

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

**Complaint no. : 948 of 2019**  
**First date of hearing: 30.07.2019**  
**Date of decision : 11.02.2021**

1. Shri Gaurav Sadh  
2. Shri Saurabh Sadh

**Both R/o:-** E-631, 3<sup>rd</sup> Floor, New Palam Vihar,  
Phase-2, Gurugram-122016

**Complainants**

**Versus**

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Jitender Sharma

Proxy Counsel for Advocate for  
the complainants

Shri Mukul Sanwariya

Advocate for the respondent

**ORDER**

1. The present complaint dated 14.03.2019 has been filed by the complainants/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**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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.	<b>DTCP Licence</b>	a. 113 of 2008 dated 01.06.2008 b. 71 of 2010 dated 15.09.2010 c. 62 of 2011 dated 02.07.2011 d. 76 of 2011 dated 07.09.2011
4.	<b>Valid up to</b>	a. 31.05.2018 b. 14.09.2018 c. 01.07.2017 d. 06.09.2017

5.	<b>Licence holder</b>	a. Browz Technologies Pvt. Ltd. & Ors. b. Blossom Properties Pvt. Ltd. & Ors. c. Calida Developers Pvt. Ltd. & Ors. Spring Buildcon Pvt. Ltd. & Ors.
6.	RERA registered/ not registered	<b>Not registered</b>
7.	Date of execution of dwelling unit buyer's agreement	<b>19.04.2011</b>
8.	Unit no.	29, Ground Floor, St. 3, Block-E
9.	Area	1156.21 sq. ft.
10.	New area	1271.39 sq. ft. (as per intimation letter dated 10.07.2013 annexed at page 85 of the complaint)
11.	Payment plan	Construction Linked Plan
12.	Total consideration	Rs. 40,23,356.77/- (as per statement of account dated 11.03.2019 annexed at page 39 of reply)
13.	Total amount paid by the complainants	Rs. 12,75,286/-

		(as per statement of account dated 11.03.2019 annexed at page 39 of reply)
14.	Termination letter	15.11.2018 (annexed at page 86 of the complaint)
15.	Due date of delivery of possession <b><u>[“10.1 Schedule for Possession of the said independent dwelling unit</u></b> <i>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...”]</i>	19.04.2014
16.	Specific reliefs sought	Direct the respondent to handover the possession and pay interest for delay in delivery.

**B. Facts of the complaint**

3. The complainants submitted that they entered into an agreement to sell with original allottee namely Mr. Gaurav Dawar for buying

the property on 06.07.2011 respect to re-sale of the plot bearing No. 29, Street-3, Sector 83 ad- measuring 240 Sq. yard Primrose independent ground floor.

4. The complainants submitted that the original allottee of the said unit agreed and entered into dwelling unit buyer's agreement with the respondent upon the terms and conditions as mentioned in such agreement. It is pertinent to mention here that initially the total consideration of the said unit was Rs. 35,77,867/- and Interest Free Maintenance Security Deposit (IFMS) @ Rs. 57,811/- total amounting to Rs. 36,35,677/-.
5. The complainants submitted that they entered into an agreement to sell with original allottee for a total consideration of Rs. 41,00,000/- to be paid for the ownership of the said unit in sale.
6. The complainants submitted that they were bound to pay an amount of Rs. 17,74,387/- to the original allottee and balance amount of Rs. 23,25,613/- was required to be paid to the respondent. It is also important to mention here that the original allottee has paid the total part amount of Rs. 12,75,286/- to the respondent out of the initial total consideration of Rs. 36,35,677/-.
7. The complainants submitted that they entered into a tripartite agreement on 30.07.2011 with the respondent and M/s First Blue

Home Finance Limited. Under the tripartite agreement they borrowed the loan amount of Rs. 36,00,000/- from M/s First Blue Home Finance Limited for purchasing the aforesaid unit in the said project of the respondent. That the financial institution sanctioned the loan vide through loan file No. CPL/032722 dated 30.06.2011. The financial institution disbursed the part amount of Rs. 14,74,387/- out of total borrowed loan.

8. The complainants submitted that after taking the loan in July 2011, bank was pressuring them to avail the full amount of sanctioned loan of Rs. 36,00,000/- even though the disbursement was of only Rs. 14,74,387/-.
9. The complainants submitted that they were allotted with new numbers of the allotted unit i.e. plot no. 29 Primrose, GF, ST.83E-3, Sector 83E instead of existing number i.e. HSG/014A, floor No. 0, plot No. 29-3rd 7-5 St.83E-Vatika India Next. Moreover, the area of the independent floor was also increased to 9.96% more than the tentative area mentioned in the builder buyer agreement. Accordingly, the total consideration of the unit was increased by Rs. 3,56,422/- and service tax of 3.09% i.e. Rs. 11,013.44/- was to be paid more from the initial agreed consideration.
10. The complainants submitted that the respondent arbitrarily and without following the principles of natural justice issued the letter

dated 15.11.2018 for the termination of builder buyer agreement which was earlier executed in favour of them.

**C. Relief sought by the complainant:**

11. The complainant has sought following relief(s).

i. Direct the respondent to handover the possession to the complainant and pay interest for delay in delivery.

12. 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**

13. The respondent contended on the following grounds: -

i. It is submitted that the "agreement for sale" that has been referred to under the provisions of 2016 Act and 2017 Haryana Rules, is the "agreement for sale" as prescribed in Annexure-A of 2017 Haryana Rules. Apparently, in terms of Section 4(1), promoter is required to fill an application to the 'authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.

- ii. It is submitted that the complainants have made the payment of only Rs. 12,75,286/- till September 2011 out of total sale consideration of Rs. 40,23,356/- i.e. 31%. It is pertinent to mention here that as per the buyer's agreement, the possession was to be handed over by 2014 but the complainants has stopped making payments after September 2011.
- iii. It is submitted that the respondents offered the complainants to collect the refund cheque from the office vide termination letter dated 15.11.2018, but they never turned up.
14. Copies of all the relevant document have failed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of their undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

15. 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.***

16. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainants 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 complainants

17. 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."*

18. As per clause 10.1 of Dwelling unit buyer's agreement, the possession was handed over within a period of 3 years from the date of execution of this agreement. Clause 10.1 of the dwelling unit buyer's agreement is reproduced below:

*10.1 Schedule for possession of the said independent dwelling unit 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 clause (11.1),(11.2),(11.3) and clause (38) 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 payment given herein in annexure III 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. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same."*

19. **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.*

20. On consideration of the circumstances, the evidence and other record and submissions made by the complainants 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 10.1 of the dwelling unit buyer's agreement executed between the parties on 19.04.2011, 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 19.04.2014.
21. Since, the respondent has not offered the possession of the subject unit to the complainants till now, accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the dwelling unit buyer's agreement dated 19.04.2011 to hand over the possession within the stipulated period.

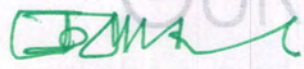
22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @9.30% p.a. w.e.f. 19.04.2014 till the date of offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**E. Directions of the authority**

23. 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 complainants from due date of possession i.e. 19.04.2014 till the date of offer of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iv. The respondent shall not charge anything from the complainants which is not part of the dwelling unit 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 complainants in case of delayed possession charges.
24. 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.
25. Complaint stands disposed of.
26. 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.