

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

Complaint no. : 1481 of 2019  
First date of hearing: 17.09.2019  
Date of decision : 02.03.2021

1. Shri Pradeep Kumar
  2. Smt. Abha Kulshrestha
- Both R/o:-** F-324 GF, Sushant Lok-2 Ext., Sector-57, Gurugram, Haryana-122011

**Complainants**

Versus

M/s Vatika limited  
Regd. Office: Flat no 621 A, 6<sup>th</sup> Floor, Devika  
Towers, 6 Nehru Place, New Delhi-110019

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Ms. Vridhi Sharma  
Shri Venket Rao

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 01.04.2019 has been filed by the complainants/allottees 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Project and unit related details**

2. The particular 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 | "Signature 2 Villa" at Vatika India Next", Sector 82, 82A, 83, 84 and 85, Gurugram<br><b>Note: - Earlier it was "Bellevue Residences"</b> |
| 2.    | Nature of the project            | Residential township  |
| 3.    | RERA registered/ not registered  | <b>Not registered</b>   |
| 4.    | Payment plan                     | Construction linked plan  |
| 5.    | Buyer's agreement                | <b>09.09.2009</b>   |
| 6.    | Unit no.                         | 91/240/Simplex/BR   |
| 7.    | Plot measuring                   | 1527 sq. ft.  |
| 8.    | First addendum to the agreement  | 11.06.2012<br>(Page no: 79 of the complaint)  |
| 9.    | New unit                         | 26/240/SM/ST 82D1-B   |

|     |  |   |
|-----|--|---|
| 10. | Second addendum to the agreement   | 15.12.2017  |
| 11. | New unit vide second addendum  | 64, S-5 (Page no: 96 of the complaint)  |
| 12. | Revised area   | 1965 sq. ft.<br>(Page no: 96 of the complaint)  |
| 13. | Total consideration  | Rs. 1,09,60,094.42/-<br>(as per SOA dated 08.04.2019 annexed at page 36 of the reply)       |
| 14. | Total amount paid by the complainants  | Rs. 39,25,119.91/-<br>(as per SOA dated 08.04.2019 annexed at page 36 of the reply)         |
| 15. | Due date of delivery of possession as per clause 11.1 of the buyer's agreement: within a period of three years from the date of execution of the agreement | 09.09.2012  |
| 16. | Specific reliefs sought  | Direct the respondent to handover the possession along with interest for delay in delivery. |

**B. Facts of the complaint**

3. The complainants have submitted that the respondent company through its online representations and its various representatives



and agents had left no stone unturned in making tall claims regarding the grandeur of their upcoming project. That replying on such claims and false representations regarding timely completion and possession of the unit various people had made bookings in the project of the respondent company

4. The complainants have submitted that vide their application dated 06.04.2009 Sh. Devesh Sharma and his wife Smt. Sarika Sharma made a booking in the project of the respondent. That after some time the applicant herein received a letter from the respondent specifying the particular of their unit in the project. The details have been given villa reference no: 91/240/SIMPLEX/BR, Plot Size 240 sq. Yds., built up area 1,527 sq. ft. total sale consideration Rs 72,81,920/.
5. It is submitted that through this letter also the respondent had made claim to the brilliancy and ultimate lifestyle provided by their project. that a sum of Rs 2,00,000/- was also furnished by the applicants herein in order to proceed with their allotment.
6. The complainants have submitted that a builder buyer agreement was executed between the parties on 09.09.2009. that as per the agreement the possession of unit was to be handed over within a period of 3 years to the applicants. The relevant section has been produced below:

**11.1. Schedule for possession of the said 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..."*

As per the agreement the unit was to be completed by 2012, which had not happened in the present case.

7. The complainants have submitted that an addendum was executed between the parties on 11.06.2012 by which the applicants were allotted a new unit no. by the respondent company. that a new signature 2 Villa bearing no 26/240/SM/ST. 8201-8 was hereby allotted to the applicant.
8. The complainants have submitted that allured by the various claims of the respondent, the complainants were looking to book a unit in the project of the respondent company, when they came across the applicants named above. That the applicants because of some personal reason wanted to sell their unit in the booking made by them. A proposal was made to the complainants to buy their unit in the project which, the complainants willingly accepted as they knew the delivery of the unit would happen soon as the agreement itself had been executed in 2009. That a sale agreement was executed between the applicants and the complainants for transferring the interest and the rights of the applicants in the unit to the complainants. A copy of the sale agreement executed on 16.05.2014 has been annexed herewith as annexure C-4.



