

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

Complaint no. : 3724 of 2021  
First date of hearing: 29.09.2021  
Date of decision : 02.02.2022

1. Kavita Khanna  
2. Nawal Khanna  
Both RR/o: 733, Sector 15, part 2, Gurugram **Complainants**

**Versus**

1. Vatika Limited  
2. Mr. Gautam Bhalla  
**Both RR/o: Tower A, Vatika City Centre, 5<sup>th</sup>  
floor, NH8, Near Kherki Daula Toll Plaza,  
Sector 83, Gurugram, Haryana 122004** **Respondents**

**CORAM:**

Dr. K.K. Khandelwal **Chairman**  
Shri Vijay Kumar Goyal **Member**

**APPEARANCE:**

Ms. Ritu Bhalla **Advocate for complainants**  
Sh. Pankaj Chandola **Advocate for respondents**

**ORDER**

1. The present complaint dated 14.09.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(f) and section 17(1) 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 thereunder or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No	Heads	Description
1.	Name of the project	City Homes in "Vatika India Next, Sector 83.
2.	Nature of the project	Group housing complex
3.	Project area	182.796 acres
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid up to 31.05.2018 71 of 2010 dated 15.09.2010 Valid up to 14.09.2018
5.	Rera Registration no.	Not registered
5.	Date of execution of commercial premises buyer's agreement	21.09.2011 [page no. 55 of complaint]
6.	Payment plan	Construction linked payment plan
7.	Plot no.	Apartment no. 802, floor 8 <sup>th</sup> , block B7 admeasuring 1738.24 sq.ft. (page 58 of complaint)
8.	Total consideration	Rs.51,69,595/- as per statement of account dated 25.03.2016 (annexure R, page 119 of complaint)
9.	Total amount payable by the Complainant	Rs.43,13,367/- as per statement of account dated

		25.03.2016 (annexure R, page 119 of complaint)
10.	<p>Due date of delivery of possession <b>(10.1 Schedule for possession of the said apartment</b></p> <p><i>The company based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said Building/said Apartment within a period of 3 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 (39) or due to failure of allottee(s) to pay in time the price of the said apartment 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 )</i></p>	<p>21.09.2014</p> <p>Due date is calculated from the date of execution of the agreement.</p>
11.	Intimation of possession	<p>10.10.2015</p> <p>*Note: Not valid as the OC at that time was not obtained by the respondent [annexure-R3, page 49 of reply]</p>
12.	Notice for termination	25.03.2016 [page 47 of reply]
	Letter of cancellation	24.06.2021 [annexure R4, page 52 of complaint]
13.	Occupation certificate	OC is annexed in the paper book at page 55 of reply, but that OC is not for the unit which was allotted to the complainant.

**B. Facts of the complaint**

The complainants have submitted as under: -

3. That on the assurances given by the respondent as well as agents, the complainants were much influenced conveyed through their wide publicity and booked an independent floor in the said project "Vatika India Next" being developed & constructed by the respondent no. 1. It is pertinent to mention here that the complainants booked a floor together. Before booking their flats, she alongwith their friends met with the officials of the respondents and told that they want to purchase the independent floors on the same floor or if it's in a low-rise and want their floors in same tower/plot.
4. The officials of the respondent no. 1 told the complainants and their friends that two 03 BHK flats and one 2 BHK flats were available on the same floor. On this, the complainants and their friends gave their consent and booked their respective units with the respondents. The complainants booked flat of 03 BHK at the rate of Rs. 2,438/- per Sq. Ft. On dated 28.07.2008, the complainants and their friends booked three unit in their above said project and at the time of booking, they have paid an amount of Rs. 6,00,000/- against priority no. 3BR/208 for 03 BHK flat/floor dated 28-07-2008. At the time of booking of the flat, the officials of the respondents duly assured the complainants that they would deliver the physical possession of the above mentioned flat within 36 months i.e., three years.

