

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

Complaint no. : 916 of 2021
First date of hearing: 07.04.2021
Date of decision : 02.02.2022

Ramesh Thakran

R/o: Village & P.O- Jharsa, near Vivek High School
Gurugram-122001

Complainant

Versus

Vatika Limited

Regd. office: Vatika Triangle, 7th floor, Mehrauli-
Gurugram Road, Sushant Lok, phase1, Gurugram
122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri. Ravi Kumar proxy counsel
for Shri Dhamender Sehrawat Advocate for the complainant
Shri. Pankaj Chandola proxy
counsel for Sri Venket Rao Advocate for the respondent

ORDER

1. The present complaint dated 04.03.2021 has been filed by the complainant/allottee 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. Unit and project related details

2. The particulars of unit details, 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.	Project name and location	Emilia floors, Vatia India Next, Sector 82,82A,83,84 and 85 Gurgaon
2.	Project area	182 Acres
3.	Nature of the project	Residential colony
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	HRERA registered/ not registered	Not registered
6.	Allotment letter dated	20.01.2011 [As per page no. 42 of the complaint]
7.	Unit no.	Unit no. 15, ground floor, block E admeasuring 781.25 sq.ft. [As per page no. 42 of the complaint]
8.	Date of execution of buyer's agreement	25.03.2011 [As per page no. 44 of the complaint]
9.	Allotment letter of new unit	16.08.2012 [annexure R2, page 37 of reply]
10.	Addendum to the emilia floor	4/GF/St-82 F-14/VIN admeasuring



	dated 01.09.2012	929.02 sq.ft. [annexure R2, page 37 of reply]
11.	Payment plan	Construction linked payment plan
12.	Total consideration	Rs.29,72,607/- [As per SOA dated 11.12.2017 page no.67 of the complaint]
13.	Total amount paid by the complainant	Rs. 8,78,411/- [As per SOA dated 11.12.2017 page no.67 of the complaint]
14.	Due date of delivery of possession as per clause 10.1 of buyer's agreement <i>(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 (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 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</i>	25.03.2014



	<i>reasonable extension of time for completing the same.</i>	
15.	Due date of possession	25.03.2014
16.	Termination of builder buyer agreement by the respondent	14.11.2018 (annexure P7, page 78 of complainant)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. That respondent approached to the complainant in the month of January 2009 and represented that a project named "Emilia Floors" situated at sector-83, Gurugram is being developed by the respondent for which requisite license had been obtained from DTCP, Haryana on the land area of about 182 acres situated in Sector-82,82A,8384 and 85, Village-Sihi, Gurgaon. One Anupam Varsheny, head CRM of the respondent company approached complainant and continuously under misrepresentation persuaded him by saying that the respondent company have approved building plans, environmental clearance, besides fulfilling all other requirement for construction the group housing project and further made arrangement to meet Mr, Anil Bhalla, Managing Director, Mr, Gautam Bhalla, Director, Mr, Gaurav Bhalla, Director in the month of September- October,2009.
4. The officials of the respondent further enticed complainant to put his hard-earned money for buying property in their coming project "Emilia Floors" as the same will be emerging new Gurgaon and further represented that their company is a cash rich company so if complainant book a property in above project then the possession of

the same will be handed over to complainant within a period of 36 months after completing the construction.

5. On the basic of the above representations, on 23-10-2009, complainant book one ground floor unit, admeasuring 180 sq. yd. in Emilia Floors along with parking space, situated on plot no. 15, at block-E, street 15th, sector-83, Gurugram, and paid a sum of Rs. 2,50,000/- vide cheque bearing no. 440363 dated 23-10-2009 to respondent and accordingly, the company allotted a priority number i.e. Emilia/GF/145 to the complainant. The total build-up area of the allotted floor as informed to the complainant was 781.25 sq. ft. and total consideration/price was Rs.24,39,696/-.
6. That the respondent company through their authorized person just to create a first impression of their punctuality in the complainant mind, issued an acknowledge letter dated 21-11-2009, against the booking amount of Rs. 2,50,000/- and further asked complainant to pay sum of Rs. 2,37,940/- within sixty days of booking.
7. That on 08.01.2010, the respondent sent a letter offering allotment of unit in independent floor at **"Vatika India Next"** for the priority number Emilia/GF/145 and mentioned that their architectural department has issued the proposed site plan of independent floors along with the numbering scheme and thereafter, the complainant again made payment as per the demands of respondent of Rs. 2,37,940/- and Rs. 6,127/- through cheque bearing no. 416035 and 416036 respectively on 20.01.2011. Thereafter, a letter dated 16.02.2011 was sent by the respondent stating further issues regarding the handing over possession of the floor allotted to the