12. The complainants have submitted that in 2015 they again inspected the site and were disheartened to see the different status of construction of the signature villa. It is submitted that in some villas plastering had been done on the other hand some villas remained untouched, which also included the villa of the complainants. That in such circumstances the complainants in order to seek the true timeline for the completion and delivery of the villa visited the corporate office of the respondent at Gurugram. That the official, one Mr. Kush Arora informed the complainants that they were encountering some problems as the farmers were not ready to give the possession but however, the respondent would stick to the timeline as provided by them. That they were shocked to find the same that their money had been taken without firstly obtaining the land in all aspects but however, they had to rest on the assurances of the respondent as they had already parted with a considerable amount of their money.
13. The complainants have submitted that after an year when they visited the office of the respondent in 2016, they were advised to get in touch with an official at the CRM office. The complainants were further told to wait for 6-8 months for the land dispute to another unit. That they were further assured of the investment made by them. It is to be noted that they had to endure both physical and mental stress during this period because even after investing their hard-earned money, they were still asked to wait because of some pending dispute. The

9. The complainants have submitted that an endorsement in the builder buyer agreement dated 09.09.2009, was also made in favour of the complainants herein. That the respondent company had acknowledged the transfer of the unit to the complainants and were now to receive the remaining payments from the complainants and were to timely deliver the unit to them.
10. The complainants have submitted that they also received a letter dated 30.05.2014 from the respondent company, acknowledging the allotment made in their favour for plot no 26/ST/82 DI-8/240/Simplex/82D1. That the new unit bearing no. 26 was however, on a corner plot and a PLC charge of Rs. 8,40,000/-
11. The complainants have submitted that they also inspected the site of the project and were appalled to see that crops were growing between the semi constructed villas in areas where the construction had not been initiated. That the complainant's villa was also subjected to neglect. That it was further noticed by the complainants that a number of groceries and other small stores were operating in the area, which is supposed to be a secure gated colony. That perturbed by the same the complainants wrote a mail to the respondent company on 19.12.2014 to know the planned construction schedule along with date of possession. That vide their mail dated 22.12.2014 the respondent assured the complainants of timely construction of the villa and the delivery of the same by first quarter of 2016.



respondent herein has illegally made the complainants adequately so that the present case can be a deterrent for the real estate companies to stop exploiting the innocent customer.

14. The complainants have submitted that on 17.02.2017 the complainants received a mail from the respondent giving option for re-allotment in 240/SIMPLEX villa having an area of 1,965 sq.ft. as there was an increase in area the complainants wanted to inspect the site on their own and hence, requested the respondent to hold the same.
15. The complainants have been submitted that they were out of station and could not reach the respondent through phone, they had dropped the abovementioned mail. That the complainants were further shocked to know that the villas so offered by them had already been allotted to some other applicants. That the complainants now understood that they had been trapped by the respondent into investing their hard-earned money as the villa/plot they had been offered was not even in the possession of the respondent and the complainant could no longer sell the same. Also, the complainants have themselves cancelling and seeking a refund which have caused financial loss to the complainants. That under the circumstances the complainants were constrained to wait for the possession of the villa by the respondent. That the complainants thus, are liable to get



damages for physical, mental and financial harassment being inflicted on them by the respondent company.

16. The complainants have been submitted that on 08.05.2017 they against received another mail from the respondents offering options for re-allotment. Fearing the previous incident, the complainants visited the respondent on the same day. That they further vide their mail dated 09.05.2017 intimated their choice for re-allotment and also asked for details for the arbitrary increase in area by 438 sq. ft. when the respondent could have proceeded with the initial area under the agreement.
17. The complainants have submitted that without answering the queries of the complainants the respondents on 10.05.2017 were furnished with the addendum to BBA, request letter and cost sheet. That they were inevitably put under the fear of cancellation of the unit and thus, were compelled to execute the same. That through their repeated mails the complainants protested the arbitrary imposition of the escalated cost which the complainants were made to bear for no mistake of their. That all such requests to waive the same were of no avail as the respondent only ignored all such pleas of the complainants. Also submitted that an addendum to the agreement was executed between the complainants and the respondent on 15.12.2017 by which the complainants were re-allotted a new signature 2 villa no 64, S-5 admeasuring about 1,965 sq. ft.

