

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

<b>Complaint no.</b>	:	<b>2016/2022</b>
<b>Date of filing complaint:</b>		<b>12.04.2021</b>
<b>First date of hearing:</b>		<b>27.05.2021</b>
<b>Date of decision</b>	:	<b>03.01.2024</b>

<p>1. Khilya Devi <b>Resident of:</b> House no. 155/20, Om Nagar, Gurugram, Haryana.</p> <p>2. Pardeep Singh Besla <b>Resident of:</b> S-44, 1<sup>st</sup> Floor, Uppal South end, Sector 49, Gurugram, Haryana.</p>	<p><b>Complainants</b></p>
<p>Versus</p>	
<p>1. M/s Vatika Ltd <b>Regd. office:</b> Unit no. A 002, INXT city centre, Ground Floor Block A, Sector 83, Vatika India Next, Gurugram, Haryana.</p> <p>2. Anil Bhalla <b>Address:</b> Unit no. A 002, INXT city centre, Ground Floor Block A, Sector 83, Vatika India Next, Gurugram, Haryana.</p> <p>3. Gautam Bhalla <b>Address:</b> Unit no. A 002, INXT city centre, Ground Floor Block A, Sector 83, Vatika India Next, Gurugram, Haryana.</p> <p>4. Brij Kishore Singh <b>Address:</b> Unit no. A 002, INXT city centre, Ground Floor Block A, Sector 83, Vatika India Next, Gurugram, Haryana.</p>	<p><b>Respondents</b></p>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Arjun Bhatnagar Advocate	Complainants
Shri Dhruv Dutt Sharma Advocate	Respondent

**ORDER**

- The present complaint 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)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions 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**

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

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	Emilia Floors in Vatika India Next, 82,82A,83,84,85, Gurgaon, Haryana.



2.	Project area	182 acres
3.	Nature of the project	Residential plotted colony
4.	Unit no. and area admeasuring.	<p>Initially plot was allotted bearing no.19, 7<sup>th</sup> court street, GF, block F, measuring 781 sq. ft.</p> <p>(Clause 1.1 of BBA dated 10.11.2009 and page no. 5 of complaint)</p> <p>Then said plot's nomenclature was changed vide intimation dated 20.12.2011 and allotment letter dated 27.09.2013: Plot bearing no. 20, Floor- GF, sector 82 F, street no. 82 F-12 admeasuring 929.02 sq. ft. (Page no. 4 &amp; 6 of complaint)</p> <p>Now, finally allotted plot bearing no. 12, ST. K-15, level 1 admeasuring 940 sq. ft. (vide addendum to the agreement dated 13.12.2017 at page 29 of complaint)</p>
5.	Date of execution of Flat buyer agreement between original allottee and the respondent	10.11.2009 (Page no. 3 of BBA dated 10.11.2009)
6.	Endorsement by original allottee	05.07.2010 (Page no. 2 of complaint)
7.	Agreement to sell between first endorsee and complainants	24.10.2013 (Page no. 10 of complaint)



8.	Affidavit of Buyer-Assignee and Indemnity cum undertaking between the complainants and respondent.	24.10.2013 (Annexure R/2 and R/3)
9.	Endorsement in name of the current complainants by respondent.	01.11.2013 (Page no. 14 of complaint)
10.	Possession clause as per the original BBA dated 10.11.2009	<b>10.1 Schedule for possession of the said independent dwelling unit.</b> That the company based on its present plans and estimates and subject to all just exceptions, contemplates to <b>complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this agreement</b> 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 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 company shall be entitled to reasonable extension of time for completing the same. <b>(Emphasis supplied)</b>



