

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

	Complaint no.: Date of filing of complaint:	438 of 2024 29.02.2024
	Date of first hearing:	24.04.2024
	Date of decision:	19.03.2025
1. Mr. Bilal Ahmad Wani R/O: Flat no. 603, tower C1, Uniw Sohna Road, Gurugram, Pin Code- 2. Mr. Rajesh Arora R/O: Flat no. 673, Ward no. 5, Nea New Friends Colony, Sohna, Pin C	122001 ar KDM School,	Complainants
	Versus	
St. Patricks Realty Private Limited Registered Address: 3 rd Floor, 7 Business Park, MG Road, Gurugra	l 'ower-D, Global	Respondent
CORAM:	INS	
Shri Ashok Sangwan		Member

APPEARANCE:

Shri Abhay Jain, Advocate Shri Deepander Bangar, Advocate Complainants

Respondent

ORDER

 The present complaint has been filed by the complainants/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 29 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 allottees as per the agreement for sale executed inter se.

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A. Unit and project-related details

2. 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:

Sr. No.	Particulars	Details	
1.	Name and location of the project	"Central Park Flower Valley", Sohna, Gurugram	
	Nature of the project	Plotted colony	
	Project area	20.225 acre	
2.	Unit no.	Plot no. 39, Block J [Annexure 03 at page 29 of the complaint]	
3.	DTCP License no. and validity status	7 of 2020 dated 29.01.2020 valid up 28.01.2025 54 of 2014 dated 20.06.2014 valid up 19.06.2024	
	Name of licensee	Chandiram and 3 others.	
4.	RERA registration	Registered Registration no. 11 of 2020 dated 18.03.2020 valid upto 31.12.2024	
5.	Area admeasuring	282.72 sq. yards [BBA at page 29 of the complaint]	
6.	Welcome Letter	31.12.2020 [Annexure 03 at page 70 of the complaint]	
7.	Date of execution of builder buyer agreement	26.02.2021 [Annexure 03 at page 26 of complaint]	
8.	Possession clause	Clause 7.1 "The company agrees to handover possession of the Plot as per agreed terms and conditions on or before June- 2025, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure", Court orders, Government Policy/ Guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority"	
9.	Due date of possession	<i>(Emphasis supplied)</i> June, 2025 (As per possession clause 7.1 of the BBA at page 44 of complaint)	

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10.	Total Sale Consideration	Rs.1,91,40,879/-
		(Annexure 03 at page 65 of the complaint)
11.	Amount paid by the	Rs.1,22,50,163/-
	complainant	(As alleged by complainants at page 9 of the complaint)
12. Completion certificate	23.11.2022	
		(Annexure R6 at page 79 of reply)
13. 01	Offer of possession	05.12.2022
		(Annexure R7 at page 82 of reply)

B. Facts of the complaint:

- 3. The complainants have made the following submissions by way of filing the present complaint: -
- a) That the complainants have paid a sum of Rs.1,22,50,163/- to the respondent in January 2023, being illegally taken under the garb of possession which was never offered to them. The complainants ran from pillar to post for refund and there is neither any communication from the developer on penalty holding charges of the illegally retained hefty money nor any physical possession being offered.
- b) That the complainants have lost faith in the respondent but have faith and believes that through HRERA, Gurugram his rights will be protected and ensured.
- 4. The complainants made additional submissions vide their written submissions dated 03.02.2025:-
- a) That in agreement for sale signed between the parties, executed on 26.02.2021, in the payment plan at page no. 65 of the main complaint, it is clearly mentioned that total cost of plot no. 39, Block J, measuring 282.72 sq. yards is Rs.1,91,40,879/-. The 10% cost of the plot i.e., Rs.19,14,088/- was paid at the time of booking, 15% of the cost of the plot i.e., Rs.28,71,132/was paid within 30 days and 11% of the cost of the plot i.e., Rs.21,05,497/was paid within 90 days of the booking. The remaining balance of 64% of the cost of the plot i.e., Rs.1,22,50,162/- was payable at the time of offer of possession of the subject plot to the complainants.

