

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

**Complaint no. :** 1418 of 2019  
**First date of hearing:** 17.09.2019  
**Date of decision :** 11.02.2021

Shri Mohammad Yousuf  
**R/o:-** C-57, Rajiv Nagar, Near Shiv Mandir,  
Mata Road, Gurugram-122006

**Complainant**

**Versus**

M/s Vatika Ltd.  
**Regd. office:** Vatika Triangle, 4<sup>th</sup> floor, Sushant  
Lok, Phase-1, Block-A, Mehrauli, Gurugram-  
122002

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Kuldeep Kumar Kohli  
Shri Venket Rao

Advocate for the complainant  
Advocate for the respondent

**ORDER**

The present complaint dated 29.03.2019 has been filed by the complainant/allottees 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.

#### A. Unit and project related details

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", Sector 82A, Gurugram
2.	Nature of the project	Group Housing Colony
3.	<b>DTCP Licence</b>	<ul style="list-style-type: none"> <li>• 113 of 2008 dated 01.06.2008</li> <li>• 71 of 2010 dated 15.09.2010</li> <li>• 62 of 2011 dated 02.07.2011</li> <li>• 76 of 2011 dated 07.09.2011</li> </ul>
4.	<b>Valid up to</b>	<ul style="list-style-type: none"> <li>• 31.05.2018</li> <li>• 14.09.2018</li> <li>• 01.07.2021</li> <li>• 06.09.2017</li> </ul>
5.	<b>Licence holder</b>	<ul style="list-style-type: none"> <li>• Browz Technologies Pvt. Ltd. and others</li> <li>• Blossom Properties Pvt. Ltd. and others</li> <li>• Calida Developers Pvt. Ltd. and others</li> <li>• Spring Buildcon Pvt. Ltd. and others</li> </ul>

6.	<b>HARERA Registration</b>	280 of 20017 dated 09.10.2017 <b>(Phase I)</b>
7.	<b>Registration valid up to</b>	31.03.2021
8.	<b>Area registered</b>	34519.201 sq. mts.
9.	<b>Allotment letter</b>	23.04.2012
10.	<b>Date of execution of apartment buyer's agreement</b>	28.01.2013
11.	<b>Unit no.</b>	501, 5th floor, Tower E
12.	<b>Area</b>	3270 sq. ft.
13.	<b>Total consideration</b>	Rs. 1,99,58,455/- [As per statement of account dated 29.03.2019, page 30 of reply]
14.	<b>Total amount paid by the complainant</b>	Rs. 1,97,78,729/- [As per statement of account dated 29.03.2019, page 30 of reply]
15.	<b>Due date of delivery of possession</b> <b>(14. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b> <i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 3(Three) years from the date of execution of this Agreement unless there shall be delay or there....)</i>	28.01.2016

16.	Specific reliefs sought	Direct the respondent to handover the physical possession of the subject apartment along with the interest for delayed period of interest.
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**B. Facts of the complaint**

1. The complainant submitted that he was lured into investing by the respondent Company and hence decided to make application for the booking in the project of the Opposite Party for the flat and thereby made an payment of Rs. 17,53,537/- in form of Earnest Money to the Respondent Company.
2. The complainant submitted that he has made most of its payments on time and the Respondent Company had intimated that they will be charging interest at the rate of 18% p.a., in cases where the payments are delayed. It is submitted that the complainant, nevertheless, duly made the payments to the respondent Company as and when demanded. It is submitted that despite making of payment on time the respondent company had miserably failed to fulfil its promise of delivering the possession of the flat by 28.01.2016.
3. The complainant submitted that despite the payment of 99% of the total consideration approximately Rs. 1,97,46,450/- by the complainant, including the basic sale price and other charges, the

respondent Company has failed to deliver the possession of the flat to the complainant. It is submitted that the complainant till date has already made the payment of Rs. 1,97,46,450/- to the respondent but the respondent has failed to complete the construction of the apartment and deliver the possession of the unit allotted latest by 28.01.2016.

