unit No. A1,

123, Level 1, Town Square–2, 16, Primrose Avenue, Vatika India Next, Gurgaon–122004 at Town Square–2, vide which the complainant was threatened to cancel the unit if complainant not pays Rs.1,08,30,431.14.

t. The complainant stood shocked and astonished when respondent issues a notice for termination for his unit No. RET-007–Level 1–A1–123 in Town Square–2 bearing Ref. No. VL/CRM/2021-2022/15-03-0228396/23 dated 24.02.2021, whereby it was threatened by the respondent that the amount already paid by complainant stood forfeited to the respondent and the complainant is left with no right, title or interest qua the said unit.

u. That, apart from the above, the respondent has also issued another letter for cancellation of builder buyer agreement cum recovery notice bearing Ref. No.15-03-0228396-14052021 dated 20.05.2021, vide which the builder buyer agreement was cancelled by the respondent illegally and unlawfully. It is not out of place to mention here that these letters have been issued by the respondent during the period of COVID-19 when general public at large was not allowed to get out of the house and on the contrary, the respondent was busy in issuing such so called notice and letters illegally and unlawfully.

v. The respondent has also issued another letter for cancellation of builder buyer agreement cum recovery notice bearing Ref. No.15-03-0228396-08062021 dated 08.06.2021, vide which the builder buyer agreement was cancelled by the respondent illegally and unlawfully. It is not out of place to mention here that these letters have been issued by the respondent during the period of COVID-19 when general public at large was not allowed to get out of the house and on the contrary, the

respondent was busy in issuing such so called notice and letters illegally and unlawfully.

w. That, during aforesaid time period, the complainant was in regular touch with the respondent including but not limited to personal approach, email etc., whereby made the respondent aware of the fact that as on 09.06.2018, the complainant has paid an amount of Rs.12,00,000/- and his wife is suffering from medical problem, due to which he is unable to pay the amount but respondent has not taken into consideration that fact and in-spite of this fact kept demanding money from complainant.

x. The complainant thereafter had tried his level best to reach the representatives of the respondent to seek a satisfactory reply in respect of the said unit but all in vain. The complainant had also informed the respondent about his financial hardship due to delay in getting possession of the said unit. The complainant requested the respondent to deliver the said unit citing the extreme financial and mental pressure he was going through, but the respondent never cared to listen to his grievances and left him with the suffering and pain on account of its default and negligence.

y. The complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his home on time agreed, to waive of the charges as levied upon by respondent and to restore the unit with immediate effect. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made life of the complainant miserable socially as well financially as all

his personal financial /fiscal plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured him to buy a floor in the aforesaid commercial project of the respondent. The respondent has trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering his dream home within deadline representing itself as a multinational real estate giant.

z. The respondent committed grave deficiency in services by not delivering the possession of the unit, which is still not near completion. On top of that the respondent has charged heavy rate of interest on delayed payment, which is at the rate of 18% per annum but miserably failed to perform it part of the agreement. The complainant suffered a huge loss by paying a huge amount of Rs.12,00,000/- and still continues to suffer at the hands of respondent as being deprived of his money for a number of years without being delivered any possession of the said Unit or without being paid any interest on the huge amount.

aa. The agreement drafted by the respondent was totally unfair and unilateral and shows wrong unfair trade practice, which complainant never expected. It is pertinent to mention here that while executing the agreement, the respondent threatened the complainant to sign the unilateral agreement, otherwise, the amount paid by the complainant be forfeited. The complainant finding no other option had to sign the unilateral agreement.

bb. The cause of action accrued in favour of the complainant and against the respondent in year 2015, when complainant had booked the said Unit and it further arose when respondent failed /neglected to deliver the said Unit. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s): -

i. Direct the respondent to handover the possession of the unit along with delayed possession charges;

ii. Direct the respondent to restore the unit booked by the complainant with immediate effect;

iii. Direct the respondent to waive off the charges being demanded/ levied by respondent on account of various heads, which were not part of the agreement, which were demanded/ levied by the respondent illegally, unlawfully and deliberately;

iv. Direct the respondent not to charge or claim any charges other than the basic sale price, if any is being charges by the respondent, then the same may kindly be waived off being illegal, null, void, ab-initio, nonest in the eyes of law and not binding upon the rights of the complainant in any manner whatsoever;

v. Pass an order to pay the penalty to the complainant on account of delay possession charges in delivering possession of the unit;

vi. Pass an order to direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation;

vii. Any other relief as this Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