5. The complainants and their friends approached the officials of the respondents and requested to execute buyer's agreement, but they lingered on the matter on one pretext or the other till 2010. Thereafter, the respondents demanded the next installment of the above-mentioned unit number and on this, the complainants and their friends requested to their officials to issue the allotment letter of their units and then they would pay the installments. In the month of July 2010, the respondents called them and their friends and offered a new unit bearing nos. B7-801,802(3BHK) and 803 (3BHK) in "City Homes" situated at Sector-83, Gurugram, Haryana with extended the area of the flats without their prior consent or permission.
6. That the complainants objected the same but the officials of the respondents forced them and their friends by saying that the plan has changed and they have to take the same. Having no other option, they and their friends gave consent and agreed for the same. After repeated requests of complainants and their friends, the respondents executed a builder buyer agreement dated 21.09.2011 in respect of the flat bearing no. B7-802 with an increase of area from 1457 Sq. Ft. to 1738.24 Sq. Ft. They paid the installment as and when demanded by the respondents till the year,2015. They paid a total sum of Rs. 43,13,367/- to the respondents in respect of the above said unit. It is pertinent to mention herein that at the time of booking of the unit, the total sale consideration of the said unit was Rs. 39,72,850/- and after re-allotment, the respondents increased that amount to 49,29,019/- i.e. total sale consideration of the new unit by increasing the area of the flat.

7. That in the middle of October 2015, the complainants and their friends received a letter dated 10.10.2015, from the respondents and they was shocked to see that they have again increased the unit area of their friend namely Shirish Shorewala from 1325 sq.ft. to 2315 sq.ft. without prior notice, intimation or consent of her and her friends. On this, they along with their friends, visited the office of the respondents on dated 19.11.2015 and asked about the same, and officials of the respondents told her that due to change in FSI, the particular unit no. 803 has been changed into duplex and of which they were supposed to provide them floor plan with all details and also offered her an alternative unit on first floor which they denied as they and their friends want to take the flat on the same floor as she and her friends booked their units on the same condition and the officials of the respondents agreed for the same.
8. That when the complainants refused to accept the unit in different way, then the officials of the respondents assured them and their friends to resolve the matter within a short span of time i.e., 24 hours. They continuously enquired the officials of the respondents in order to clear the plan, but they delayed the matter on one pretext or the other and leading to sending several e-mails to the respondents.
9. The complainants aongwith their friends again visited to the office of the respondents in order to meet their officials and to solve the matter. On this, the officials of the respondents further took some time to resolve the issues. On 12.12.2015, the complainants and their friends received an e-mail from the respondents in which it was mentioned that their team would clear all the matters and

- issues and would respond as soon as possible. The respondents further sent a demand letter dated 18.02.2016 to them and their friends. Upon which they and their friends visited the office of the respondents alongwith the cheque in order to clear the due amount but the officials of the respondents further took some more time in order to resolve the issues. They and their friends again insisted that they want all the three flats on a same floor as they booked their flats on their above said project only on those conditions. On this, their officials assured them and their friends verbally that they would fulfil that condition promised at the time of booking.
10. That the complainants and their friends sufficiently waited to resolve the matter, but the officials of the respondents did not give any positive response to them and their friends. When they did not get any satisfactory answer from the respondents, then they sent a letter to the respondents in which it was mentioned to clear the status of their units. The officials of the respondents even did not bother to reply the above said letter sent by them and again sent a demand notice to them. The respondents are not resolving the issues and are demanding the amount from them, illegally and unlawfully.
  11. That on the same day, the complainants again visited the office of the respondents to clear the matter of the flat no. B7-803 of their friend namely Shirish Shorewala, by saying that if the respondents were ready to give the possession of the flat no. 803 on the same rate i.e. Rs. 2443/- per sq.ft. as mentioned in the buyer agreement, then, they would be ready to take possession of their respective floors immediately by clearing the entire dues. But again, the

officials of the respondents did not pay any heed to their just and genuine requests. They and their friends again requested to the officials of the respondents to give the units on the same rates and to waive off the interests thereupon but no fruitful came out. Instead of resolving the matter of the their and their friends, the respondents sent a termination notice dated 15.05.2021 to them and their friends through e-mails in which it was mentioned that if the dues of their would not be cleared then the respondents would terminate the units of complainants and their friends while they were still ready to take the same on the rates as agreed by the respondents at the time of booking and after waiving off the interest. They and their friends visited to the office of the respondents in order for the redressal of their grievance but the requests of their and their friends fell on the deaf ears and the officials of the respondents flatly refused to do so.

12. That the respondents intentionally and wilfully wanted to usurp the hard-earned money of in an unlawful and illegal manner. Due to their above said acts and conducts, they suffered a huge economic loss, mental pain, agony. The respondents knowingly, intentionally with ulterior motives and malafide intentions did not handover the physical possession of the unit to them which is categorical, default and deficiency in service on their part and attempted to cause loss to them which was being caused due to wilful default on the part of the respondents. The respondents are legally bound to entertain their just and legal claim in every aspect. It is worthwhile to mention herein that at the time of booking of the flat, officials of the respondents had assured them that the actual



physical possession of the unit will be deliver within a period of three years and as per terms and conditions of the buyer agreement dated 21-09-2011, in para no. 10.1. But the respondents delayed to handover the actual physical possession of the unit to them their friends and instead of handing over the physical possession within time, the respondents cancelled/terminated the booking just to harass and humiliate them.