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- b) That the respondent issued an illegal and unlawful offer of possession dated 05.12.2022 and demanded Rs.1,22,94,629/- for Plot no. 39, Block J, admeasuring 282.79 sq. yards. The complainants took this offer of possession letter dated 05.12.2022 as genuine and legal and thereby paid Rs.1,24,04,371/- and requested for physical possession of the plot and execution of conveyance deed, but the respondent failed to fulfil its obligations.
- c) That the complainants wrote various e-mails and met representatives of the respondent multiple times seeking physical possession and execution of conveyance deed of the plot. However, the respondent confessed and conceded via various e-mails that the respondent is not able to provide physical possession to the complainants due to GAIL pipeline near the plot of the complainants. Further, e-mail's dated 19.09.2023 and 05.12.2023 sent by respondent to complainants clearly mentioned that the respondent needs "some more time in order to proceed with the possession formalities." Thus, the respondent was not able to provide physical possession to the complainants to provide physical possession to the complainants clearly mentioned that the respondent needs "some more time in order to proceed with the possession formalities." Thus, the respondent was not able to provide physical possession to the complainants till 05.12.2023.
- d) That the respondent intimated the complainants vide its letter dated 20.01.2025 that the plot size has been decreased from the originally allotted plot admeasuring 282.72 sq. yards to 278.52 sq. yards, decreasing the size by 4.2 sq. yards. A legal, valid and lawful offer of possession has not been made to the complainants till date.

C. Relief sought by the complainants:

- 5. The complainants have sought the following relief(s):
 - I. Direct the respondent to refund the amount which was illegally collected under the garb of possession with equal penalty charges on percentage basis for delay possession and penalty charges for holding the illegal demand should be directed by the Court.
- 6. 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.

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D. Reply by respondent:

- The respondent has contested the complaint on the following grounds by filing reply dated 03.07.2024: -
- a) That the present complaint has been filed by the complainants prematurely without any cause of action. The contents of the complaint are contradictory, and all the allegations made by the complainants are vague, false and baseless.
- b) That the respondent is developing a residential plotted colony "Mikasa Plot" located in Central Park Flower Valley, Sector 32, Village Dhunela, Tehsil Sohna, District Gurugram. For the development of a residential plotted colony the respondent, in collaboration with the landowners, has obtained the required licence for the said project bearing licence no. 7 of 2020 dated 29.01.2020 from Director General Town and Country Planning, Haryana.
- c) That the complainants applied for allotment of a residential plot in the said project in December 2020 through submission of a booking application form containing detailed terms of allotment and opted for possession linked payment therein. Thereafter, the respondent shared booking details for a plot bearing no. 39, Block J, admeasuring 236.39 sq. mtr. In the project vide welcome letter dated 31.12.2020.
- d) That the buyer's agreement was executed between the parties on 26.02.2021 and registered vide vasika no. 5798 on 26.02.2021 before the Sub Registrar, Sohna for a total sale consideration of Rs.1,87,27,879/- not including applicable taxes, maintenance charges, and IFMSD. The complainants had sufficient time and opportunity to read and understand the terms and conditions prior to executing the said agreement and did not at any point of time raise any objections to any of the terms and conditions contained therein.
- e) That in terms of the possession linked plan opted by the complainants, they were liable to pay 36% of the total sale consideration in three instalments Page 5 of 16 ⁴



and thereafter the remaining 64% of the total sale consideration along with other charges was to payable on the stage of offer of possession. The due date of possession was June 2025.

