

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

Complaint no. : 1076 of 2020
First date of hearing: 25.03.2020
Date of decision : 12.10.2021

1. Shri Amit Kumar
2. Smt. Reena Sahu

Both RR/o: - H. no. 583, 2nd floor, Sector-47, Near
HUDA Water Works, Gurugram, Haryana-122018

Complainants

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 4th floor,
Sushant Lok, Phase-I, MG Road,
Gurugram-122009

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

APPEARANCE:

Sh. Gaurav Rawat
Sh. Pankaj Chandola

Advocate for the complainants
Advocate for the respondent

Order

1. The present complaint dated 02.03.2020 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.	Project area	281.577 acres
4.	DTCP License	113 of 2008 dated 01.06.2008
	License validity/ renewal period	31.05.2018
5.	RERA registered/ not registered	Not registered
6.	Date of execution of plot buyer's agreement	14.07.2011
7.	Unit no.	Plot no. 34/St. 83 B-14/Sec. 83/VIN (page 21 of complaint)
8.	Area	240 sq. yds.
9.	Payment plan	Construction linked plan (At page 36 of the complaint)
10.	Total consideration	Rs. 1,16,40,000/- (As per payment plan at page 36 of the complaint)
11.	Total amount paid by the complainants	Rs. 1,17,30,631/- (As per receipts attached at page 40-52 of the complaint)

12.	Due date of delivery of possession (As per clause 9 of the agreement the company based on its present plan and estimates and subject to all just exceptions, contemplates to complete the development of the said plot within a period of three years from the date of execution of this agreement)	14.07.2014
13.	Subsequent allottee	28.06.2017 (page 37 of complaint)
14.	Offer of possession	Not offered
15.	Completion certificate	Not obtained
16.	Delay in delivery of possession till date of decision i.e., 12.10.2021	7 years 2 months and 28 days

B. Facts of the complaint

3. The complainants submitted that they approached the respondent for booking a plot in the 'Vatika India Next', Sector-83 B, Gurugram and respondent advised them to buy a plot which was previously booked. The Complainants approached the previous allottee Dr. Alok Madan, who was willing to sell the said project, and hence, sold the plot to the complainants subject to transfer formalities to be done by respondent by endorsing the plot buyer's agreement.
4. The complainants submitted that the plot buyer's agreement between the respondent and Dr. Alok Madan was executed on 14.07.2011 and the respondent endorsed it in favour of the complainants on 28.06.2017, through which the complainants

became legal allottees and purchasers of the said property. The respondent to dupe the complainants in their nefarious net even executed buyer agreement signed between M/s Vatika Limited and Dr. Alok Madan on dated 14.07.2011 and finally respondent endorsed in the favour of complainants on dated 28.06.2017.

5. The complainants submitted that the total cost of the said plot is Rs. 1,16,40,000/- and amount Rs 1,17,30,631/- inclusive taxes was paid by allottees, as per demand raised by respondent. The previous allottee has paid all demand raised by builder in time bound manner of Rs. 1,17,30,631/- inclusive of taxes. The complainants visited the site many times to ascertain the status of the project and found that the project was lying in a raw, desolate state and in a state of utter neglect and abandonment, whereas the respondent builder/developer has extracted more than 100% amount of total sale consideration received from complainants citing milestones of progress, development & in the name.
6. That respondent was liable to hand over the possession of a developed plot before 14th July 2014 as per plot buyer agreement clause no. 9. The builder without getting completion certificate offered the illegal possession and extracted the last installment & fraudulently taken NOC from previous allottees dated 12.05.2016. Respondent has not obtained completion certificate till date. The respondent miserably failed to complete the development work of the project within assured time limit, thereby grossly violating the terms and conditions of the printed agreements as entered

- between the complainants and respondent and has not met his obligations.
7. The complainants have submitted that they sent so many emails regarding issue to the respondent from 2017 to 2019 but complainants were not getting any proper response from the respondent. Thereafter, without getting completion certificate builder gives possession to them and sent the demand letter of maintenance which was illegal arbitrary and unilateral.
 8. The complainants have submitted that due to unfair unreasonable trade practices adopted by builder from the very beginning like, no development milestones and timelines, without completion certificate offer of possession, fraudulently taken NOC of physical possession as admitted in writing by respondent himself, illegal demand of last instalment without commensurate development of plot committed in the agreement and the payment plan, excess delay in legal possession as well as lots of default on the part of builder unfair and illegal trade practices.
 9. It is submitted that the viability of any investment into housing projects exists only till the sellers deliver possession on or before the promised time or if compensation is paid in lieu of delay and is further eroded when burdensome and onerous conditions and covenants are imposed upon the buyers. The respondent has indulged in all kinds of tricks and blatant illegality, misrepresentations, and caused deliberate and intentional huge

mental and physical harassment of the complainants and their family.