complainant, will be dealt by the CRM department and as such sales team will not be interacting regarding the same.

8. That thereafter complainant applied for a home loan from HDFC bank regarding the said floor and after getting necessary permission and documentation from the respondent and bank, home loan of the floor was sanctioned by the HDFC bank. Thereafter no update was given to complainant, so that he can executed the loan documents and get the said flat financed, however in June 2011 he approached to the respondent and surprisingly they handed over another letter dated 10.02.2011 to the complainant which was regarding the payment of instalment due with respect of Plot no.15, Emilia, GF 15th St., Sector-83E, amounting Rs. 3,65,954/- + Rs. 9,423/- to be paid towards service tax.
9. That after receipt of the said letter dated 10.02.2011 complainant out of sock and fear asked the official of the respondent about 'builder buyer agreement' of the floor sold to him by the respondent, upon this the officials of the respondent presented a unit buyer agreement dated 25.03.2011 for signatures of the complainant and when the complainant being astonished asked about the same, it was told to the complainant that they could not inform the complainant hence persuaded him to sign the said agreement then and there. The complainant having no option but to sign the agreement since substantial amount towards the said plot/floor was already paid to the respondent and the complainant pressed to sign the unit buyer agreement dated 25.03.2011 for his allotted unit.

10. That as loan of the said floor was already sanctioned by the HDFC bank hence after execution of tri party loan agreement between complainant, bank and the respondent and submitting of original unit buyer agreement above said amount of Rs. 3,65,954/- + Rs. 9,423/- towards service tax was paid to the company by the complainant after receiving from bank through cheque amounting Rs. 3,65,000/- bearing cheque no. 003146 dated 24.06.2011 and Rs. 9,423/- bearing cheque no. 270694 dated 04.07.2011 respectively on their demand. The payment plan was construction linked, thus the remaining payment was to be made as per the construction done by the respondent.
11. That thereafter, the complainant meets the respondent many times, but no updates were provided to the complainant, however to the shock and surprise of the complainant, on 06.08.2012 a letter was received by him wherein the respondent company informed the complainant that they have changed the plan, however the reasons given were totally false and fake and based on their own whims and fancies. They further informed that the present allotted unit needs to be re-allotted to the complainant and if the complainant does not reach the venue as given the said letter, then they will allot the unit in their own at the complainant's back.
12. That on 16.08.2012 the respondent company changed the unit allotted to the complainant and allotted a new floor in the residential project namely '**Independent Floors-Vatika India Next**' bearing Unit No.-04, Street-82F-14, Sector-82F, Gurugram, Haryana. The respondent person in order to extract more money from the

complainant increased the super area of flat on their own without disclosing the detailed factors of increasing the earlier area or in other words how the area of the flat increased, when there was no change in the flat size, they claimed the area of the flat as 929.02 sq. ft. whereas actual area of the flat allotted and proposed to be handed over to the complainant was 782.25 sq. ft., nevertheless the matter of fact is that even after accepting the proposal made by the respondent for re-allotment of the unit which is in Sector-82F, Gurugram and the payment made for the said unit as per the demands of the respondent and the respondent did not fulfil their part of promise thereby demonstrating their ulterior motives to cheat the complainant. It is submitted that an addendum to the main buyer's agreement was executed on 01.09.2012.