18. The complainants have submitted that they have been arbitrarily charged 49% for an alleged increased area. That the complainants on various occasions tried to clarify the position on this but were ignored and were told that the cost for the increased area will have to be paid at the time of possession, not before that. They were further told that increased cost of the area was to be further paid by every allottee given an allotment in the said villa. That it is crystal clear that the increased area cost to the tune of 49% is arbitrary and there is no surety whether there has actually been an increase in the area or not, as the addendum shows the original area.
19. The complainants have submitted that apart from changing the allotment no. the respondent company has till date failed to complete the construction work at the project site and has moreover failed to provide any construction details to the complainants herein, constraining them to file the present complaint for possession along with compensation for such delay.
20. The complainants have submitted that it is to be noted by the hon'ble authority that the complainants vide their mail dated 18.01.2019 questioned the invoice no 1/105/1819/00077 of the respondent dated 22.10.2018, that the respondent had arbitrarily charged the complainants for PLC charges along with the escalated cost for increase in the area. That the complainants also penned down the grievances that they have been rendered helpless as the banks were



not willing to provide land to the complainants as the project of the respondents is RERA non-complaint. That such details had not been divulged by the respondent at the time of allotment because of which the complainants now have to bear the repercussions. That the complainants have been again given false hopes like every time but no details of the completion of delivery of the villa or the compensation for delay has been stated by the respondent which has constrained them to file the present complaint before the hon'ble authority for immediate possession of the villa along with compensation for the delay and harassment faced by the complainants till date.

21. The complainants have submitted that in the present case the complainants have been arbitrarily charged without reaching any milestone in the construction of the project. the complainants till date have paid an amount of Rs 27,62,967.91 and now claim the possession of the plot before the Hon'ble authority.
22. The complainants have submitted that it is submitted that further the agreement is a unilateral agreement as the respondent arbitrarily charges the complainants at a high rate of interest on the delayed payments but fails to compensate the complainants proportionately for giving them delayed possession. Also, they were made to sign and agree to the unilateral clauses, which gives impunity to the respondent to delay the project as per their whims and pay a

negligent compensation in lieu of the delay caused. Whereas the complainants are made to constantly fear the delayed instalments as the respondent can change them at an exorbitant amount of interest on the payment of such instalments. That such an agreement which gives unfettered powers to one party, is an illegal and arbitrary agreement and the execution of the same manifests the malicious intention of the respondent to always have an upper hand in the agreement and to exploit the complainants both financially and emotionally.

23. The complainants have submitted that the said clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 which has clarified the position that the interest payable by the promoter in case of default shall be the same as the interest payable by the allottees in case of any default made by them. They also submitted that they have preferred the present complaint before the Hon'ble authority established specially to protect the interest of the consumers in the Real Estate Sector and to provide speedy dispute redressal in such cases. That the objective of the Real Estate (Regulation and Development) Act, 2016 has been produced below:

*"An act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating*



*mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."*

24. The complainants have submitted that they have been diligently making the payments as per the demands of the respondent company hoping that the possession will be ultimately delivered to them soon. But their hopes have been completely shattered as the respondent has failed to intimate the complainants of any date of delivery of possession of the plot. that perturbed by the lingering silence on the part of the respondent the complainants have preferred the present complaint before the Hon'ble authority to issue necessary directions to the respondent to immediately handover the possession of the plot to the complainants along with relevant compensation for delay.
25. The complainants have submitted that the Hon'ble authority is requested to redress the grievance of the complainants and the hardships faced by them for around 5 years as a considerable amount of their money has been retained by the respondent and no date of possession of the unit has been given by the respondent till date. That the Hon'ble authority is requested to give necessary directions to the respondent under section 37 of the RERA Act,2016 to give immediate possession of the unit to the complainants along with compensation for delay @18%. The relevant section has been produced herein below:

*"Section 37. The authority may, for the purpose of discharging its functions under the provisions of this act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions and such directions shall be binding on all concerned".*