13. That after termination notice of the booking, they visited the office of the respondents many times and asked about the termination of their bookings after receiving more than 90% amount from them, but the officials of the respondents lingered on the matter on one pretext or the other and finally in the month of July, 2021, the officials of the respondents refused to withdraw their termination notice and to restore the booking and to listen the legal and genuine request and demanded the interest amount which was illegally charged by the respondents upon them. The terms and conditions of the buyer's agreement are one sided as the respondents have not fulfilled the terms and conditions of the agreement at any point of time.
14. It is pertinent to mention herein that after receiving a sum of Rs. 38,60,265/-, the respondent demanded a sum of Rs. 27,13,722/- from them as they have illegally charged in respect of interest on the due amount, but the respondents are not clearing the issues raised by them regarding increasing of area of the flat and rates which were enhanced by the respondents without giving any prior notice/information to them. The respondents have illegally charged the interest upon the dues which was not delayed by them

but delayed by the respondents themselves in handing over the actual physical possession of the flat which is due from 2011 to till date. They have already paid more than 90% amount of the total sale consideration of their flat but the respondents are using the and enjoying the same It is pertinent to mention herein that due to the negligence or cheating on their part, they suffered a lot and due to this, raised their voice against the respondents and only for which, they have illegally and unlawfully terminated the booking, without any rhyme and reason, just to harass and humiliate them.

15. That it is pertinent to mention herein that they are always willing and ready to pay the remaining cost of the flat but the respondents refused to accept the same from them as they do not want to deliver the flat to them, intentionally and unlawfully.

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

The complainants have sought following relief(s):

- (i) Direct the respondents to handover the actual physical possession of the flat bearing unit no. B7-802, admeasuring 1738 sq.ft. on 8<sup>th</sup> floor in the project "City Homes" of the respondents situated at Sector 83, Gurugram, Haryana.
  - (ii) Direct the respondents to execute the conveyance deed/sale deed in favour of the complainants in respect of the said unit.
16. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (f) and section 17(1) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondents**

The respondents have contested the complaint on the following grounds: -

- i. It is imperative to note, that the complainants herein, learn about the project launched by the respondent titled as 'City Homes -Vatika India Next' situated at Sector 83, Gurgaon and approached the respondent repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project. It is submitted here that the complainants initially booked the unit having area about 1457 sq.ft. However, later on the BBA was executed for the area 1738.24 sq.ft.
- ii. That after having keen interest in the project constructed by the respondent the complainants decided to book a unit bearing no. B7-802 situated at Sector-83 and paid an amount of Rs. 6,00,000/- through cheque dated 28.07.2008 for further registration.
- iii. The respondent vide welcome letter dated 08.11.2010, allotted a unit bearing no. B7-802 admeasuring to 1738 sq. ft. to the complainants. Thereafter, on 08.11.2010, the complainants at their free will paid an amount of Rs. 7,00,000/- through cheque towards the agreed sale consideration for the said unit.
- iv. That after much pursuance of the respondent, on 21.09.2011, a builder buyer agreement was executed between the complainants and the respondent, qua, a unit bearing no. B7-802 admeasuring to 1738.24 sq.ft. in the said project for a total sale consideration of Rs. 49,29,019/- It is to be noted, that as per the



agreement, the construction of the apartment was estimated to be completed within 36 months subject to clause(s) 11.1, 11.2, 11.3 & 38 and the same was subject to the midway hindrances which were beyond the control of the respondent. Also, the complainants were aware that in case the project was delayed due to any event beyond the control then the respondent shall be entitled for extension of time period in handing over the possession. of the agreement which states about the hindrances in the midway of construction beyond control, of the respondent. As per the terms of the agreement the complainants were an under obligation to make the requisite payment of instalments as per the payment schedule and the respondent was not duty bound to serve any notice or demands for the instalments. The respondent served various reminders dated 10.10.2015, 04.11.2015, 01.12.2015, pre-termination notices dated 25.03.2016 and 15.05.2021 to the complainants demanding the outstanding payments. However, all the requests of the respondent fell in the deaf ears of the complainants. In spite after knowing that during the construction of the aforesaid project, the respondent had faced several obstacles which were beyond the control and the construction of the project was ought to be interrupted due to the same. However, it is necessary to brought into the knowledge of the Id. authority that as on date the complainants have only paid partial amount of the total sale consideration and the complainants while concealing such fact have filed this complaint with mala-fide intention.