11.	Amendment to possession clause 10.1 of BBA dated 10.11.2009.	<p><b>Clause 3 of Indemnity cum undertaking dated 24 October 2013 signed between complainants and respondent (Page no. 30 of reply, Annexure-R/2)</b></p> <p>That Indemnifier agree without demur that the clause as envisaged in Builder buyer agreement wrt handing over of possession of the Flat/Apartment/floor/Villa/unit shall be rectified/amended hereof and Indemnifier agree that the possession of the same shall be given <b>within 4 years from the date of his/her affidavit</b> Indemnifier hereby ratify that the relevant clause of the Builder Buyer Agreement related to handing over of the Apartment/Floor/Villa/Plot/Unit within 3 years from the date of signing of the Agreement herein stands cancelled and shall be read as amended above for which Indemnifier hereby give his/her consent.</p> <p><b>Clause 8 of Buyer-Assignee affidavit dated 24 October 2013 (Page no. 33 of reply, Annexure-R/3)</b></p> <p>That I agree without demur that the clause as envisaged in Builder buyer agreement wrt handing over of possession of the Apartment/Floor/Villa/Plot/Unit shall be amended and I agree that <b>the possession of the same shall be given within four years from the date of signing of his affidavit.</b> I hereby ratify that the relevant clause of the Builder Buyer Agreement related to handing over of the possession of Apartment/Floor/Villa/Plot/Unit shall be read as amended above for which I/We hereby give my consent.</p>
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12.	Due date of possession	24.10.2017 (Calculated from the date of affidavit dated 24.10.2013)
13.	Basic sale price	Rs. 28,60,857/- (Page no. 31 of complaint, SOA dated 06.02.2019) Vide addendum to the agreement dated 13.12.2017 at page 29 of complaint: "...Allottee undertakes to pay the sale consideration on the basis of actual super area & location of new allotted unit..."
14.	Amount paid by the complainants	Rs. 13,33,979/- (Page no. 31 of complaint, SOA dated 06.02.2019)
15.	Offer of possession.	Not offered
16.	Last opportunity for making due payments and termination notice	06.02.2019 (Page no. 30 of complaint) 07.09.2020 (Page no. 38 of reply)
17.	Letter of cancellation	02.02.2021 (Page no. 40 of complaint)
18.	Demand raised in notice for cancellation	Rs. 2,62,717/- (Page no. 41 of complaint)
19.	Occupation certificate	Not obtained

- B. Facts of the complaint:**
3. The respondent no. 1 launched a project by the name and style of "Emilia" in Sector 82, Gurugram in the year 2009 having independent floors. Finding it attractive Mr. Kapil Bhardwaj s/o Sh. Girija Shanker Bhardwaj invested his hard-earned money and applied for an independent floor in the above project of the respondent no.1. Subsequently, a builder buyer agreement was executed between the respondent no.1 and Mr. Kapil Bhardwaj dated 10.11.2009. All the covenants pertaining to the payments, delivery etc. of the floor were categorically mentioned in the aforesaid builder buyer agreement. The payment plan of the aforesaid mentioned property is construction linked plan. Vide the builder buyer agreement, Mr. Kapil Bhardwaj was allotted plot no.19, ground floor on the 7th court street in emilia's Sector-82. Mr. Kapil Bhardwaj paid Rs. 8,42,852.50/- which included booking, allotment and earthwork charges, out of the total sale consideration of Rs. 23,43,945/- which is approximately 35% of the total sale consideration as per the construction linked plan.
  4. Subsequently, Mr. Kapil Bhardwaj assigned his original allotment in favor of Mr. Bikeramjit Singh s/o Mr. Parduman Singh r/o House No.89, Sant Nagar, Ludhiana, (Pb)-141001 by surrendering his rights and his account was transferred in the official records of the respondent no.1 vide letter dated 05.07.2010. Afterwards the respondent no.1 raised another demand of Rs. 3,60,646/- towards the part of sale consideration which was duly paid by Mr.