26. The complainants have submitted that they cannot be expected to wait endlessly for the completion of the plot and hence, by the present complaint seek to expedite the process of transfer of the plot and its possession in their name as several years have elapsed and no communication has been made by the respondent in this regard. Hence, the complainants have preferred the present complaint for grant of immediate possession along with relevant compensation for the delay cause herein.
27. The complainants have submitted that in above circumstances, it is absolutely just and necessary that this Hon'ble Authority be pleased to hold that the respondent have illegally retained the money of the complainants and are withholding the possession of the complainants and are unjustly maintaining and are withholding the possession of the complainants and are unjustly maintaining silence on the same. It is submitted that they cannot be expected to endlessly wait for the possession. This principal has been settled by the Hon'ble Apex court in the case of the ***Fortune Infrastructure and Ors versus Trevor D' Lima and Ors.***
28. The complainants have submitted that in above circumstances, it is just and necessary that this Hon'ble authority be pleased to direct the



respondent grant immediate possession to them along with relevant compensation for the delay caused herein. And also submitted that they reserve their right to seek compensation from the respondent for which a separated application shall be made to the adjudicating officer, if required.

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

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

- i. Direct the respondent to immediately grant the possession of the plot 64, S-5, Signature villa 2 along with compensation for the delay caused herein to the complainants.
- ii. Direct the respondent to withdraw the demand for disproportionate 49% increase in total sale price for less than 10% increase in carpet area, when construction cost accounts for only about one-third of the total sale price, and plot area for 240 sq. yds. Which accounts for two-third of the total sale price, has remained same.

30. 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**

31. The respondent has contested the complaint on the following grounds:

- i. The respondent had adopted general marketing strategies to launch and promote its project by advertisement through print media electronic media, website etc. its is submitted that the respondent had never made any fraudulent misrepresentations, incorrect and false statement in the representation in order to lure the prospective customers. It is pertinent to submit here that people booked their units in the project only after being fully satisfied with the terms and conditions of the project. it is further submitted that the present complainants had purchased the unit from the secondary market from original allottee's, thus there is no question arise of misleading the complainants by advertisement.
- ii. The respondent denied that the original allottee booked the unit for the total sales consideration of Rs 72,81,920/-. It is pertinent to note that the original allottee booked the unit for the total sale consideration of Rs 81,59,920/-and also have submitted that Sh. Devesh Sharma and Smt. Sarika Sharma booked a unit in the project voluntarily with free will and consent through an independent property broker, after agreeing with all the terms and conditions.
- iii. The respondent submitted that the complainants has concealed the other terms and condition mentioned in



clause 11.1 of the agreement. It is pertinent to note that the project got delayed due to the cogent reasons beyond the control of the respondent due to which clause 11.1 of the agreement enforced. The main reasons behind the delay in project were due to the non-acquisition of sector roads by HUDA, initiation of GAIL corridor passing through the "Vatika India Next" project, non-shifting of defanged high-tension lines passing through the project by DHBVN. Also submitted that the "Vatika India Next" is large township and respondent has already given possession more than approx. 6500 units in the past few years which includes plots, villas, independent floor, group housing flats and commercial. That due to extraneous reasons which is beyond control of the respondent, the respondent was unable to execute and carry out all necessary work for completion in some part of the project. there was change in the master layout plan of the project by the concerned govt. agencies because of which the entire plot cluster map changed, and due to this there was a delay in the handing over the possession. It is further submitted that the agreement was executed between the original allottee and respondent.

- iv. That the respondent in good faith had re-allocated the unit to the original allottee for preventing them from financial

losses which was further on later endorsed to complainant's name as per the joint request of original allottee's and complainant's. Also submitted that the complainants purchased the unit from the original allottee on 16.05.2014 voluntarily with his free will and consent from the secondary with the terms and condition of the agreement. It is submitted that the complainant was well aware about the deferment of the project and only after being satisfied with its terms and condition purchased the unit. It is further submitted that the respondent is not having any privity to the personal dealing between the original allottee and complainant nor a party to any agreement executed between them.

- v. The complainants were apprised by the respondent about the hurdles in completion of the project due to which the delay may happen in handing over. The respondent denied that the complainants visited the site of the project and found certain irregularities at the site. It is submitted that the complainants never visited the site of the project and making false, baseless and vague claims and allegation against the respondent without producing any relevant correspondence in support of the same. It is submitted that the project was not completed till year 2016 due to the



reason mentioned in above paras and due to other several reasons and circumstances absolutely beyond the control of the respondent such as interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High court of Punjab & Haryana in CWP no. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April,2015 and again in November ,2016, adversely effected the progress of the project. it is pertinent to mention here that complainant has concealed the relevant fact about indemnity bond executed by him on 16.05.2014 whereby he indemnified the respondent and wherein clause no 3 expressly states that possession of the unit shall be given within 4 years from the date of his indemnity bond / affidavit dated 14.05.2014.