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.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

a. The complaint is liable to be dismissed in view of the preliminary submissions on facts and preliminary objections set out hereinafter. Since the preliminary objections are of a jurisdictional nature which goes to the root of the matter, therefore as per settled law, the objection to maintainability & jurisdiction ought to decide prior to proceedings with the case on merits.

b. That the respondent has developed/is developing a commercial project named as 'Town Square 2", situated at Sector-82, Vatika India Next, Gurugram, Haryana.

c. That the complainants had entered into an agreement for purchase of a commercial space by way of the builder buyer's agreement executed on 07.01.2016.

d. Prior to offering to purchase the commercial space in the project, the complainant had made elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent for the purpose of the development/implementation of the project referred to above and being fully satisfied with the same, the complainants took an independent and informed decision, uninfluenced in any manner by the respondent to purchase the commercial space in question. Moreover, the complainant is also one of the contractor of the respondent and doing the construction work of respondent's projects.

e. That the agreement stipulated that interest @ 2% per annum shall be levied on the purchaser in the event of default/delay in payment of outstanding amount and in the event of non-payment of amount due along with interest, the allotment is liable to be cancelled and earnest money along with delayed payment interest and other applicable charges was liable to be forfeited or to be recovered.

f. That it was further stipulated in the agreement that the timely completion of the project is subject to timely payment of all amounts payable by the allottes including the complainant and delay in constriction could also occur for reasons beyond the control of the respondent. The possession of the completed commercial space was already offered by the respondent, within 48 months from the date of execution of the agreement.

g. That the complainant was not complying with its contractual obligations to pay the timely instalments.

h. That the respondent has issued Intimation for possession to the respondent dated 18.10.2018, further its reminder letter dated 01.11.2018 was also issued. But complainant did not paid any heed towards the same. Thereafter, respondent has also issued another reminder as final opportunity dated 06.12.2018 to comply with the precious intimation and reminders and further having no other alternate, the respondent has also issued notice for termination dated 18.01.2019 to the complainant wherein respondent has categorically informed the complainant to clear the outstanding amount but till date possession has not been taken over by the complainant. Thereafter on 12.03.2020, the respondent has further issued offer of possession to the respondent but till date possession has not been taken over by the

complainant, therefore the respondent again issued notice for termination dated 24.02.2021 to the complainant. However, despite of several reminder's complainant failed to clear the outstanding amount till date and possession also has not been taken over by the complainant therefore respondent have no option but to issue two letters for cancellation of builder buyer agreement dated 20.05.2021 and 08.06.2021.

i. Thus, the complainant has defaulted and violated their contractual obligations and they are merely trying to wriggle out of the contract and attempting to make an unlawful gain by demanding possession, restoration of unit and refund along with interest.

j. That instead of clearing the outstanding dues and taking possession of the commercial space, the complainant has filed this false and frivolous complaint alleging delay in completion of construction. As per agreed terms of the agreement, in terms of clause 17 thereof, the respondent was to endeavour to offer possession of the commercial space in question within 48 months from the date of execution of the agreement. In the present case, the respondent has already offered the possession to the respondent.

k. That the present complaint is not maintainable, either in law or on facts as the complainants are guilty of hiding material facts relating to their own defaults resulting in delay in completion of project.

l. That the present complaint filed by the complainants seeking handover of the possession of the unit, restore the unit, waiving off the charges and payment of assured return is not maintainable as respondent already terminate the aforementioned unit and cancelled the builder buyer agreement as well as per the newly promulgated ordinance i.e.

"Banning of Unregulated Deposit Scheme Ordinance 2018" and further "Banning of Unregulated Deposit Scheme Act. 2019. The Government banned such assured / committed returns and schemes of such returns completely. Thus, in view of the above-mentioned Ordinance and Act and termination letters and cancellation letters of builder buyer agreement, the possession, restoration, waiving off and assured return or returns on investment in any form is not payable.

m. That there is no cause of action arose for the filling the present complaint as respondent has not committed any violation of the RERA Act or the Rules. Hence the disputes, if any, can be adjudicated in a Civil Court only. The Real Estate (Regulation and Development) Act, 2016 does not apply in the instant case. The complainant is trying to abuse the due process of law, for undue personal gains. As such, the above tilted complaint is required to be dismissed on this ground alone.

n. The complainants have booked the commercial space in question (RET-007-Level 1-A1-123) in respondent's project "Town Square 2".

