


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

Complaint no. : 142 of 2021
First date of hearing: 11.02.2021
Date of decision : 02.02.2022

Arvind Garg
R/o: M 428, GF, Orchid Island, Sector 51,
Gurugram

Complainant


Versus

Vatika Limited
Regd. office: Vatika Triangle, 4th floor, Sushant
Lok, Ph-1, block A, Mehrauli-Gurugram Road,
Gurugram 122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri. Sukhbir Yadav
Shri. C.K. Sharma

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 15.01.2021 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	16.08.2011 [As per page no. 75 of the complaint]
7.	Unit no.	Plot no. 30, first floor, block E admeasuring 1086.96 sq.ft. [As per page no, 75 of the complaint]
8.	Date of execution of buyer's agreement	14.07.2011 [As per page no. 27 of the complaint]
9.	Payment plan	Construction linked payment plan [As per page 75 of complaint]
10.	Total consideration	Rs.52,41,203/- [As per SOA dated 23.11.2020 page no.83 of the complaint]
11.	Total amount paid by the	Rs. 15,85,054/-



	complainant	[As per SOA dated 23.11.2020 page no.83 of the complaint]
12.	<p>Due date of delivery of possession as per clause 10.1 of buyer's agreement</p> <p><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 reasonable extension of time for completing the same.</i></p>	14.07.2014
13.	Subsequent allottee (second endorsement in favour of complainant)	28.01.2014 [As per page no.71 of the complaint]
14.	Termination of builder buyer agreement by the respondent	15.11.2018 (annexure R2, page 34 of complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. That in October 2013, the complainant, come to know about the project from a real estate agent, who represented himself as an authorized agent of the respondent and marketed the project situated at Sector 82, Gurgaon and offered the independent floor in resale bearing no. plot no. 30, first floor on plot size 208.73 sq.yd. situated at street no. 7, Sector 82E, Gurugram. The complainant visited the Gurugram office and project site of the respondent with the family members and real estate agent. They met the marketing staff of builder and had assured them that possession of flat would be handed over within 6 months. Believing on the representation and assurances of respondent, the complainant, purchased the independent floor bearing plot no. 30, first floor on plot size 208.73 sq.yd. situated at street no. 7, Sector 82E, Gurugram in resale from Mrs. Sushila Devi with the consent of the respondent, through a real estate agent.
4. The said floor was firstly booked by Mr. Devanand on 08.06.2011 for a total sale consideration of Rs. 51,61,856/-. A builder buyer's agreement was executed inter-se the original allottee Mr. Deva Nand and the respondent on 12.07.2011. As per clause no. 10.1 of the builder buyer's agreement, the builder has to give possession of the apartment within 3 years from the date of execution of the agreement and which was executed on 12.07.2011. Therefore, the

due date of possession was 12.07.2014. On 16.08.2011, the respondent issued an allotment letter in favour of original allottee Mr. Devanand, conforming to allotment of 2BHK apartment no. emilia/30/208.73/FF/82 E-7/Vatika India Next for size admeasuring 1086.96 sq.ft.

5. On 13.06.2012, Mrs. Sushila Devi purchased the said apartment from the original allottee, with the consent of the respondent. The respondent endorsed the name of Mrs. Sushila Devi in its record and on BBA and allotment letter and transferred the rights in her favour. It is pertinent to mention here that the respondent has charged Rs. 1,08,696/- as administrative charges for the endorsement. On 13.01.2014, the complainant purchased the said apartment from Mrs. Sushila Devi, with the consent of the respondent. The respondent endorsed the name of Mr. Arvind Garg in its record and on BBA and allotment letter and transferred the rights in his favour. It is pertinent to mention here that the respondent has charged Rs. 1,52,664/- as administrative charges for the endorsement and same were paid him. It is not out of place to mention here that he also paid the previous transfer/administrative charges i.e. Rs. 1,08,696/- to Mrs. Sushila Devi.

6. On 17.01.2014, the respondent issued a welcome letter to the complainant with the subject "welcome letter for plot no. 30/208.73/82 E-7 in "independent floors in Vatika India Next,



Gurgaon". On 22.01.2014, the respondent issued a payment receipt of Rs. 1,52,664/-. On 10.11.2020, the complainant visited the office of the respondent and met Mrs. Neha Srivastava and requested her to fix a meeting with a senior officer of the respondent company. After the meeting, he sent an email to the respondent and the requested for a meeting with a senior. He sent a reminder email to the respondent on 18.11.2020. Further on 23.11.2020, he sent an email to the respondent and asked for a copy of the transfer file. As per the statement of account dated 23.11.2020, he paid Rs. 15,85,054/- till 13.01.2014. On 25.11.2020, he again sent an email to the respondent and asked for possession of the allotted floor, any alternative floor or refund of total paid money along with interest as per HARERA prescribed rate of interest i.e., @9.3% per annum. Since 2015, he is regularly visiting to the office of the respondent, as well as on the construction site, and making efforts to get possession of allotted flat but all in vain. Despite several visits and requests by him to the respondent, he has never been able to understand the actual state of construction. It is pertinent to mention here that till today, the construction on the said plot has not yet started. The respondent kept the complainant in dark and never told that it would not give possession of the allotted unit. The main grievance of the complainant in the complaint is that despite he paid more than 30% of the actual cost of the apartment and ready and willing to pay the

remaining amount, the respondent has failed to deliver the possession of apartment on promised time and till today. He had purchased the flat with the intention that after purchase, he would be able to stay in a better environment. Moreover, it was promised by the respondent at the time of receiving payment that the possession of a fully constructed flat and developed project would be handed over to him as soon as construction is completed i.e., July 2014.