- vi. It is pertinent to not that the complainants are investors and purchased the unit for financial gains and due to huge slump in real estate market now the complainants wants to withdraw from the project. in pursuance of which the complainants are making false and baseless allegation against the respondent and misleading this Hon'ble authority by making false averments without producing any correspondence to prove the same. It is denied that

respondent has illegally made complainants deposit money. It is submitted that the complainant never adhered to the payment schedule and always made payment after termination of stipulated time. It is pertinent to note that the amount deposited from the complainant was invested in the project by the respondent. It is further submitted that the complainant is not entitled for compensation as the delay in handing over of possession was beyond the control of the respondent.

- vii. The respondent provided option of re-allotment to the complainant in good faith to prevent him from repercussions. It is important to place here that it is agreed and consented through the agreement that the final area of the villa shall be calculated on completion of the construction and the consideration shall be adjusted accordingly. Also, the respondent was providing the complainants different options for re-allotment for preventing them from any loss. It is further submitted that there is an admission on the part of complainants regarding consent given for the re-allotment of another villa. Also, it is submitted that the complainant signed the addendum to BBA voluntarily with free will and consent and being an investor, the complainant sent some false E-mails for



preventing himself and shifting his onus upon the respondent.

- viii. The respondent submitted that the construction work of the project is in full swing and will be completed soon. However, the complainants is misleading the Hon'ble authority by making false and baseless averments for gaining the unlawful profits from the respondent.
- ix. The respondent charges the complainants as per the schedule and terms and conditions agreed upon by the complainants. However, the complainant being an investor had sent false and baseless mails for putting himself at same side and filing the false and baseless mails for putting himself at same side and filing the false litigation against the respondent. The complainants has filed the present complainant with malafide intention by making fictitious contention and allegation against the respondent. It is denied that the respondent gave false hope to the complainant. It is submitted that the construction work of the project is going well and the respondent is making every possible effort to complete the project soon.
- x. The respondent denied that he arbitrarily charged the complainant. It is submitted that he raised the demand as per the payment schedule as duly agreed upon by the

complainants. However, the complainant is making false, baseless and vague allegation against the respondent without producing any correspondence regarding the non-completion of the milestone of the project. It is pertinent to note that the complainants never adhered to the payment schedule and a huge outstanding consideration towards the unit is still pending on account of the complainants.

- xi. The respondent submitted that the agreement was signed with free consent of the original allottee and thereafter the complainant purchased the unit from the original buyer after satisfying with all of its terms and condition. However, the complainants is now raising questions on the terms and condition of getting unlawful gains from the respondent. It is submitted that the project get delayed due to reason beyond the control of the respondent therefore, as per clause 12.1 of the agreement the respondent was entitled for extension of the time period for handing over of possession.
- xii. The respondent submitted that the complainants is not entitled for any compensation or interest as the project got delayed due to reason beyond the control of the respondent thus the clause 12.1 of the agreement enforced. It is submitted that at the time of framing of such agreement the



Real Estate (Regulation and Development) Act, 2016 was not in force therefore, the agreement was made by abiding the laws which was present at that point of time. However, now the complainant with the malafide intention of making unlawful profits is questioning the terms of the agreement and making fictitious and vague allegation against the respondent.

- xiii. The respondent submitted that he would hand over the possession soon to the complainants. However, it is submitted that the complainants is not entitled for compensation as the delay occurred due to reason beyond the control of the respondent thus, respondent is entitled for extension of time period and the complainants shall not claim any compensation.
29. 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 and submission made by the parties.
- E. Jurisdiction of the authority**
30. 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.*

**F. Finding on the objections raised by the respondent**

**F.I Objection regarding respondent is not having any privity to the personal dealing between the original allottee and complainant.**

31. The authority has observed that the builder buyer agreement dated 09.09.2009 has been executed between Devesh sharma and Sarika Sharma with Vatika Limited. On 16.05.2014 sale agreement was executed between First allottees and the Pardeep Kumar & others for transferring the interests and the rights of the unit in question. On 11.06.2012 an addendum was executed between the parties by which the applicants were allotted a new unit no. that is 26/240/SM/ St. 8201-B. The authority observed that the agreement has been endorsed in the name of complainant by the respondent company. Moreover, addendum dated 15.12.2017 annexed at page no 96 of the complaint is in the name of complainant (Pradeep Kumar) which is furtherance of agreement dated 09.09.2009. So, the objection raised by the respondent is liable to be dismissed.