13. That thereafter the complainant had visited many times to the office of the respondent and also sent various emails from 2012 till 2018 but all the director/representative of respondent company gave false assurance every time to the complainant but never thought to start any construction work of the floor allotted to the complainant and when the complainant told them about initiating a complaint against respondent, then the respondent company representatives jointly in a meeting offered the complainant another unit in another project and in return they demanded an amount of Rs. 5,500/- per sq. ft. (approx. Rs. 50,00,000/-) for the unit which was double the amount on which they had earlier allotted the above noted unit to the complainant.

14. That after sensing net of cheating by the respondent, the complainant refused their proposal. On 23.05.2018 the complainant again visited the office of the respondent company then the respondent offered the complainant a new unit bearing plot no.- 1b, St. K-15, level-1, Sector-83, Gurugram in their ongoing project "**Vatika India Next**" which clearly show that respondent had not started any work on the unit which they had allotted to complainant earlier or either they had sold the said unit intentionally to any other person as the rate of the ground floor units became very high or may be the respondent do not had the license of the respective land on which they had allotted the complainant the above noted unit, however no information was given to the complainant.
15. That the respondent in connivance of its directors and officials firstly induced the complainant to part with money and thereafter have been misappropriating the monies paid by the complainant and changing the unit without the complainant's consent from which it is clear that they had the intention to cheat the complainant since the inception of the booking date and further did not have any positive intention of fulfilling the promises made by them and wanted to cheat people like complainant.
16. That the complainant approached the directors and authorized representative of the respondent company on various occasions with a request to fulfil their promises made to the complainant at the time of booking but now the respondent company directors or authorized person threat to the complainant so that they could pressurize him to take possession of the flat/unit offered to the complainant against his

wish and desire, nevertheless the matter of fact is that Block G & H at “Vatika India Next” Sector-83, Gurugram does not exist wherein the floor allotted to the complainant is situated, as it was never earmarked/constructed.

17. That thereafter to the utter shuck of the complainant, the respondent sent a termination letter regarding the unit buyer agreement dated 24.11.2018 to the complainant.
18. That after termination letter regarding the unit buyer agreement dated 24.11.2018 the complainant approached the police officer for register a police complaint against the respondent, but no response comes from the side of police officer. Further a complaint before CM Grievance Cell was also made by the complainant.
19. Thereafter despite the respondent's officials committing various criminal Acts, but no action was taken by the police on the complainant of the complainant, due to which an application under section 156(3) of the Code of Criminal Procedure 1973 was filed by the complainant against the respondent company which is pending disposal before the JMIC, Gurugram.
20. That after filing of the criminal complaint U/s 156(3) against the respondent. The respondent's company with malafide intention deposited a sum of Rs. 12,29,192/- in the complainant's account without informing the complainant which was later refunded to the respondent's company on 07.12.2019 by the complainant.
21. That thereafter in pursuance to the complaint filed before CM Cell, a meeting was held on 06.05.2019 at 4:00 PM under the chairmanship

of District Town Planner, Gurugram to resolve CM Grievance No. CMOFF/N/2018/125470 against Vatika Ltd where representative of respondent company offered a same range flat with the same specification in Sector-83 Gurugram.

22. That thereafter the complainant tried to communicate with the respondent by email or telephonically but did not get any satisfactory reply from the respondent. The respondent has failed to give possession on time and there is delay in possession of 6 years 3 months, further the respondent has failed to pay assured returns till possession.
23. That the complainant bonafide for his needs and better future purchased the floor/unit on question, further the respondent failed to give the possession of the floor/unit in question on time.
24. That as huge time had been lapsed, the complainant therefore made several calls to the customer care and marketing departments to seek status of the construction, but the complainant were never provided with a satisfactory response and the respondent's officials made false and frivolous statements and gave false assurances that the construction is in full swing and the unit shall be handed over within the agreed time.
25. That as the buyer's agreement stated that time was the essence of the contract, it was incumbent upon the Builder i.e., the respondent to develop and hand over possession of the said floor/unit within the period of 36 months as per the timeframe set out in the buyer's agreement dated 25.03.2011.