C. Relief sought by the complainants:

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

- i. Direct the respondent to get the completion certificate and immediately hand over the legal possession of plot in habitable condition with all amenities mentioned in brochure and execute the conveyance deed in favour of complainants.
- ii. Direct the respondent to pay interest on paid amount of Rs. 11,73,631/- along with pendent lite and future interest from 14.07.2014 to till actual physical possession thereon @18% equal to what respondent charges from complainants as per the agreement.
- iii. Direct the respondent to quash the demand of maintenance charges.

D. Reply by the respondent

11. The respondent has contested the complaint on the following ground.

- i. The present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainants have not approached this Id. authority with clean hands and 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.

- ii. It is pertinent to mention before the Id. authority that the complainants purchased the said plot no. 34 in the project from the original allottee of the plot voluntarily with free will and consent after being fully satisfied with the position and status of the project. The respondent was not aware about the transaction and understanding between the original allottee and complainants for the sale and purchase of the said plot. It is submitted that the plot buyer's agreement was executed between the original allottee and the respondent on 14.07.2011, whereby the original allottee was allotted plot no. 34 admeasuring area 240 sq. yds. As per clause 9 of the agreement, the possession of the plot was to be delivered within 3 years from the date of execution of the agreement unless there is a delay or failure due to reasons mentioned in clauses 11,12 or 30. Hence, the due date of delivery was 14.07.2014. However, due to some unforeseen circumstances the delivery of possession was delayed. Thereafter, due to some understanding with the respondent, the original allottee voluntarily provided NOC to the respondent and made the payment. The complainants bought the unit from original allottee in the year 2017 after obtaining entire information about the status of the project from him. It is pertinent to mention here that the complainants voluntarily stepped into the shoes of the original allottee 2 years after passing of due

date of possession, and the complainants cannot deny this fact that they were well aware about the status of the project.

- iii. The complainants have come before this hon'ble authority with ulterior motive. That the present complaint has been filed by the complainants just to harass the respondent and gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainants, a detailed deliberation by leading the evidence and cross-examination is required, thus only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication, if at all the contents of the complaint are taken to be correct and true. The complainants relied upon various e-mails as annexed with the complaint
12. Copies of all the relevant documents have been filed and placed on 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

13. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act of 2016 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants

Relief sought by the complainants:

F.I Delay possession charges

14. **Relief sought by the complainants:** Direct the respondent to pay interest on paid amount of Rs. 1,17,30,631/- along with pendent lite and future interest from 14.07.2014 to till actual physical possession thereon @18% equal to what respondent charges from complainants as per the agreement.
15. In the present complaint, the complainants intends to continue with the project and are 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."

16. Clause (9) of the plot buyer's agreement provides for time period for handing over of possession and is reproduced below:

The company based on its present plans and estimates and subject to all just exceptions contemplates to complete the development of the said plot within a period of three years from the date of execution of this agreement unless there is a delay or failure due to reasons mentioned in clauses (11),(12) and (30) or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payment given in annexure-ii or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this agreement.

17. At the outset, it is relevant to comment on the present 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 under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 time period 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 allottees of their 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.
18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession. 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.

19. The legislature in its wisdom in the subordinate legislation under the 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.
20. 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., 12.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
21. The definition of term 'interest' as defined under section 2(z) 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;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
23. 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 9 of the plot buyer's agreement executed between the parties on 14.07.2011, 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 14.07.2014. Since, the respondent has not offered the possession of the subject unit to the complainants so far. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot

buyer's agreement dated 14.07.2011 to hand over the possession within the stipulated period.

24. 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. 14.07.2014 till the date of offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G. Directions of the authority

25. 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. 14.07.2014 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 shall be paid by 10th of each subsequent month.
 - iii. The respondent shall not charge anything from the complainants which is not part of the plot buyer's agreement.
 - iv. The respondent/promoter shall not charge anything from the complainants/allottees which is not the part of the agreement, the complainant would not be entitled to claim holding


charges at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Samir Kumar)
Member

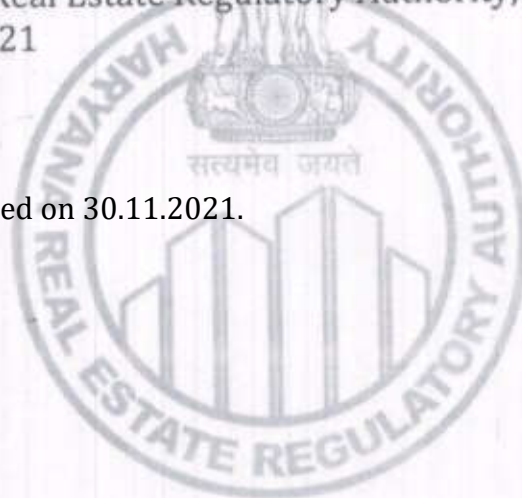
V.I - 3
(Vijay Kumar Goyal)
Member


Dr. K.K. Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.10.2021

Judgement uploaded on 30.11.2021.



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