**F.II Objection regarding execution of indemnity bond.**



32. The authority has observed that no documents has been placed on record by the respondent on the name of indemnity bond. Even if any such document has been executed by the parties, the respondent has not clarified as to why a need arose for the complainant to sign any such affidavit or indemnity cum undertaking and as to why the complainant has agreed to surrender his legal rights which were available or had accrued in favour of the original allottees. It is not the case of the respondent that the complainant had executed this affidavit out of his free will and concern. Such an undertaking/ indemnity bond given by a person thereby giving up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to a suspicion. If even a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. Therefore, this Authority does not place reliance on the said affidavit/ indemnity cum undertaking in view of order dated 03.01.2020 in case titled as *Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015*, it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy.

besides being an unfair trade practice. The relevant portion is reproduced below:

***"Indemnity-cum-undertaking***

*30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever.*

*It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."*

**G. Findings on the relief sought by the complainant**

**Relief sought by the complainant:**

The respondent be directed to immediately grant the possession of the plot 64, S-5, Signature Villa 2 along with compensation for the delay caused herein to the complainants.

33. 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."*

34. As per clause 11.1 of the dwelling unit buyer's agreement, the possession of the unit in question was to be handed over to the complainants within a period of 3 years from the date of execution of the agreement. Clause 11.1 of the buyer's agreement is reproduced below:

***11.1 Schedule or possession of the said unit***

*That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling 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 (12.1), (12.2), (12.3) 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 payments given 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".*

35. At the outset it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default in making payments as per the schedule of payment or upon demand raised by the promoter or failure on part of the allottee to abide by any of the terms and

conditions of the buyer's agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

36. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants is seeking delay possession charges at the rate of 18% p.a. 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.*

37. 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."*

38. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as

on date i.e., 11.02.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

39. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid."*

40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.
41. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. Vide application form dated 06.04.2009, the complainant booked a unit in the project 'Signature 2 Villa in Vatika India Next'. In pursuance of aforesaid application form, the complainant and the respondent have executed the buyer's agreement on 09.09.2009 in respect of unit no.



91/240/Simplex/BR admeasuring 1527 sq.ft. Thereafter, due to unavoidable reasons beyond the control of the respondent, the complainant was reallocated an alternate plot/unit/apartment and an addendum dated 11.06.2012 was executed to that effect allotting a new unit bearing no. 26/240/SM/ST 82 D1-8 admeasuring 1527 sq. ft. The relevant para of the addendum is reproduced below:

*"...That now aforesaid Bellevue villa Floors has been changed due to circumstances, which has been explained to and understood by the Allottee and accordingly, Allottee has been re-allotted a new signature 2 villa (new villa) no. 26/240/SM/St 82 D1-8 admeasuring about 1527 sq. ft. built up area in Project "Vatika India Next" in lieu of the Old unit no. (old villa) 91/240/Simplex/BR which has been duly accepted by the Allottee. The Allottee is fully satisfied and readily accepts the allotment of new no. 26/240/SM/St 82 D1-8 admeasuring about 1527 sq. ft. super area in project "Vatika India Next" without any demur or protest. In view thereof, Allottee has been left with no right, title and interest in the old villa 91/240/Simplex/BR Therefore, in Builder Buyer's Agreement dated 09.09.2009 executed between Allottee, and the company herein Bellevue villa, wherever it is written in the Agreement, shall be read as signature 2 villa no 26/240/Simplex/St. 82 D1-8. Allottee undertakes to pay the Sale Consideration on the basis of actual super Area & location of new allotted signature 2 villa no 26/240/SM/ST-82 D1-8 in Project "Vatika India Next". All other terms and condition of the Builder buyer Agreement dated 09.09.2009 and consequent documentation and understandings in this regard executed between the Parties herein shall remain and hold good and valid for this new allotted Unit no. 26/240/SM/ST 82 D1-8 and all payment received on account of Bellevue vill no. 91/240/SM/BR shall be treated as part payment of sale consideration of new Unit no. 26/240/SM/ST 82 D1-8 and shall constitute a valid discharge to such effect. All the terms and conditions of the executed Builder Buyer's Agreement shall remain the same & binding on the parties. The allottee has till date did not create any charge encumbrance on the original allotted Bellevue villa no 91/240/SM/BR*

