


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

Complaint no. : 1025-2021
First date of hearing: 07.04.2021
Date of decision : 02.02.2022

Sh. Ajay Dhingra and Sons HUF
(Through Karta Ajay Dhingra)
R/o: - House no. B-22, Sector-8,
Dwarka, New Delhi-110077

Complainant
versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 4th floor, Sushant Lok-
, phase 1, Block A, Mehrauli Gurugram Road,
Gurugram-122002

Respondent**CORAM:**

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member****APPEARANCE:**

Sh. Sukhbir Yadav
Sh. Venket Rao

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 25.02.2021 has been filed by the complainant/allottee 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. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Vatika Express City", Sector 88 A & B, Gurugram
2.	Nature of the project	Residential plotted colony
3.	Project Area	100.875 acres
4.	DTCP Licence	94 of 2013 dated 31.10.2013 valid upto 30/10/2019 (Original licenced area 100.875 acres part migrated to Lic. No. 9 of 2022)
5.	RERA registered/ not registered	Registered vide registration no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022
6.	Occupation certificate	Not obtained
7.	Payment plan	Installment payment plan
8.	Date of execution of builder agreement	11.05.2015 (page 30 of complaint)
9.	Allotment letter	05.05.2014 (page 25 of complaint)
10.	Unit no.	Plot no. 15, E 11.2 (page 25 of complaint)
11.	Plot measuring	300 sq. yd.
12.	Total consideration	Rs. 36,00,000/- (As per averments of complainant (page 22 of the complaint)
13.	Total amount paid by the complainant	Rs. 36,00,000/-

		(As per SOA at page 72 of the complaint)
14.	Due date of delivery of possession (As per clause 9 of the agreement: 48 months from the date of execution of agreement)	11.05.2019
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained
17.	Delay in handing over of possession till date of this order i.e., 02.02.2022	02 years 08 months 22 days

B. Facts of the complaint

- That complainant, Sh. Ajay Dhingra (Karta of Ajay Dhingra and Sons HUF) received a marketing call from the office of the respondent for booking a residential plot in the proposed plotted colony in the sector- 88 A & B, Gurugram. The caller represented himself a manager of the respondent company, and marketed the project situated at Sector - 88 A & B, Gurgaon and offered a plot admeasuring 300 Sq. Yd. He visited the Gurugram office and project site of the respondent/builder with the family members. He met the marketing staff and office bearers of respondent company and got information about the project. The marketing staff of builder assured to the complainant that they have applied for the license for the plotted colony and very soon, they will get the license and after obtaining the license they will issue an allotment to the complainant.
- Believing in the representation and assurance of respondent, the complainant issued a cheque of Rs. 10,00,000/- vide no. 017440

dated 06.08.2012 and thereafter made two RTGS of Rs. 13,00,000/- each on 17.08.2012 in favour of the respondent.

5. That on 05.05.2014, the respondent issued a letter in favour of the complainant by allotting a plot bearing no. 15, admeasuring 300 sq. yd. situated in street no. E – 11.2, Sector 88A, Gurugram. On 09.09.2015, a tripartite agreement was executed between the respondent "Vatika Ltd.", a sister concern of Vatika Ltd. namely "Aplin Developers Pvt. Ltd." and the complainant. In the tripartite agreement, "both Vatika and Aplin were jointly referred to as seller".
6. That a builder buyer's agreement was executed inter-se the Aplin Developers Pvt. Ltd. and the respondent on 11.05.2015. Thereafter, on 09.09.2015, the respondent endorsed the name of the complaint in the builder buyer's agreement and its records. As per clause no. 9 of the builder buyer's agreement, the builder has to give possession of the plot within 48 months from the date of execution of this agreement. The agreement was executed on 11.05.2015, therefore, the due date of possession was 11.05.2019.
7. That on 30.10.2018, the karta of the complainant visited the project site and office of the respondent and asked about the status of the project and firm date of possession of the plot. The deputy manager – sales and marketing of the respondent company assured that the maximum possession date was May 2019.

8. That the complainant visited the project site and office of the respondent in May 2019 and asked for the possession of the Unit, but the office bearers of the respondent failed to give the possession of the allotted plot and requested to allot a new plot bearing No. 15 in Street No. H - 29, Sector - 88 B, Gurgaon and assured that possession of the said plot would be delivered by December 2019.
9. That on 07.11.2013, the complainant asked for the layout/marketing plan of the plots and the respondent sent an email containing the map "layout" of the plot.
10. That on 07.04.2017, the complainant sent an email to the respondent and asked for the status of the project as well as of the plot.
11. That on 09.12.2018, the complainant sent an email to the respondent and asked for a visit along with information regarding the location and demarcation of the plot. On 01.08.2019 and 19.09.2019 the complainant sent grievance emails to the respondent and asked zoning plan and other information about the project.
12. That on 11.02.2021, the karta of the complainant visited the project site and found the development works at the project site was still incomplete and there is a long way to get possession of the developed plot.