7. That in 2018, the staff of the respondent told the complainant that due to some technical reasons, they are not able to give possession of the unit. But when he asked for the reason in writing the staff showed inability to give in writing. It is pertinent to mention here that every time during the site visit, the project staff of respondent showed different locations of plot no. 30. So, there is strong apprehension that plot no. 30 admeasuring 208.73 sq. ft. yd. does not exist in Sector 82, at street E7 with the respondent it played fraud with the him and other allottees. 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 him.
8. 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 him on account of the aforesaid act of unfair

trade practice. 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 him and others and is prima facie clear on the part of the respondent which makes it liable to answer this hon'ble authority.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent to handover the possession of the allotted unit.
 - ii. Direct the respondent to give delayed possession interest on the amount paid by the allottee, at the prescribed rate from the due date of possession to till the actual possession of the flat is handed over as per the proviso of section 18(1) of the Act, 2016.
10. 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

11. The respondent has contested the complaint on the following grounds.
- i. That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts. The

complaint filed by the complainant before the authority besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Id. authority as the relief being claimed by him, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Id. authority.

- ii. Apparently, in the present case, the complainant is seeking interest which, from reading of the provisions of the 2016 Act and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication, if at all, by the adjudicating officer and not this Id. authority. Thus, on this ground alone, the complaint is liable to be rejected. Further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- iii. That initially, the unit was booked by Deva Nand (original allottee), and the floor buyer's agreement was signed between the original allottee and respondent on 14.07.2011. Thereafter, the original allottee transferred the unit to one Mrs. Sushila Devi on 1.06.2012 and finally, the floor buyer's agreement was endorsed



in the name of the complainant on 28.01.2014. It is further submitted that, since the complainant is a subsequent allottee, the period for calculating the date of handing over of possession has to be done from the date of endorsement. The total sale consideration of the unit purchased by the complainant was Rs. 52,41,203/-. However, it is submitted that the total sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which are to be paid by the complainant at the applicable stage. It is submitted that the complainant agreed that the payment would be made as per the payment plan annexed with the buyer's agreement and the copy of same was read over to the complainant. It is submitted that the original allottee paid Rs. 13,23,694/-. Thereafter, the subsequent allottee Mrs. Sushila Devi paid Rs. 1,08,696/- towards administrative charges and finally, the complainant paid an amount of Rs. 1,52,664/- towards administrative charges after purchasing the flat from Mrs. Sushila Devi.

- iv. The complainant has not come to this hon'ble authority with clean hands and has concealed the material fact that the respondent had already terminated the builder buyer agreement dated 14.07.2011 vide termination letter dated 15.11.2018 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. It is submitted that the respondent also offered alternate unit in the same project. However, the complainant did not accept this alternate option and thus, the respondent was constrained to terminate the agreement. It is pertinent to mention here that the respondent also offered to refund the amount to the complainant along with 6% interest p.a. However, it was the complainant who did not come forward to collect the money.

12. 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

13. 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

14. 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.

15. 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 give delayed possession interest on the amount paid by the allottee, at the prescribed rate from the due date of possession to till the actual possession of the flat is handed over as per the proviso of section 18(1) of the Act, 2016 and direct the respondent to handover the possession of the allotted unit.
16. 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.

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18. Clause 10.1 of the buyer's agreement (in short, agreement) dated 14.07.2011 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.

17. The authority has gone through the possession clause of the agreement and observes 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 was to be handed over within three years from date of execution of agreement i.e., 14.07.2011 which comes out to be 14.07.2014.
18. In the present complaint, on consideration of the documents available on the record and submissions 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 original allottee (Mr. Deva Nand) on 12.07.2011 and the respondent. On 13.06.2012, Mrs. Sushila Devi purchased (second allottee) the said unit from the original allottee, with the consent of the respondent. Thereafter, the complainant Mr. Arvind Garg purchased the said unit from the second allottee. As per statement of account dated 23.11.2020, the total consideration of the said unit is Rs. 52,41,203 and the amount paid is Rs. 15,85,054/-. It is pertinent to mention here that the respondent has terminated the builder buyer agreement dated 14.07.2011 vide termination letter dated 15.11.2018 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 vide termination letter dated 15.11.2018 that the respondent offered the alternative 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 15.11.2018 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. 52,41,203/- (Rupees Fifty Two Lakhs Fourty One Thousand Two Hundred Three Only) vide Application Form dated 08.06.2011 pursuant to which the Builder Buyer Agreement dated 14.07.2011 ("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 dated 14.07.2011.

Against the afore-mentioned Total Sales Consideration of Rs. 52,41,203/- (Rupees Fifty Two Lakhs Fourty One Thousand Two Hundred Three Only), a total amount of Rs. 13,10,402/- (Rupees Thirteen lakhs Ten Thousand Four Hundred Two 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.

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 15-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.

19. 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 15.11.2018 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.

20. **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.*

21. 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.
22. 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%.



23. 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;"*

24. 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.

25. 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


26. 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.

27. Complaint stands disposed of.

28. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2022

HARERA
GURUGRAM