o. The respondent intimated about the possession to the complainants vide letter about intimation of possession dated 18.10.2018. i.e. much prior to the agreed date of completion i.e. 48 months under the Act and Rules. As such, it is clear that the respondent is not liable to handover the possession, refund, pay interest w.r.t delay/ possession/ compensation under the Act, read with the Rules. The respondent can only be treated as a defaulter under the Act if it breaches any term or condition of the Act and not otherwise as the statute (RERA) has the effect of superseding the contract. Reference may be made to Section 38 of the RERA which provides that the Authority can exercise its powers

if there is any contravention of the obligations under this Act or the rules.

p. That the complaint is also liable to be dismissed for the reason that the unit in question was sold and the builder buyer agreement was executed on 07.01.2016, i.e. prior to coming into effect of the Act and the Rules. Since, the respondent has not violated any of the provisions of RERA, hence the liability for damages shall continue to be governed by the terms of the agreement.

q. Since the applicability of the RERA is not retrospective, therefore the respondent cannot be subjected to the any penalties and compensation which were enacted in the new Act. The terms and conditions of the agreement, which was executed prior to coming into force of the Act and the Rules shall remain applicable and binding between the parties and the compensation for delay in delivery of possession shall be governed by the terms of the said agreement. Therefore, the prayer for refund along with interest and compensation, cannot be made by invoking the RERA.

7. All other averments made in the complaint were denied in toto.

8. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

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

E. I Territorial jurisdiction

10. 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.

E. II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per buyer's agreement. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(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.*

12. 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 complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to handover the possession of the unit along with delayed possession charges;

F.II Direct the respondent to restore the unit booked by the complainant with immediate effect;

F.III Direct the respondent to waive off the charges being demanded/ levied by respondent on account of various heads, which were not part of the agreement, which were demanded/ levied by the respondent illegally, unlawfully and deliberately;

F.IV Direct the respondent not to charge or claim any charges other than the basic sale price, if any is being charges by the respondent, then the same may kindly be waived off being illegal, null, void, ab-initio, nonest in the eyes of law and not binding upon the rights of the complainant in any manner whatsoever;

F.V Pass an order to pay the penalty to the complainant on account of delay possession charges in delivering possession of the unit;

F.VI Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

13. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. In the present complaint, the complainant intends to continue with the project and is seeking restoration of allotment, possession and delayed possession charges as provided under the proviso to Section 18(1) of the Act. Section18(1) proviso 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,*
> *(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) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***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, 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"*

15. The complainant was allotted a commercial unit bearing no.123, Ground Floor, Block A, having tentative super area 430 sq. ft., in project "Town Square – 2" at Sector – 82, Gurugram, being developed by M/s Vatika Limited under construction linked payment plan and thereafter, a builder

buyer agreement was executed between the parties on 07.01.2016, on the above-mentioned unit. As per clause 17 of the agreement, the respondent was required to complete the construction of the residential floor within a period of 48 months from the date of execution of this agreement. Therefore, the due date of possession comes out to be 07.01.2020. The complainant has paid an amount of Rs.12,00,000/- against the total sale consideration of Rs.76,04,120/-. The complainant has submitted the respondent failed to timely construct and develop the project.

16. The respondent has raised a plea in its reply that the complainant is defaulter and has failed to make payment as per the agreed payment plan. Therefore, various demand letters, reminders and final opportunities were given to the complainants. Thereafter, on account of non-payment of outstanding dues the respondent has issued pre-cancellation letter on 12.03.2020 and finaly cancelled the unit on 08.06.2021. Accordingly, the complainant failed to abide by the terms of the builder buyer's agreement dated 07.01.2016 executed inter-se parties by defaulting in making payments in a time bound manner, as per payment schedule.

17. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 08.06.2021 is valid or not.

18. Upon examining the documents available on records and submissions made by both parties, the Authority observes that the complainant has paid an amount of Rs.12,00,000/- (i.e.,19.04% of total sale consideration) against the total sale consideration of Rs.76,04,120/- (i.e., inclusive of BSP, PLC & EDC/IDC). The complainant has opted for construction linked payment plan and last payment was made by the complainant was on 30.03.2017. It is also on record, that various demand/ reminder letters dated 11.06.2015, 14.07.2015, 31.08.2015, 27.11.2015, 22.12.2015,

25.03.2016, 24.05.2016, 10.09.2015, 27.10.2016, 16.12.2016, 10.01.2017, 02.02.2017, 30.08.2017, 18.10.2018, 01.11.2018, 06.12.2018, 18.01.2019, 12.03.2020, 24.02.2021 and 20.05.2021 were sent by the respondent to the complainant, to clear the outstanding dues prior to the cancellation of the allotment vide letter dated 08.06.2021. However, the complainant never cleared the outstanding dues. It is observed that as per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. Despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues. Therefore, the respondent has cancelled the allotment of the subject unit due to non-payment on 08.06.2021.