Bikeramjit Singh vide receipt voucher dated 25.01.2011. Making the total paid up sale consideration to the tune of Rs. 12,03,498.50/-. Thereafter, the respondent no.1 vide letter dated 20.12.2011 intimated Mr. Bikeramjit Singh about the change in numbering system and area of floors in the aforesaid project and accordingly Mr. Bikeramjit Singh was allotted a new number of his apartment which was Plot No. 20, GF, Emilia, Street No. 12, Sector 82-F, Gurugram instead of Plot No.19 and the area of the Plot was increased to 929.02 sq. ft. from 781.25 sq. ft. along with a revised payment plan. The respondent no. 1 vide letter dated 27.09.2013 made a tentative allotment to Mr. Bikramjit Singh. Eventually Mr. Bikramjit Singh vide sale agreement dated 24.10.2013 assigned his share in favor of the complainants for which Mr Bikramjit Singh paid Rs. 1,20,481/- to the respondent no.1 towards assignment charges vide receipt voucher dated 28.10.2013.

5. That vide letter dated 01.11.2013 the complainants were officially incorporated in the records of the respondent no.1 and the name as allottees was officially entered in the records towards the unit.
6. The respondent no.1 vide letter dated 19.03.2015 raised a demand of Rs. 5,18,348.74/- towards casting of the ground floor roof slab which was received by the complainants on 11.04.2015 along with a reminder of payment due dated 09.04.2015 with enhanced interest and making the amount as Rs. 5,22,758.45/-. However, to the utter dismay of the complainants that when they visited the site, the construction work did not even commence on the aforesaid



- mentioned plot and it was lying vacant, rather the construction work was done only till Plot no. 22.
7. Resultantly, the complainants sent the respondent no.1 an email dated 06.04.2015 appraising the respondent no. 1 about the factum that construction hasn't commenced. Vide email dated 08.04.2015 the respondent no.1 accepted the factum of raising illegal demand which was not in accordance with the construction and also denied to the just and legal demand of the complainants for visual updates.
  8. Vide same email dated 08.04.2015 the respondent no.1 also informed the complainants that they would be reversing the demands of Rs.5,22,758.45/- raised against the completion of foundation and on casting of ground floor slab with immediate effect.
  9. That being dissatisfied by the reply, the complainants vide email dated 10.04.2015 humbly requested the respondent no.1 to send the visual updates of the site but of no avail. However, the respondent no.1 gave a vague and evasive reply.
  10. Afterwards the complainants were taken aback when the respondent no.1 vide letter dated 13.12.2017 sent an addendum disclosing the fact that some unnarratable dispute has arisen on the aforesaid mentioned site and re-allotted the complainants plot no. 12 street K-15 level 1 in sector 83.
  11. That being still aggrieved the complainants accepted the unjust and illegal re-allotment done by the respondent no.1. After the addendum the respondent no.1 did not send any demand notice to

the complainants nor emailed anything relating to the payments due.

12. The respondent no.1 sent a notice for termination of the complainant's unit dated 06.02.2019 whereby the respondent no.1 disclosed the factum of an outstanding payment of Rs. 8,84,356/- along with a statement of accounts in reference to the demands raised on 19.03.2015 and a reminder dated 09.04.2015 and if this demand is not met out within seven days, then in that eventuality the respondent no.1 threatened to terminate/cancel the allotment as well as the builder buyer agreement.
13. Afterwards the complainants realized that they have fallen prey to the dilatory tactics of the respondent no.1 and that it is in absolute mood of looting the complainants hard earned money for its unjust enrichment and again vide email dated 15.02.2019 requested the respondent no.1 to check all the correspondences between the respondent no.1 and the complainants and to further get the clarity on the issue but to no avail. The respondent no.1 did not even deem it right to reply to the complainant's sincere demands as all the efforts made by the complainants fell onto the deaf ears of the respondent no.1.
14. That on one fine day on 07.09.2020 the respondent no.1 again woke up and sent an email regarding termination of the allotted property, if the outstanding amount is not cleared within 7 days with further intimation that the interest is getting accumulated.