26. That almost a period of 135 months has been lapsed from the date of booking of the floor/unit and further a period of almost 119 months have gone since the agreement was executed between the complainant and the respondent. Despite passing of huge time the respondent had deliberately failed to handover the possession of the floor/unit to the complainant.
27. As per Rule 16(2) of the Real Estate (Regulation and Development) Rules, (RERA), 2018 (amended) the allottee is entitled to claim compensation for delay caused by the Builder in handing over possession of the unit.
28. That respondent has not bothered to act accordingly and did not comply with the terms and conditions of the buyer's agreement and did not handover the possession of the unit till date.
29. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest as per RERA Act in case of any default on his part. They are also liable to pay pendent lite interest and further interest till date of actual payment.

C. Relief sought by the complainant:

3. The complainant has sought following relief(s):
 - i. Direct the respondent to handover the possession of the unit purchased by the complainant or if the handing over of the same is not permissible then to handover possession of the alternate unit at the same cost and rate.
4. 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

5. The respondent has contested the complaint on the following grounds.

- i. That the present complaint has been filed in amended CRA form which was introduced under the amended HARERA Rules, meanwhile, the Hon'ble Punjab and Haryana High Court had upheld the amended rules vide its order dated 16.10.2020. Thereafter, the order of the hon'ble high court was challenged through SLP no. 13005 of 2020 before the Hon'ble Supreme Court and the Hon'ble Supreme Court stayed the operation of order dated 16.10.2020 of the Hon'ble High Court. Therefore, there is status quo upon the amended HARERA Rules, thus, the present complaint in the amended CRA form is not maintainable before the hon'ble authority until the Hon'ble Supreme Court decides the validity of amended HRERA Rules. Therefore, it is pertinent to note that the present complaint shall liable to be dismissed only upon the sole ground.
- ii. That the unit buyer agreement [hereinafter referred to as 'UBA'] executed in between the complainant and respondent on dated 25.03.2011 in regard to the allotted unit of complainant. It is submitted that the complainant signed the UBA voluntarily with



free will and consent after being satisfied with every clause of UBA and also agreed with the payment plan and total sale consideration. That the complainant being the habitual defaulter in terms of payment has failed to adhere to the payment plan and violated the terms and conditions embodied under clause 8 of UBA.

- iii. That the complainant has made total payment amounting to Rs. 8,53,895/- against the total sale consideration i.e. Rs. 29,72,607/- inclusive of all charges which is amounting to 28% of the total sale consideration.
- iv. That it is pertinent to note that the respondent faced various problems and difficulties in carrying out the smooth development of the subject project where the allotted unit of complainant was situated. It is submitted that the respondent conveyed the obstruction/unforeseen circumstances being faced by respondent which hampered the construction and development work of the said project through various telephonic conversations. Therefore, being a customer centric company and for preventing the complainant from any financial loss, the respondent issued an Allotment Letter in favour of complainant with the wilful consent of the complainant, whereby the complainant was allotted an alternate unit bearing no. 04, Street-82F-14, situated in 'Independent Floors-Vatika Limited' situated at Sector 82F,

Gurgaon, admeasuring area 929.03 sq. ft. [hereinafter referred to as 'New Allotted Unit'].

- v. That an addendum to the UBA was executed on 01.09.2012, between the complainant and the respondent. As per the Addendum to UBA, the Project "EMILIA FLOORS" has been changed due to unforeseen circumstances, which has been explained to and understood by the complainant and accordingly, complainant was re-allotted with new allotted unit. Therefore, the complainant waives of the right to seek any title or interest in the old unit.
- vi. That the respondent informed the complainant about the unforeseen circumstances which were beyond the control of respondent. That as per clause 11.1 of the UBA, if the project delays due to reasons beyond the control of the respondent, the completion schedule of the project would get extended automatically.
- vii. That in the agreement, the company had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the company



& approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.