- f) That in fulfilment of its obligations under the buyer's agreement, the respondent completed the development of the said plot, applied to the competent authority for grant of the completion certificate vide application dated 24.08.2022 and obtained completion certificate from the competent authority vide memo no. LC-2841 E+F+G-II/JE(DS)/2022/35189 dated 23.11.2022.
- g) That after obtaining the completion certificate from the competent authority, the respondent vide offer of possession dated 05.12.2022 offered the possession of the plot to the complainants subject to the payment of the remaining amount as per the agreement. In the said offer of possession letter dated 05.12.2022, various details such as a breakup of the due amounts and calculation of delay payment interest were clearly mentioned. An amount of Rs.1,22,94,629/- not including maintenance charges and IFMSD, was payable by the complainants towards the plot on or before 26.12.2022. The complainants were also informed of significant information pertaining to the physical possession of the plot, club membership, TDS, and details of the special handover team for a hassle free handover of possession.
- h) That the complainants paid the remaining payment due against the plot after the mentioned due date of 26.12.2022, in January 2023. Further, the complainants were also liable to pay an amount of Rs.62,964/- towards delay payment interest calculated at the applicable rate of interest as per the Haryana RERA Rules, however the respondent as a one-time goodwill gesture accepted payment of Rs.39,740/- only against the same. The complainants made payment of Rs.39,740/- on 10.07.2023. The respondent raised all the payment demands including the imposition of delay payment interest in accordance with the agreed terms and conditions of the Page 6 of 16



agreement and payment plan and the complainants have made payments voluntarily and without any coercion and at no point of time raised any concerns with respect to the date of offer of possession or making payments at the time of making the said payments. The complainants at the time of making the due payments never claimed that they faced any financial distress in making the said due payments

- i) That since the due date of possession as per the agreement is June 2025, the present complaint alleging delay in handover of possession is not maintainable being premature, without any cause of action and thus, deserves to be dismissed with cost. The respondent offered possession of the said plot only after the grant of the completion certificate by the competent authority, thus it is a legal and valid offer of possession.
- j) That it is evident that the complainants are investors who invested in the project of the respondent with the sole purpose of making profit through resale. However, since the complainants have been unable to generate their desired profit, they have filed the present complaint prematurely on false, misleading and baseless grounds to unjustly enrich themselves.
- k) That it is the complainants who have in fact delayed in making timely payments in accordance with the terms and conditions of the agreement and as per the payment plan opted by them resulting in the imposition of the delay payment interest in accordance with the terms and conditions of the agreement, which was also partially waived by the respondent as a one-time goodwill gesture. Since there is no delay in the handing over of possession of the plot in terms of the timelines agreed between the parties, there can be no question of any compensation or interest or penalty for delay in handing over of possession.
- That the Gas Authority of India ("GAIL") has a pipeline passing through a certain portion of the project for which right of use ("ROU") is a mandatory requirement as per the regulations and policies of GAIL for maintenance and Page 7 of 16



operation of such pipeline. In terms of the guidelines of GAIL, there has been a change in the ROU of the pipeline passing through the project as a result of which certain plots, including the plot of the complainants herein has been affected.

- m) That the respondent had prepared the initial layout plan for the project as per the policies of GAIL prevalent at the time and the said layout plan was approved by the competent authority without any objections. Therefore, the respondent accordingly developed the project and obtained completion certificates for the relevant phases including the plot of the complainants and thereafter duly offered possession to the complainants upon the grant of the completion certificate. Upon it coming to the knowledge of the respondent that there has been a change in the ROU of the pipeline, the respondent ran from pillars to post as the respondent was in constant contact with GAIL for obtaining clarity with respect to the change in ROU of the pipeline. The respondent also organised a visit from the team of GAIL for survey of the gas pipeline and in pursuance thereof vide letter dated 22.08.2023 to the General Manager (LPG PL O&M), GAIL (India) Limited submitted the survey drawings for ROU of 6" Sohna Bhondsi Spur line (gas pipeline) along with the coordinates of the said gas pipelines on the drawing in order to get the acknowledgment of GAIL so that subsequently the respondent can plan for the future i.e. demarcate the affected plots and handover the possession of the plot as soon as possible.
- n) That the respondent was compelled to revise the layout plan of the project due to the change in ROU of the GAIL pipeline. The revised layout plan reflects the changed ROU of the GAIL pipeline and has been approved by the DTCP vide drawing bearing drawing no. DTCP-9982 dated 30.01.2024. It is submitted that as per the initial layout plan, the setbacks/ROU for GAIL pipelines was 10-20 meters, which is duly reflected in the initial layout plan, but it was later informed to the respondent that the said setbacks/ROU was Page 8 of 16