15. Subsequent thereto, the complainants requested the respondent no.1 to send a corrected statement of accounts by reversing the entries and to go through the correspondence and email dated 08.04.2015 but again this email was also not responded to.
16. That on 17.11.2020 the respondent no.1 again mailed the complainants to clear the dues till tomorrow(18.11.2020) else the allotment will be terminated/cancelled which was duly replied to by the complainants and further the complainants requested the respondent no.1 to provide information regarding the license No., layout plan, copy of approval from HRERA, corrected statement of accounts with reversed entries and expected date of possession.
17. Despite several requests of the complainants, the respondent no.1 vide letter dated 02.02.2021 terminated/cancelled the complainants builder buyer agreement. Further, in the letter dated 02.02.2021 the respondent no. 1 raised a flimsy demand of Rs 2,62,717.26/-.
18. The complainants sent a legal notice dated 25.02.2021 to the respondents which was duly delivered on 26.02.2021 but the respondents despite the delivery failed to reply to the same.

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

19. The complainants have sought the following relief(s):
  - i. Direct the respondent to declare the termination letter dated 02.02.2021 as illegal, ultra vires, null and void.
  - ii. Direct the respondent to pay interest on delayed possession at the rate determined by this Hon'ble Authority for every month of delay.

**D. Reply by the respondent**

20. The from perusal of the provisions of 2016 Act and/or the 2017 Haryana Rules and conjoint reading of the same, it is evident that the 'Agreement for Sale' that has been referred to under the provisions of 2016 Act and 2017 Haryana Rules, is the 'Agreement for Sale', as prescribed in Annexure 'A' of 2017 Haryana Rules. Apparently, in terms of Section 4(1), a promoter is required to file an application to the 'Authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term 'prescribed' has been defined under Section 2(z)(i) to mean prescribed by Rules made under the Act. Further, Section 4(2)(g) of 2016 Act provides that a promoter shall enclose, along with the application referred to in Sub-Section 1 of Section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act *inter alia*, provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. Sub-Section 2 of Section 13, *inter alia*, provides that the agreement for sale referred to in Sub-Section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said Sub-Section. Rule 8 of 2017 Haryana Rules categorically lays down that the agreement for sale shall be as per annexure 'A'.

Suffice it is to mention that annexure 'A' forms part of the 2017 Haryana Rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

21. Besides the aforementioned sections, a reference may be made to Rule 5 of 2017 Haryana Rules, which *inter alia*, provides that the Authority shall issue a registration certificate with a registration number in Form 'REP-III' to the promoter. Clause 2(i) of Form 'REP-III' provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the government.
22. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the floor buyer's agreement, executed much prior to coming into force of 2016 Act.
23. The previous allottees and the complainants have miserably and willfully failed to make payments in time or in accordance with the terms of the allotment/ floor buyer's agreement. It is submitted that the previous allottees and complainants have frustrated the terms and conditions of the floor buyer's agreement, which were the essence of contract between the parties and therefore, the complainants now cannot invoke a particular clause.
24. It has been categorically agreed between the parties that subject to the allottees having complied with all the terms and conditions of the floor buyer's agreement and not being in default under any of the provisions

of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said unit within a period of 3 years from the date of execution of the agreement. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure III to the floor buyer's agreement, the date of handing over of the possession shall be extended accordingly. The previous allottees and complainants have not fulfilled their obligation and have not even paid the installments on time that had fallen due. Accordingly, no relief much less as claimed can be granted to the complainant.

25. Initially the unit was booked by one Mr. Kapil Bhardwaj (original allottee) and the floor buyer's agreement was signed between the original allottee and respondent no. 1 on 10.11.2009. Thereafter the original allottee transferred the unit to one Mr. Bikeramjit Singh in June-July 2010 and finally, the floor buyer's agreement was endorsed in favor of the complainants in October-November, 2013. Since the complainants are subsequent allottees, the period for calculating the date of handing over of possession has to be done from the date of endorsement.
26. The complainants have already condoned the alleged delay and relinquished the claim of delay possession charges to which the original allottees might have been entitled and are now estopped from claiming the delay possession charges. The complainants have also given an affidavit at the time of transfer/ endorsement of unit in their name whereby they agreed and consented that the period

for calculating possession shall be Four (4) years from 24.10.2013 and the relevant clause of the buyer's agreement related to handing over of the possession of plot stands cancelled and shall be read as amended.