- viii. That after the booking and the signing of the agreement, the respondent company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted/group housing/commercial/institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct high-tension lines passing through these lands, which also contributed to the inevitable change in the layout plans. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company, company was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the company's projects. To further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorised occupation of certain parcels by some farmers

- coupled with other regular obstructions and impediments beyond the control of the company have resulted in the company being unable to deliver.
- ix. That it is contended to note that the respondent being in a position of developer did not make any false promises or fake assurances to the complainant. Whereas the respondent has agreed to refund the entire amount so far received from complainant in regard to the new allotted unit of complainant situated in the subject project of respondent.
- x. That it is submitted that the respondent company faced many unforeseen challenges due to which it had become impossible to carry out the necessary developmental work in the project where the previous allotted unit of complainant was situated. The respondent company on various occasions offered several alternate units to the complainant but the complainant never expressed his consent for re-allotment.
- xi. That under the compelling circumstances beyond the control, the respondent company was bound to terminate the agreement vide termination letter dated 14.11.2018 and in furtherance to its obligations under the agreement and in order to make up for its inability to deliver in view of the extraordinary circumstances attending upon those unfortunate event, as a bona-fide measure the respondent company offered the refund of the principal



amount paid by the complainant in respect of the booking alongwith an interest of 6% per annum. As a matter of fact, the respondent company had duly transferred the amount of Rs. 12,70,892/- to the complainant's bank account but complainant with malafide reasons had returned the money to the respondent.

- xii. That the respondent upon lots of investment in the said project, could not complete the project due to the reasons beyond its control and therefore, to safeguard the investment and interest of the complainant, the respondent company already refunded the amount paid by the complainant along with interest as agreed under the agreement even after bearing a huge loss. It is further submitted that the respondent in its letter dt. 14.11.2018 had expressly stated all the roadblocks in execution of the project and its inability to complete the same in those prevailing circumstances.
- xiii. That the respondent clearly stated all the difficulties and roadblocks and thereby offered the complainant to refund the entire amount so far paid by complainant along the interest rate 6% p.a. which has been stated under Point 6.
- xiv. That the complainant intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement and to gain unlawful enrichment. That it is brought to the knowledge of the hon'ble authority that

the complainant is guilty of placing untrue facts and are attempting to hide the true colour of the intention of the complainant. The present complaint is devoid of merit and thus liable to be dismissed. That the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the Respondent. That the complainant be put to the strict proof of the same. It is humbly submitted that the complainant has not come this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.

- xv. 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 which clearly shows the gross misconduct and *malafide* motive of the complainant who has pre-determined mala-fide motive to cause harassment and financial loss to the respondent by raising baseless and absurd allegations which are not maintainable in the eyes of law.
- xvi. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. That the various contentions and claims as raised by the complainant is fictitious, baseless, vague, and wrong



and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant is sustainable before this hon'ble authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the hon'ble authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

6. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning

area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the relief sought by the complainant

Relief sought by the complainant:

G.I Direct the respondent to handover the possession of the unit purchased by the complainant or if the handing over of the same is not permissible then to handover possession of the alternate unit at the same cost and rate.

10. In the present complaint, the complainant intends 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, —

(a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

or

(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

.....

18. Clause 10.1 of the buyer's agreement (in short, agreement) dated 25.03.2011 provides for handing over of possession and is reproduced below:

"Clause 10.1

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 (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 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.

11. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of three years from the date of execution of agreement. As per clause 10.1 of buyer's agreement the possession of the allotted unit is to be handed over within three years from date of execution of agreement i.e. 25.03.2011 which comes out to be 25.03.2014.
12. In the present complaint, on consideration of the documents available on the record and submission made by both the parties regarding contravention of the provisions of the Act. The authority observes that the buyer's agreement was executed inter-se the allottee on 25.03.2011 and the respondent. As per statement of account dated 11.12.2017, the total consideration of the said unit is Rs. 29,72,607 and the amount paid is Rs. 8,78,411/-. It is pertinent to mention here that the respondent has terminated the builder buyer agreement dated 25.03.2011 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. Moreover, it has been overserved via termination letter dated



14.11.2018 that the respondent offered the alternated unit but the complainant did not accept the same. The respondent also offered refund the amount to the complainant along with 6% interest p.a. but the same was also not collected by him. The relevant portion of the letter dated 14.11.2018 is reproduced below:

