

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint no. : 4010 of 2019**  
**First date of hearing: 06.12.2019**  
**Date of decision : 03.11.2020**

Shri Raj Kumar Singhal  
**R/o:-** E-10/12, DLF City, Phase-I, Gurugram-  
122002

**Complainant**

Versus

M/s Vatika Limited  
**Regd. office:** Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok, Phase-I, MG Road,  
Gurugram-122009

**Respondent**

**CORAM:**  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**  
Raj Kumar Singhal

Complainant in person

Shri Ganesh Kamath and  
Sanyam Nagpal

Advocates for the complainant

Ms. Ankur Berry

Advocate for the respondent

**ORDER**

1. The present complaint dated 06.09.2019 has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

2. The particulars of the 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.	Heads	Information
1.	Name and location of the project	"Vatika India Next" in Sector 81, 82, 82A, 83, 84, 85, Gurugram
2.	Nature of the project	Residential township
3.	Project area	281.58 acres
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
5.	RERA registered/ not registered	<b>Not registered</b>
6.	Date of execution of plot buyer's agreement	<b>04.11.2011</b>
7.	Unit no.	C/70
8.	Area	300 sq. yds.
9.	New unit	10/St. C-2

		(as per addendum to agreement dated 24.10.2013 on pg. 50 of the complaint)
10.	Payment plan	Construction Linked Plan (At page 47 of the complaint)
11.	Total consideration	Rs. 30,82,102/- (as per statement of account dated 17.12.2015 annexed at page 59 of the complaint)
12.	Total amount paid by the complainant	Rs. 30,87,467/- (as per statement of account dated 17.12.2015 annexed at page 59 of the complaint and receipt at page 65 of the complaint)
13.	Due date of delivery of possession (as per clause 9 of the agreement: 3 years from the date of execution of agreement)	04.11.2014
14.	Offer of possession	04.03.2016 (At page no. 66 of the complaint)
15.	Delay in handing over of possession	1 year and 4 months
16.	Specific reliefs sought	Direct the respondent to handover the possession and pay interest for delay in delivery.

3. As per clause 9 of the plot buyer's agreement the possession was to be handed over to the complainant within 3 years from the date of execution of the agreement, which comes out to be 04.11.2014. Clause 9 has been reproduced below:-

***"9 HANDING OVER POSSESSION OF THE SAID PLOT TO THE ALLOTTEE***

*The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11), (12 and Clause (30) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."*

4. The possession of the subject apartment has been offered by the respondent to the complainant on 04.03.2016 i.e. after a delay of approx. 1 year. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves his right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and

mental harassment caused to the complainant. Hence, this complaint for the reliefs as stated above.

5. The complainant submitted that the respondent vide its letter dated 16th October 2013, unilaterally withdrew the plot originally allotted i.e. 300 sq. yd. plot no. C/300/70, and forced the complainant to accept another plot no. 10/ST-C-2/300/Sec-82A in lieu, vide its subsequent re-allotment letter dated 24<sup>th</sup> October 2013.
6. The complainant submitted that after series of follow ups for possession, the complainant was issued a final demand letter dated 17.12.2015 by the developer. When the complainant asked for credit of the delay penalty, the developer gave a vague reply that they have not compensated others & thereafter kept silent on this.
7. The complainant submitted that after vigorous follow-up by the complainant, and after nearly 4.5 years of BBA, a bogus offer of possession letter dated 04.03.2016 is issued by the respondent. Be that as it may, the actual possession is not offered. The same day, certain formats are got signed by the complainant. The paper possession of the plot is offered by the respondent in its office on 11th April 2016.

8. The complainant submitted that despite collecting the final demand in January 2016, itself, the respondent again raised a demand of STP charges Rs. 18766.54/- in March 2017 and though the BBA did not have an express provision for the same, the same was paid under duress by the complainant in March 2017 itself.
9. The complainant submitted that due to not having the conveyance deed, the complainant is unable to get the building plans approved and hence no construction can be started. The cost of construction has well escalated in the said period.
10. The complainant submitted that after payment of entire deposit of Rs.31,06,233.50/- in regard to said plot, the complainant kept on following the developer about the fate of the plot and about exact time when the sale deed would be executed & its physical possession would be handed over.
11. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
12. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at [vatika.rera@vatikagroup.com](mailto:vatika.rera@vatikagroup.com), the delivery reports have been

placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. The advocate for the respondent appeared on the date fixed for hearing.

13. 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 on the basis of these undisputed documents.
14. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.
15. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 9 of the plot buyer's agreement executed between the parties on 04.11.2011, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 04.11.2014. Since, the


respondent has offered the possession of the subject unit to the complainant on 04.03.2016 i.e. after a delay of approx. 1 year.

16. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot buyer's agreement dated 04.11.2011 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. due date of possession i.e. 04.11.2014 till the date of offer of possession i.e. 04.03.2016, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
17. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:
  - i. The respondent shall execute the conveyance deed within a period of 15 days from the date of this order.
18. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in



this regard against the respondent. A copy of this order be endorsed to the registration branch.

19. Complaint stands disposed of.
20. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.11.2020

**Judgement Uploaded on 02.12.2020**

**HARERA**  
GURUGRAM