27. The total sale consideration of the unit purchased by the complainants was Rs. 32,32,308/-. However, the total sale consideration amount was exclusive of the STP, Gas pipeline, Stamp duty charges, Service tax and other charges which are to be paid by the complainants at the applicable stage. The previous allottees and complainants agreed that the payment will be made as per the payment plan (construction linked payment plan) annexed with the buyer's agreement and the copy of same was also read over to the complainants. It is submitted that the original allottee paid Rs. 8,42,852.50/-. Thereafter, subsequent allottee Mr. Bikeramjit Singh paid Rs. 3,60,646/- and Rs. 1,30,481/-. After the assignment of rights in the favor of the complainants, the complainants did not make payment of even single rupee to the respondents towards the sale consideration of the unit. It is submitted that out of the sale consideration of Rs. 32,32,308/-, the amount actually paid by the previous allottees is Rs. 12,03,498/- i.e. around 37% of the sale consideration of the unit. It is further submitted that despite the number of opportunities the complainants failed to make the payments and the respondent was therefore constrained to cancel the booking of the complainants and the complainants are now left with no right, title, interest etc. in the present unit. As a matter of

fact, the respondent reserves its right to claim an amount of Rs. 2,62,717.26/- from the complainants.

28. Builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. A builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one buyer who makes payment in time can also not be segregated, if the payment from other perspective buyer does not reach in time. It is relevant to note that the problems and hurdles faced by the developer or builder must be considered while adjudicating complaints of the prospective buyers.

**E. Jurisdiction of the authority:**

29. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction 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.

**E. 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 the entire Gurugram District for all purposes 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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;*

#### **Section 34-Functions of the Authority:**

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

30. So, given the provisions of the Act 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.

### **F. Findings on the objections raised by the respondent.**

#### **F.I Objection regarding entitlement of delayed possession charges in view of clause 2 of indemnity cum undertaking dated 24.10.2013.**

31. The respondent contends that the complainants right to delayed possession charges is relinquished due to the signing of indemnity

cum undertaking dated 24.10.2013. The relevant clause of the said undertaking deed is produced below:

*"2 The Indemnifier having been appraised, understands and confirms that being the Assignee, he/she is not entitled to claim any compensation for delay in handing over possession or rebate under a scheme of otherwise or any other discount by whatever name from the Company and hereby undertakes not to raise any claim whatsoever with regard to the same from the Company, for which the original Applicant/ Allotter might have been entitled"*

32. On perusal of the records brought before this Authority, it is the view of this Authority that the aforesaid undertaking does not annul the right of delayed possession charges that are provided by the law of parliament. It is the view of this Authority that the statutory rights created by an Act of parliament cannot be superseded by any private contract. There is a need to differentiate the "claim of statutory rights" from the "claims of regular nature i.e. non-statutory rights", while the former has the protection of the legislature, whereas the latter does not have such protection. The legislature provides special remedies to protect statutory rights and such rights are above any form of settlement/agreement/contract agreed to by the parties. On the other hand, any claim of a regular nature i.e. non-statutory right is not protected by any legislative law, and they are dealt with by normal processes of trade, transactions, and applicable laws. In the instant case, the right to delayed possession charge is a statutory relief that is provided by the legislature under the Act of 2016, and therefore the said relief supersedes any agreement/settlement

entered into between the parties. Hence, the aforesaid objection raised by the respondent has no merit in it.