4. The complainant submitted that the perusal of various clauses of the Flat Buyers Agreement represents that the Terms and Condition is unilateral and arbitrary wherein the Respondent has an upper-hand in the entire transaction. That as per the Terms and Conditions the Respondent had the authority to impose an exorbitant rate of interest on the Complainant to the tune of 18% on delayed payments and whereas, the Respondent was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 5/- per Sq. ft. per month for the period of delay. The relevant extracts from Clause 11 and Clause 19 from the Flat Buyer Agreement are reproduced here for the sake of the perusal of this Hon'ble Authority:

*"11. Without Prejudice to its aforesaid right to cancel the allotment as aforesaid, the Developer may, in case of exceptional circumstances and at its sole and absolute discretion waive the breach by the Allottee in not making payments as per the schedule of payment but on the condition that the Allottee shall pay to the Developer interest on the delayed payment which shall be charged @18% per annum for the period of delay"*

*"19. Subject to Clauses 17,18 & 42 hereof and provided the Allottee has paid all instalments and sums due on time and as per the Schedule of Payment and is otherwise in compliance of this Agreement, if the Developer fails to handover possession of the Apartment within the stipulated period as stated in Clause 14 above and such extended periods as permitted under this Agreement, then, the Developer will pay to the Allottee, compensation up to a maximum of Rs.5/- Per Sq. Ft. (Rs.54/- per sq. ft.) of the super area of the apartment per month for the period of such delay after expiry of the initial period of 60(sixty) days from the stipulated date for delivery of possession."*

**C. Relief sought by the complainant**

5. The complainants have sought following relief(s):

a) Direct the respondent to deliver immediate possession of the apartment no 501 in the project "The Sovereign Next" located at sector 82A, village shikohpur, Gurugram along with all the promised amenities and facilities and to the satisfaction of the complainant;

b) Direct the respondent to make the payment of compensation @18% p.a. on the amount already paid by the complainant to the respondent, from the promised date of delivery of the flat till the actual delivery of the flat to the complainant.

6. 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.

**D. Reply by the respondent**

7. The respondent contended on the following grounds: -

- i. The respondent submitted the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed without cause of action. The present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainant is trying to suppress material facts relevant to the matter. The complainants are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The respondent submitted that the complaint is devoid of merits and should be dismissed with costs.
- ii. The respondent submitted that the complainant is trying to shift its onus of failure on the respondent as it is the complainant who failed to comply his part of obligation and miserably failed to pay the instalments in time despite repeated payment reminders being sent by the respondent from time to time and it is the complainant

who wants to cancel the unit booked with the respondent. The respondent submitted that the project of the respondent is almost 95% complete and possession will be offered soon to the complainant.

8. Copies of all the relevant documents have failed and placed on the record. Their authenticity is not in dispute. Hence, the complainant can be decided on the basis of their undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no 7. Of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and Anr.*
10. 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.

**F. Finding on the relief sought by the complainant**

**Relief sought by the complainant:** The respondent be directed to immediately grant the possession of unit along with compensation for the delay caused herein to the complainant.

11. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(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, —*

*Provided 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 the handing over of the possession, at such rate as may be prescribed."*

12. As per clause 14 of builder buyer's agreement, the possession was handed over within a period of 3 years from the date of execution of this agreement. Clause 14 of the builder buyer's agreement is reproduced below:

***"14 Schedule for possession of the said apartment***

*The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of he said building/said apartment within a period of 3years from the date of execution of this agreement unless there shall be failure due to reasons*

*mentioned in clauses 17,18 & 42 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the developer 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.*

13. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, however, proviso to 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 the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. The

Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd.**

**vs. Simmi Sikka (Supra)** observed as under: -

*64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."*

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 Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the apartment buyer's agreement executed between the parties on 28.01.2013, 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 28.01.2016.


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. 28.01.2016 till the date of handing over of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.


**G. Directions of the authority**

Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 28.01.2016 till the date of handing over of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the date of handing over of possession shall be paid before 10th of every subsequent month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
  - v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
16. Complaint stands disposed of.
17. File be consigned to registry.

  
**Dr. K.K. Khandelwal**  
(Chairman)

  
**(Samir Kumar)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 11.02.2021

Judgement uploaded on 04.08.2021.