- v. It is submitted that the complainants were aware of terms and conditions under the aforesaid agreement and post being satisfied with each and every term agreed to sign upon the same with free will and consent without any demur. The complainants being the habitual defaulter in terms of payment have failed to adhere to the payment plan and violated the terms and conditions embodied under clause 7 of agreement.
- vi. As per the agreement initially the complainants were an under obligation to make the requisite payment of instalment as per the payment schedule. The respondent herein was not duty bound to serve notice or demands for the instalments. It is imperative to note, that the complainants have failed to make the requisite payment for the respective unit in the said project. It is a matter of fact, that the complainants were aware of the exact status of the project and despite after knowing that payment was essence of time failed to provide timely payment due to which the respondent was forced to serve several demands and payment reminder letters.
- vii. The complainants herein have filed the present complaint on baseless and absurd grounds. Under clause 10.1 of the agreement so signed and acknowledged by the complainants, the respondent herein, clearly mentioned that the possession will be granted within 3 years unless, there shall be delay in the midway of the development of the said project for the reasons beyond the control of the respondent as mentioned in other clauses in the agreement. It is pertinent to mention that the delay caused in the project was beyond the control of the

- respondent. It is submitted that as per the agreement so signed and acknowledged, the complainants herein knew that the respondent would not be liable for any event beyond its control and further extension time would be granted for completion of the project.
- viii. It is further submitted that the complainants in the said agreement so signed and acknowledged agreed that he/she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any government rules, orders or notification. That it is evident that the respondent faced various problems and difficulties in carrying out the smooth development of the subject project where the allotted plot of complainants was situated. It is submitted that the respondent conveyed the obstruction/unforeseen circumstances being faced which hampered the construction and development work of the said project through various telephonic conversations.
- ix. It is to be noted, that the project in question was majorly dependent upon the timely payment as the same was an essence for its completion and despite after knowing the fact, the complainants herein failed to comply with the payment schedule as annexed along with the agreement. It is an admitted fact, that even at the time of offering possession, an amount of Rs. 41,63,854/- was due on account of the agreed sale consideration for the said unit.
- x. Hence, it cannot be denied that the reasons for the delay in handing over the possession were firstly the delayed payment

on account of the complainants and secondly due to the reasons beyond the control of the respondent and the same are explained in detail herein below.

- xi. On 10.10.2015, a Letter for offer of possession was offered to the complainants in compliance with clause 10.2 of the agreement which evidently proves the fact that despite after obstructions in the midway of construction, the respondent herein has managed to provide the said unit. But the complainants herein failed to accept the offer within the prescribed period as mentioned period under the agreement and moreover, the same was intimated in the contours of the letter for offer of possession.
- xii. It is imperative to bring into the knowledge of the Id. authority that despite after calling upon the complainants to take over the possession and to clear the balance due, they have neither taken over the possession nor cleared the amount of Rs. 41,63,854/- which was due on account of the agreed sale consideration for the said unit.
- xiii. As per the agreement in case the allottees failed to take-over the possession of the apartment within the specified time period as prescribed under the letter of possession, then the unit shall lie at the risk and cost of the allottee, and the company shall have no liability or concern thereof. Therefore, the complainants have no right to raise the objection before the hon'ble authority when no obligation have been complied therewith as mentioned under the agreement.

- xiv. The provisions of the RERA are prospective and not retrospective. However, it is pertinent to mention that the retroactive application of the Act will equally applicable on the ongoing projects. But, in the present complaint, the project in light is not on-going project since the OC has already been obtained on 30.08.2016 for the project in question therefore, the procedure laid down under section 3 will not be applicable to the project.
- xv. it is humbly asserted that complainants did not comply with the terms of the agreement and equally to the letter dated 10.10.2015. It is submitted that the agreement was executed on 21.09.2011, which is much prior to the implementation of the RERA Act, 2016, as the said act came into force on 01.05.2017. Therefore, in the light of the aforementioned facts wherein the facts become crystal clear that the sole purpose of the agreement was fulfilled much prior to the enforcement of the RERA. It is mentioned for the purpose of the law established in the circumference of the various judgements of the High Court wherein it has been established that RERA contains the retrospective effect to the ongoing projects which is prescribed under section 3 of the RERA Act which confers in the subsequent manner.
- xvi. It is submitted that the aforesaid provision specifically provides that the projects which are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued are subject to registration. It is a



matter of fact, that in the present case the OC has already been issued much prior to the enforcement of the RERA Act.