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

**G.I Direct the respondent to declare the termination letter dated 02.02.2021 as illegal, ultra vires, null and void.**

**G.II Direct the respondent to pay interest on delayed possession at the rate determined by this Hon'ble Authority for every month of delay.**

33. The aforesaid relief being connected are dealt with together.

34. The original allottee Mr. Kapil Bhardwaj executed the flat buyer agreement for plot no. 19, 7<sup>th</sup> court street, ground floor, block F, admeasuring 781 Sq. Ft. with the respondent on 10.11.2009 for total basic sales price of Rs. 23,43,945/-. Thereafter the original allottee endorsed the said plot in the name of Mr. Bikeramjit Singh (First endorsee) on 05.07.2010, and new nomenclature was adopted in naming the units without any change in location or direction, and thereby the first endorsee was allotted plot no. 20, Ground floor, street 82 F 12. Though the size of the plot was increased to 929.02 Sq. Ft. Furthermore, the basic sale price of the plot increased to Rs. 28,68,125/-. Thereafter, the first endorsee entered into an agreement to sell with the complainants on 24.10.2013, and an endorsement of aforesaid plot was made in the name of the complainants on 01.11.2013. On 13.12.2017, an addendum to the agreement dated 10.11.2009 was executed between the complainants and the respondent whereby the

complainants were re-allotted a new plot bearing no. 12, ST. K-15, level 1 admeasuring 940 sq. ft. Furthermore, vide the said addendum, the complainants agreed to pay sales consideration on the basis of actual super area. The relevant portion of the addendum is reproduced below:

*"...Allottee undertakes to pay the sale consideration on the basis of actual super area & location of new allotted unit..."*

35. On the endorsement of the plot in the name of the complainants, the rights, liabilities, etc. regarding the said plot got transferred in their name. It is brought to the attention of this Authority that the allotment of the plot in name of the complainants was cancelled by the respondent on default in making payments as per the agreement dated 10.11.2009.
36. The complainants contend that the respondent raised illegal demands upon them which were not as per the actual construction on ground, and furthermore charged wrongful interest on the basis of that illegal demand. The complainants stated that the respondent has failed to correct the statement of account, and instead cancelled their allotted plot.
37. The respondent on the other hand contended that the respondent has defaulted in making timely payments as per the payment schedule mentioned in the agreement dated 10.11.2009. The respondent contended that it has provided ample opportunities to the complainants for clearing their dues, yet they did not make the due payments, and consequently it was forced to cancel the said allotment.

38. On consideration of the documents available on record and submissions by both parties, the Authority is of the view that the complainants have paid a sum of Rs. 13,33,979/- against the basic sale price of Rs. 28,60,857/-. Further, a bare perusal of record shows that the respondent has raised wrongful demands of "Completion of foundation" worth Rs. 2,87,342/- dated 11.02.2015 and "Casting of ground floor roof slab" worth Rs. 4,31,012/- dated 12.02.2015, as the respondent vide its e-mail dated 08.04.2015 accedes to the said fact. The relevant portion of the e-mail dated 08.04.2015 is reproduced below:

*"We understand that the work is not in tandem with the instalment raised, so we are not sharing the visual updates as of now We are in the process of expediting the work of your unit keeping in mind the construction quality and your complete satisfaction.*

*We would also like to inform you that we are in process of reversing the demand raised against &quot;. On completion of Foundation & Completion of Ground Floor Roof Slab & quot;, Kindly allow us to get this resolved. We sincerely regret any inconvenience caused a result of the same."*

39. Thereafter, the respondent did not correct its statement of account, and kept on raising the aforesaid illegal demands along with wrongful interest on those demands from the complainants, which is evident from the statement of account dated 06.02.2019. Furthermore, the respondent went ahead and issued termination notice to the complainants on 06.02.2019 whereby a sum of Rs. 8,84,356/- was demanded from the complainants in view of the earlier demand of April 2015. In response to the said termination notice, the complainants again requested for corrected statement

of accounts vide e-mail dated 15.02.2019 but the same was not provided to them.