13. That as per the statement of account dated 27.02.2015, the complainant paid Rs. 36,00,000/- (Thirty-Six Lakh) i.e., Rs. 12,000/- per sq. Yd. for plot admeasuring 300 Sq. Yd.
14. That, since 2019, the complainant is regularly visiting the office of the respondent party, as well as on the construction site, and making efforts to get possession of the allotted plot, but all in vain. Despite several visits and requests by the complainant to the respondent, he has never been able to understand/know the actual state of construction/development. It is pertinent to mention here that till today, the development of the said plot has not yet started. The respondent kept the complainant in dark and never told possession of the allotted unit would not be given.
15. That the main grievance of the complainant is that despite the complainant paid 100% of the actual cost of the plot and ready and willing to pay the remaining amount (justified) (if any), the respondent has failed to deliver the possession of plot on promised time and till today.
16. That the complainant had purchased the plot with the intention that after purchase, he would be able to construct a home for the whole family. Moreover, it was promised by the respondent party at the time of receiving payment for the unit that the possession of a fully constructed and developed unit shall be handed over to the complainant as soon as construction completes i.e., May 2019.

17. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, he is liable to be punished and compensate the complainant.
18. That due to the acts of the above and the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
19. That there are a clear unfair trade practice and breach of contract and deficiency in the services of the respondent and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent which makes it liable to answer this hon'ble authority.

That the cause of action for the present complaint arose in or around September 2015 when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action further arose in 2019, when the respondent failed to handover the possession of the unit as per the buyer agreement. The cause of action again arose on various occasions, including December 2019/December 2020, and on many times till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by it that

the possession would be delivered by a certain time. **C. Relief sought by the complainant:**

The complainant has sought following relief(s):

- i. Direct the respondent to give possession of the fully developed/constructed plot with all amenities.
 - ii. Direct the respondent to give delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).
20. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions 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

The respondent has filed the reply on the basis of the following grounds:

- i. That in second quarter of 2012, the complainant herein, learn about the project launched by the respondent titled as 'Vatika Express City' situated at Sector 88 A & B, Gurgaon and approached the respondent repeatedly to know the more details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with

every proposal deemed necessary for the development of the project.

- ii. That after having keen interest in the project constructed by the respondent the complainant booked a plot for a total sale consideration of Rs. 36,00,000/- in the aforesaid project and made a payment of Rs. 10,00,000/- through cheque on 06.08.2012, and Rs. 13,00,000/- on 17.08.2012, through RTGS for further registration.
- iii. The respondent vide allotment letter dated 05.05.2014, further allotted a plot bearing no. 15, street no. E-11.2, Sector 88A Gurugram, admeasuring to 300Sq.Yd. On 11.05.2015, a builder buyer agreement was executed between the respondent and Aplin Developers Pvt. Ltd. for the previous plot endorsed in the name of the complainant in the aforesaid project. It is submitted that the complainant was aware of terms and conditions under the aforesaid agreement and being satisfied with each and every terms agreed to sign upon the same with free will and consent.
- iv. It is imperative to mention that in the agreement dated 11.05.2015, M/s Aplin developers Pvt. Ltd. has been referred to as allottee where the allotted plot has been endorsed upon the name of complainant and thus further development of the allotted plot of complainant would be carried out by M/s Aplin Developers Pvt. Ltd. and as per clause 20 of Agreement, it is the

Allottee i.e., Aplin Developers Pvt. Ltd. is under obligation to complete the development of the said plot and to obtain occupation certificate within 4 (four) years from the date of offer of possession by the respondent company.

- v. On 09.09.2015, a tripartite agreement was executed between the complainant; respondent and Aplin Developer Pvt. Ltd. i.e., the sister concern of the respondent for the previous plot allotted to the complainants in the aforesaid project. It is submitted that as per clause 1 of TPA, the respondent owes no form of liability in regard to the previous plot allotted to the complainant, as the right to develop was transferred/assigned to M/s Aplin Developers Pvt. Ltd. upon wilful consent of the complainant vide TPA dated 09.09.2015.
- vi. It is submitted that as per clause 2 and clause 3 of TPA, the complainant has given his consent to transfer the entire amount so far deposited with respondent company to M/s. Aplin Developers Pvt. Ltd. in order to transfer or assign the rights to develop the allotted plot of complainant. Therefore, the respondent has already waived off his obligation in regard to the previous plot allotted to the complainant. As per the TPA, it is stated that the respondent company has executed an agreement in favour of M/s. Aplin Developers Pvt. Ltd. to develop the construction of the allotted plot of the complainant.