- xvii. Compensation has been sought in the present complaint. It is submitted that the complainants have sought relief, which is in nature of compensation, therefore, the present complaint is not maintainable before the authority. Therefore, the present complaint is liable to be dismissed on this ground alone.
- xviii. That the complaint is pertaining to compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 and is required to be filed before the adjudicating officer under Rule-29 of the Rules, 2017 read with section 31 and section 71 of the said Act and not before this Hon'ble Regulatory Authority under Rule-28.
- xix. In the present case, the complaint pertains to the possession and compensation for which the complainants filed the present complaint. The complaint, if any, is still required to be filed before the adjudicating officer and not before this hon'ble regulatory authority as this hon'ble regulatory authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- xx. It is pertinent to mention before the Id. authority that the respondent was chasing the complainants to take over the possession of the unit and to clear the outstanding dues towards the allotted unit. However, the complainants never turned up and failed to take over the possession of the unit by paying the outstanding dues. It is submitted that as per the agreement so signed and acknowledged, the complainants herein knew that

the respondent shall not be liable for any events beyond the control of the respondent and further extension time would be granted for completion of the project. It is further submitted that the complainants agreed that he/she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any government rules, orders or notification. That it is evident that the respondent faced various problems and difficulties in carrying out the smooth development of the subject project where the allotted plot of complainants 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. It is submitted that the time schedule for handing over the possession given under Clause 10.1 of the agreement was subject to other terms and conditions of the agreement such as timely payment of the instalments by the complainants and reasons of delay which are beyond control of the respondent. The main reasons behind the delay in project was due to the non-acquisition of sector roads by HUDA, initiation of GAIL corridor passing through the "Vatika India Next" project, non-shifting of high-tension lines passing through the project by DHBVN. It is submitted that the "Vatika India Next" is large township and respondent has already given possession more than approx. 5000 apartments in the past few years which includes plots, villas, independent floors, group housing flats and commercial. That due to extraneous reasons

beyond control of the respondent, the respondent was unable to execute and carry out all necessary work for completion in some part of the project. There was changes in the master layout plan of the project by the concerned govt. agencies because of which the entire plot cluster map changed, and due to this, there was a delay in the handing over the possession.

- xxi. It is pertinent to mention that letter for offer of possession was offered to the complainants on 10.10.2015 in compliance with clause 10.2 of the agreement which specifically reflects that the completion of the contractual obligation was fulfilled by the respondent however, the complainants failed to accept the offer within the prescribed period as mentioned period under the agreement and moreover, the same was intimated in the contours of the letter for offer of possession.
- xxii. It is pertinent to mention before the Id. authority that the respondents was chasing the complainants to take over the possession of the unit and to clear the outstanding dues towards the allotted unit, however, they never turned up and failed to take over the possession of the unit by paying the outstanding dues. The respondent has issued various demand letters dated 10.10.2015, 04.11.2015, 01.12.2015, pre termination notices dated 25.03.2016 and 15.05.2021. That on not receiving any response from they, the respondent was constrained to cancel the allotment and issued letter on 24.06.2021 for cancellation of builder buyer agreement cum recovery notice.
- xxiii. It is humbly asserted that complainants did not comply with the terms of the agreement and also with the offer for possession



letter. It is submitted that the agreement was executed on 21.09.2011, which is much prior to the implementation of the RERA Act, 2016 as the said Act came into force on 01.05.2017. Therefore, in the light of the aforementioned facts wherein the facts become crystal clear that the sole purpose of the agreement was fulfilled much prior to the enforcement of the RERA. It is mentioned for the purpose of the law established in the circumference of the various judgments of the High Court(s) wherein it has been established that RERA contains the retrospective effect to the ongoing projects which is prescribed under section 3 of the RERA Act which confers in the subsequent manner. It is submitted that the aforesaid provision specifically provides that the projects which are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued are subject to registration. It is matter of fact, that in the present case, the OC has already been issued much prior to the enforcement of the RERA act. Further, the implications involved in the registration of the project fails to apply in the present case. Further, the complainants have no locus standi in the complaint since they breached the terms of the agreement entered with the respondent, mentioned that as per clause 10.3 of the agreement.