40. The respondent again raised a demand upon the complainants viz "On completion of super structure" worth Rs. 4,45,680/- vide invoice dated 14.07.2020. As per the said invoice, the previous balance of Rs. 8,84,356/- was shown as due upon the complainants. The complainants again requested the respondent to provide the corrected statement of accounts vide e-mail dated 06.10.2020. However, the respondent unilaterally & arbitrarily again cancelled the allotment of the plot vide cancellation letter dated 02.02.2021, which cannot be held valid in the eyes of law. Therefore, in view of the above, the cancellation is set aside.
41. In the instant case, the flat buyer agreement was executed between the original allottee and the respondent on 10.11.2009, and as per clause 10.1 of the said agreement, the possession was to be handed over within 3 years from the date of the agreement. The said clause is reproduced below:

*"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 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 company shall be entitled to reasonable extension of time for completing the same. ”.*

42. Meanwhile, the said plot was transferred in the name of complainants by an affidavit dated 24.10.2013. As per the said affidavit signed by the complainants, the possession of the aforesaid plot was to be handed over to the complainants within 4 years from the date of this affidavit, thereby amending the possession clause 10.1 of the agreement dated 10.11.2009. The relevant clause 3 of the affidavit dated 24.10.2013 is reproduced below:

*“3. That Indemnifier agree without demur that the clause as envisaged in Builder buyer agreement wrt handing over of possession of the Flat/Apartment/floor/Villa/unit shall be rectified/amended hereof and Indemnifier agree that the possession of the same shall be given within 4 years from the date of his/her affidavit Indemnifier hereby ratify that the relevant clause of the Builder Buyer Agreement related to handing over of the Apartment/Floor/Villa/Plot/Unit within 3 years from the date of signing of the Agreement herein stands cancelled and shall be read as amended above for which Indemnifier hereby give his/her consent.”*

43. Therefore, the due date of possession of the said plot comes out to be 24.10.2017.
44. There has been a delay in obtaining the completion certificate/part CC by the respondent, and the same has not been obtained by it till date.

✓

45. The complainants wish to continue with the project and are seeking delayed 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.”*

46. In the instant case, the due date of possession is 24.10.2017, therefore, the respondent is liable to pay delay possession charges from the due date of possession till the actual handing over of possession or date of valid offer of possession plus 2 months after obtaining CC/part CC from the competent authority, whichever is earlier.
47. **Admissibility of delay possession charges at prescribed rate of interest:** 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's 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.*

48. 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.
49. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as of the date i.e., 03.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., 10.85%.
50. The definition of the term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest that 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;"*

51. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
52. On consideration of the circumstances, the documents, submissions made by the parties, and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3 of affidavit dated 24.10.2013 which amended the clause 10.1 of the agreement executed between the parties on 10.11.2009, the possession of the subject unit was to be delivered within 4 years from the date of the signing of the said affidavit. Therefore, the due date for handing over possession was 24.10.2017. Accordingly, it is the failure of the respondent/promoter to fulfill its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is a delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement.
53. Accordingly, it is the failure of the promoter to fulfill its obligations and responsibilities as per the agreement dated 10.11.2009 to hand over the possession within the stipulated period. Accordingly, the

non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e. 24.10.2017 till the date of valid offer of possession plus 2 months after obtaining CC/part CC from the competent authority or the actual handing over of possession whichever is earlier, at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**H. Directions issued by the Authority:**

54. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The cancellation of the unit is hereby set aside, and the respondent shall handover possession of the unit to the complainants.
- II. The respondent is directed to pay delayed possession charges to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession i.e. 24.10.2017 till the date of valid offer of possession plus 2 months after obtaining CC/part CC from the competent authority or actual handing over of



possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- III. The rate of interest chargeable from the allottee by the promoter, in case of default, shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - IV. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - V. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
  - VI. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
55. Complaint stands disposed of.
56. File be consigned to the Registry.

**HARERA**  
**GURUGRAM**

**Ashok Sangwan**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.01.2024