- vii. It is further submitted that all such above-mentioned terms and conditions clearly stipulate that the respondent company owes no form of obligation/liability in regard to the allotted plot of complainant. Hence, the present complaint has been filed by the complainant by putting fabricated and false allegations against the respondent company which are not maintainable in the eyes of law, as the present complaint has no cause of action against the respondent company.
- viii. Therefore, respondent is not a necessary and proper party in the present complaint and hereby this complaint deserves to be dismissed by imposing exemplary costs upon the complainant by wasting worthy time of hon'ble authority.
- ix. It is pertinent to note, that the respondent herein, had again issued an allotment letter on 17.07.2019 upon free will and consent of the complainant. It is submitted that the complainant has pre-determined mala fide motive to cause harass and financial loss to respondent. Thus, the complainant has repeatedly engaged in requesting the respondent company to change allotted plot and to provide with new allotment.
- x. The respondent vide allotment letter dated 17.07.2019, allotted a new plot bearing no. 15, street no. H-29, at Sector 88b, admeasuring area 300 sq. yd. That on receiving several requests the respondent issued another allotment in favour of

complainant and cancelled the previous plot allotted to the complainant.

- xi. It is a matter of fact, that the respondent company herein, is not a necessary and proper party in the present complaint as the respondent has already discharged all of his obligation vide TPA dated 09.09.2015 in regard to the plot allotted to the complainant.
- xii. That the complainant is relying upon various emails without producing a certificate under Section 65-B and therefore, such emails are not admissible before the hon'ble authority. The email records can be admissible as evidence in the hon'ble courts as per the relevant provisions provided under the Indian Evidence Act, 1972. Under the IEA, Section 65B prescribes a distinct framework that governs the admissibility of electronic evidence. There have been multiple litigations over the scope and ambit of Section 65B, with divergent views taken by the hon'ble apex court. It is to note, that the complainant has relied upon various e-mails as annexed with the complaint were not supported by affidavit/ certificate under section 65 (B) of Evidence Act hence, the e-mails placed on record by the complainant has no authenticity, be invalid and is not an admissible document.

xiii. It is brought to the knowledge of hon'ble authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainant. 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, hence the present complaint filed by the complainant deserves to be dismissed with heavy costs.

xiv. The complainant filed a rejoinder retreating his earlier version of the complaint.

21. 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.

F. 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.

F.I Territorial jurisdiction

25. 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.

F.II Subject matter jurisdiction

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.

26. 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 complainants at a later stage.

G. Findings on the relief sought by the complainant:

G.I Delay possession charges

27. 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. Section 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."

28. Clause 9 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

9. Schedule for possession of the said residential unit

The company based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the company contemplates to complete development of the said residential plot within a period of 48 (Forty Eight) months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Plot along with all other charges and dues in accordance with the Schedule of Payments given in Annexure II 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.

29. 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

complainant 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 formalities and documentation 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. This is just to comment as to how the builder has misused his dominant position and drafted such clause in the agreement and the allottee is left with no option but to sign on dotted lines.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at 18%. 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.

31. 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 case.
32. 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%.
33. 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 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;"

34. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.
35. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 11(4)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 9 of the builder buyer's agreement executed between the parties on 11.05.2015, 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 11.05.2019. Since, the respondent has not offered possession of the unit to the complainant till now, accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the builder buyer's agreement dated 11.05.2015 to hand over the possession within the stipulated period.
36. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such, the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 11.05.2019 till the handing

over of possession, as per provisions of section 18(1) of the Act read with rule 15 of the rules and 19(10) of the Act of 2016.

H. Directions of the authority

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

- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 11.05.2019 till the date of handing over the possession.
- ii. The arrears of interest accrued till the date of offer of possession shall be paid to the complainant within a period of 90 days from the date of this order and failing which the same would carry interest @9.30 p.a. till payment.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
- v. The respondent shall not charge anything from the complainant which is not part of the builder buyer's agreement. The respondent is not entitled to claim holding charges from

the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.

38. Complaint stands disposed of.

39. File be consigned to registry.

V-1 - 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2022


(Dr. K.K. Khandelwal)

Chairman

**HARERA**
GURUGRAM