*This Addendum shall be considered as an integral part & parcel of the Builder Buyer's Agreement dated 09.09.2009, modifying only those terms as have been specifically mentioned hereinabove, all other terms and conditions of the Builder Buyer's Agreement dated 09.09.2009 shall remain unaltered and effective." (.....Emphasis supplied)*

42. From the above clauses of addendum to the buyer's agreement it is quite evident that the original agreement shall stand changed only to the extent of change in unit number and its location. In other words, all the terms and conditions of buyer's agreement dated 09.09.2009 remained effective and unaltered except change in unit.
43. Subsequently, another addendum dated 15.12.2017 was executed between the parties whereby the unit of the complainant was changed again and a new unit bearing no. 64, S-5, Signature Villa 2, Vatika India Next, Gurgaon -122005 admeasuring about 1965 Sq. Ft was reallocated in favour of the complainant. It was further stated in the addendum to the agreement that the complainant shall not be entitled compensation for delay in possession of the re-allotted unit. The relevant clauses of the addendum dated 15.12.2017 are reproduced below:

*"...That we are fully aware of the present construction status of the re-allotted unit/project and unequivocally and unconditionally agree that I am not entitled to any compensation for delay in possession of the re-allotted unit or it is getting reallocated.*

*This Addendum shall be considered as an integral part & parcel of the Builder Buyer's Agreement dated 09.09.2009 modifying only those terms as have been specifically mentioned hereinabove, all other terms and conditions of the Builder Buyer's Agreement dated 09.09.2009 shall remain unaltered and effective."*

44. From the above clauses of addendum to the buyer's agreement it is quite evident that this addendum forms an integral part and parcel of the buyer's agreement dated 09.09.2009 and the original agreement shall stand changed only to the extent of change in unit number and its location. In other words, all the terms and conditions of buyer's agreement dated 09.09.2009 including but not limited to possession clause (clause 11.1) remained effective and unaltered except change



in unit. Therefore, the due date of possession shall be calculated as per clause 11.1. of the agreement dated 09.09.2009. As far as disentitlement to claim compensation as per aforesaid clause of addendum dated 11.06.2012 is concerned, the respondent has not clarified as to why a need arose for the complainant to agree on such a clause and as to why the complainant has agreed to surrender his legal rights which were available or had accrued in his favour. The respondent has also not stated the compelling circumstances on grounds of which the respondent has kept on changing the unit allotted to the complainant. The respondent has not provided any documentary proof which shows that the units has been changed again and again on the request of the complainant-allottee, so it can be concluded that the change in unit and execution of addendum was only at the unilateral wish of the respondent. In these circumstances, it can be said that the allottee was left with no choice but to sign on the dotted lines of the addendum. Also, it can be said that by incorporating such clause wherein the allottee was compelled to waive his right to compensation for delay in handing over possession, the respondent-promoter can be said to be in a win-win situation wherein on one hand he has violated terms of buyer's agreement dated 09.09.2009 by not handing over possession within time stipulated therein and on the other hand disentitling the allottee to claim delay possession charges. So, the clause regarding waiving of delay possession charges incorporated in the addendum becomes ineffectual. Such a clause whereby a person gave up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to a suspicion. If even a slightest of doubt arises

in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices.

45. By virtue of clause 11.1 of the dwelling unit buyer's agreement executed between the parties on 09.09.2009, 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 09.09.2012. Since, the respondent has not offered the possession of the subject unit to the complainant so far, it is the failure on the part of the respondent-promoter to fulfil its obligations and responsibilities as per the dwelling unit buyer's agreement dated 09.09.2009 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 at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 09.09.2009 till the date of handing over the possession, as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**H. Direction of the authority**

46. 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 shall pay 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. 09.09.2012.
  - 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 offer of possession shall be paid before 10<sup>th</sup> of every subsequent month.
  - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for delayed period.
  - iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
  - v. Interest on the delay payments from the complainants 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.
47. Complaint stands disposed of.
48. File be consigned to registry.



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

  
**(Sanjay Kumar)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
**Dated: 13.04.2021**

Judgement uploaded on 04.08.2021.