19. Further, despite several requests and demand letters, the complainant neither contacted the respondent nor deposited the outstanding dues. As per clause 2.e) of the buyer's agreement dated 07.01.2016, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 2. e) of the buyer's agreement is reproduced as under for a ready reference:

> ***2. e) TIME IS ESSENCE***
> ***Time is of essence with respect to the Buyer's obligations to pay the balance sale consideration in accordance with the payment schedule herein agreed to along with other payments*** *such as applicable, stamp duty, registration fee, interest Free Maintenance security Deposit (IFMSD) and other charges & cesses as may* ***be applicable on or-before due date or as and when demanded by the Developer and also performance/ observance of all his other obligations is of essence to this Agreement.*** *In the event the Buyer fails to make the payment on the due date or commits breach of any of the terms and conditions of this Agreement,* ***the allotment hereby made may be cancelled by the Developer atter giving a notice in writing to rectify the breach within 15 days and thereafter the Earnest***

Money (as defined hereinafter) along with other non-refundable amounts e.g. interest on delayed payment, any brokerages paid / payable etc' will be forfeited by the Developer and the balance will be refunded to the Buyer without any interest and sent to him. *Thereafter the Developer will have the right to sell the said unit...*

20. In view of the above findings, the Authority observes that the allotment of the subject unit of the complainant was cancelled by the respondent after issuing proper reminders to pay outstanding dues. Therefore, the cancellation letter dated 08.06.2021 is hereby held to be valid in the eyes of law and the complainant is not entitled for the relief(s) being sought in the present complaint as the subject unit of the complainant was cancelled by the respondent after issuing proper reminders as per the terms and conditions of the payment plan annexed with the buyer's agreement dated 07.01.2016.

21. However, in the present complaint, there is no document is on record from which it can be said that after cancellation of the allotment the respondent/ promoter has refunded the balance refundable amount to the complainant. Notably, the respondent has failed to comply with the agreed terms regarding the deduction of earnest money upon cancellation, as it has not refunded the remaining balance amount. Accordingly, the cause of action remains continued.

22. But after cancelling the unit, the respondent is not entitled to keep the money paid by the complainant with it and the respondent is under obligation to return the paid-up amount after deducting the amount of earnest money. The Authority observes that clause 4 of the buyer's agreement talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee, the respondent is entitled to forfeit the amount of earnest money. The relevant Clause 4 of the buyer's agreement is reproduced as under for a ready reference:

4. ERANEST MONEY

The buyer has entered into this agreement on the condition that 10% of the total sale consideration (10% of TSC) of the said unit shall be treated as Earnest Money to ensure fulfilment, by the buyer, of the terms and conditions as contained in the application and this agreement. *The said earnest money shall be forfeited by the developer in the event of the failure of the buyer to perform his obligations of to fulfil any of the terms and conditions set out in this agreement and on occurrence of such failure,* ***the developer shall refund residual amount remaining after deducting earnest money and all non-refundable amounts (such as brokerage paid, service tax other applicable tax, cess, duties, etc. charges for dishonour of cheque, interest on delayed payment etc.) to the buyer without any interest of compensation of whatsoever nature.***

23. However, the issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in ***CC/438/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020) and Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

24. So, keeping in view of the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/promoter can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/promoter is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest on such balance amount at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation letter i.e., 08.06.2021 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid.

F.VII Pass an order to direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation;

25. The complainant is seeking above mentioned relief w.r.t litigation expenses. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19

which is to be decided by the adjudicating officer as per Section71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the Authority:

26. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f):

    i. The respondent/ promoter is directed to refund the paid-up amount of Rs.12,00,000/- after deduction of 10% of the sale consideration as earnest money along with interest on such balance amount at the rate of 10.80% p.a. as prescribed under Rule 15 of the Rules, 2017, from the date of cancellation letter i.e., 08.06.2021 till its actual realization.

    ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint as well as application, if any, stand disposed of accordingly.

28. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.08.2026