"We refer to the above-captioned booking whereby your good-self had booked the captioned unit for a Total sales consideration amount of Rs. 29,72,607/- (Rupees Twenty nine Lakhs Seventy Two Thousand Six Hundred Seven Only) vide Application Form dated 23.10.2009 pursuant to which the Builder Buyer Agreement dated 25/3/2011 ("Agreement") was executed and signed. In the Agreement, the Company had inter alia represented that the performance by the Company of its obligations under the Agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, (Haryana), Chandigarh and any subsequent amendments/modification in the unit plans as, may be made from time to time by the Company & approved by the Director, Town & Country Planning, (Haryana), Chandigarh from time to time. On your part, on the basis of your own investigation & judgment as to the ownership, tentative lay-out plans, competence, other relevant details etc. pertaining to the Company and the Township, you had decided to go ahead with the above-mentioned booking, as evidenced by the signing of the Agreement read with Letter dated 01.09.2012.

Against the afore-mentioned Total Sales Consideration of Rs. 29,72,607/- (Rupees Twenty Nine Lakhs Seventy Two Thousand Six Hundred Seven Only), a total amount of Rs. 85,38,895/- (Rupees Eighty Lakhs Fifty Three Thousand Eight Hundred Ninety Five Only) has been received, till date, by the Company from you.

Subsequent to the booking and the signing of the agreement, the company has been facing umpteen roadblocks in construction and development works in various projects in its licensed lands comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted/Group Housing/Commercial/ Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.

Accordingly, you were re-allotted Unit No. Plot No.4/ST. 82F-14/180/GF/82F/Vatika India Next in the same Project vide Letter dated 01/09/2012 to the said Agreement, duly signed by you.



Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Company, it is unable to execute and carry out all the necessary work for the completion of your unit in the above said Project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's projects. To further add to the woes of the Company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forcefully unauthorized occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the Company have resulted in the Company being unable to deliver. Therefore, in the backdrop of the uncertainties involved as detailed hereinabove and keeping in mind your interests, the Company offered in various discussions to you an alternate unit in the same Project, however, you did not accept this alternate option despite our subsequent numerous discussions with you. Thus, the Company is constrained and left with no choice but to terminate the Agreement.

We take this opportunity to state that as per terms of the Agreement, the Company is required to pay interest @6% p.a on the refund amount. As such, in furtherance of our obligations under the Agreement and in order to make up for our inability to deliver in view of the extraordinary circumstances attending upon this unfortunate event, as a bonafide measure we are hereby willing to return the principal amount [paid by you from your own resources] in respect of the booking alongwith an interest of 6% per annum calculated thereon till 14-Nov-2018.

You are requested to kindly get the above refund cheque collected from our office at Vatika Triangle, 5th Floor, Sushant Lok Phase1, Gurugram, Haryana after 30 days with prior appointment of receipt of this letter.

13. Upon perusal of above-mentioned paragraphs, the authority observes that, the subject unit has already been cancelled and builder buyer agreement has been terminated on 14.11.2018 narrating the detailed reasons for cancellation of the unit and termination of builder buyer agreement on account of *inability of the promoter to make available the said unit. The promoter has failed to develop the unit and cancelled it on account of his own fault/omissions,*

accordingly. So, he is duty bound to refund the amount alongwith interest at the prescribed rate (i.e. 9.3%) on the each amount received till date of payment without any deduction keeping in view the provisions contained in Section 18 of the Act, 2016.

14. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking delay possession charges 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.*

15. 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.
16. 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., 02.02.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

18. Therefore, the respondent is duty bound to refund the amount alongwith interest at the prescribed rate on the amount received till date of payment without any deduction keeping in view the provisions contained in section 18 of the Act, 2016.

19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 9.30% p.a. from the date of payment of each sum till its

actual realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

H. Directions of the authority


20. 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/promoter is directed to refund the entire amount of Rs. 15,85,054/- paid by the complainant along with prescribed rate of interest @9.30% p.a. from the date of payment of each sum till the date of its actual realization within 90 days from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- ii. The respondent/promoter is further debarred from creating 3rd party rights with regard to unit in question without paying the amount detailed above.

21. Complaint stands disposed of.

22. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2022