- xxiv. That the complainants herein, suppressed the above stated facts and have filed this complaint under reply upon baseless, vague, wrong grounds and has mislead this Id. authority, for the reasons stated above. It is further submitted that none of the

reliefs as prayed for by the complainants are sustainable before this Id. authority and in the interest of justice.

- xxv. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainants have not approached the Id. authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Id. authority that the complainants are guilty of placing untrue facts and are attempting to hide their true colour or intentions.
- xxvi. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Id. authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
18. 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.

**F. Jurisdiction of the authority**

The respondents have raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F. I Territorial jurisdiction**

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**

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per section 11(4)(f) and section 17(1) of the Act of 2016, leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

#### **G. Findings on the relief sought by the complainants.**

**Relief sought by the complainants:** The complainants have sought the following relief(s):

- i. Direct the respondent to handover the actual physical possession of the flat bearing unit no. B7-802 admeasuring 1738 sq.ft. on 8<sup>th</sup> floor in the project "city homes" of the respondent situated at Sector 83, Gurgaon, Haryana.
  - ii. Direct the respondent to get the conveyance deed executed.
19. In the present complaint, the complainants are seeking relief of execution of conveyance deed as well as seeking relief of physical possession of the unit. Clause 16 of unit buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"16. Conveyance of the said apartment**

*The company/its associates companied shall prepare and execute along with the allottee a conveyance deed to convey the title of the said Apartment in favour of allottee but only after receiving full payment of the total price of the apartment and the parking space allotted to him/her and payment of all securities including maintenance security deposits and charges for bulk supply of electrical energy, interest, penal interest etc. on delayed installments stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this agreement or as demanded by the company from time to time prior to the execution of the conveyance deed. If the allottee is in default of any of the payments as set forth in this agreement then the allottee authorizes the company to withhold registration of the conveyance deed in his/her favour till full and final settlement of all dues to the company is made by the allottee and agreed to bear the consequences. The allottee undertakes to execute conveyance deed within the time stipulated by the company in its written notice failing which the allottee authorizes the company to cancel the allotment and terminate this agreement in terms of clause (12) of this agreement and to forfeit out of the amounts paid by him/her the earnest money, delayed payment of interest any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount without any interest in the manner prescribed in clause (12) supra. The allottee shall be solely responsible and liable for compliance of the provision of Indian Stamp Act, 1899 or any amendments thereof including any actions taken or deficiencies/penalties imposed by the competent authority(ies). Any increase/decrease in the Stamp Duty charges during the period when the case for execution of the conveyance deed of the allotted flat is being processed by the company shall be borne by/refunded to the allottee.*

Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

**"17. Transfer of title. -**

*(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate*



*title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

20. **Validity of offer of possession:** The authority in complaint bearing no. 5137 of 2019 titled as **Dr. Ashok Kumar Vaid and anr. Versus Emaar MSG Land Ltd.**, has comprehensively dealt with the components of valid offer of possession and they are as follow:

**a. Possession must be offered after obtaining OC/CC:** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

**b. The subject plot/unit should be in habitable condition:**

The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or





capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developer. The allottee should accept possession of an apartment with such minor defects under protest. This authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not at all habitable because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational, then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession

- c. Possession should not be accompanied by unreasonable additional demands:** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottee. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession.

Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if the additional demands are made by the developer, the allottee may accept possession under protest or decline to take possession raising objection against unjustified demands.

21. In light of the above-mentioned concept, the offer of possession dated 10.10.2015 made by the promoter in the present matter is not a valid/lawful offer of possession as the same has been made before obtaining OC from the competent authority which is a necessary pre-requisite. The OC for the subject unit has not been obtained by the respondent till date.
22. On consideration of the above-mentioned facts the authority observes that the respondent offered the possession vide letter dated 10.10.2015 but that offer of possession is not valid as the respondent has not obtained OC/GC of unit allotted to the complainants. So, in such situation, the authority neither can give the direction of execution of conveyance deed nor to handover the possession of the said plot to the complainants.
23. The counsel for the complainants' time and again pressing for relief being aggrieved by cancellation of the unit and impressing upon the authority that the said cancellation is not in accordance with terms and conditions of sale and it is unilateral and without any sufficient cause. In the relief, no such relief against cancellation of the unit has been sought. On the request of counsel for the complainants, liberty is granted to file separate complaint.

24. Complaint stands disposed of.
25. 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**