15-15 meters, which is reflected in the revised layout plan of 197.1 acres. The respondent wrote another letter dated 23.04.2024 to the District Town Planner, Gurugram O/o Town & Country Planning, Haryana, HSVP Complex, Sector- 14, Gurugram seeking approval of the revised demarcation-cumzoning plan in view of the revised layout plan. Same is pending before the concerned authority of DTCP, Haryana, Gurugram for approval. The change in ROU of the GAIL pipeline is an unforeseen circumstance, which is not in the control of the respondent and hence is a force majeure event for which the respondent cannot be held liable.

o) That the complainants were duly informed by the respondent over calls and thereafter vide email dated 23.09.2023 that the respondent was in discussion with the Government Authorities with respect to the change in ROU/shifting of the setback area for the GAIL pipeline and was in the process of reaching a solution for the same. The complainants vide email dated 30.10.2023 have in fact acknowledged the meeting and discussion with respect to the said issue, however the complainants have alleged in their complaint that there has been no communication from the respondent which makes it evident that the complainants are misrepresenting the facts in their complaint and have not approached this Hon'ble Authority with clean hands. Further, the respondent has also reiterated the situation to the complainants vide emails dated 02.12.2023 and 05.12.2023. It is thus clear that the respondent has been continuously in touch with the complainants and has addressed their queries repeatedly and that there has been no delay or deficiency on part of the respondent, since the time required in handing over of possession is a force majeure condition not in the control of the respondent. The respondent is still awaiting the approval of the zoning plan from the DTCP. Without prejudice to any other submission made the complainants had specifically agreed in Clause 1.5 of the agreement as follows:

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"1.5 The Company shall confirm the area of the plot as per approved demarcation-cum-zoning plan that has been allotted to the Allottee(s) after the development of the plotted area along with essential services [as mandated by the Rules and Regulations of competent authority] is complete. The Company shall inform the Allottee(s) about any details of the changes, if any, in the area. The total price payable for the area shall be recalculated upon confirmation by the Company. If there is a reduction in the area then the Company shall refund the excess money paid by the Allottee(s) within 90 days with annual interest at the rate prescribed in the Rules, from the date when such excess amount was paid by the Allottee(s). If there is any increase in area, which is not more than five percent of the area of the plot, allottee(s) as per the next milestone of the Payment Plan. All these monetary adjustments shall be made at the same rate per square yard as agreed in Clause 1.2 of this Agreement."

- p) That till the demarcation-cum-zoning plan is approved by the DTCP with respect to the plots affected by the change in ROU of the GAIL pipeline, being a force majeure event over which the respondent had no control, the respondent is not in a position to confirm the final area of plot of the complainants. Further, the complainants are bound by such variation as may occur in the final area of the plot in terms of the abovementioned clause. It is reiterated that even otherwise the possession of the said plot is to be handed over to the complainants in June 2025, thus despite the force majeure circumstances as explained hereinabove, there is no delay or deficiency by the respondent and the complainants have not been adversely affected.
- q) That the complainants herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants is sustainable before this Hon'ble Authority as the complaint is not maintainable being premature and without any cause of action. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority. The present complaint is an utter abuse of the process of law and hence deserves to be dismissed.
- 8. All other averments made by the complainant were denied in toto.

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9. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

11. 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

12. 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."

13. So, given the provisions of the Act quoted above, the authority has complete

jurisdiction to decide the complaint regarding non-compliance of obligations

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by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

- F. Findings on the relief sought by the complainants.
 - F.I Direct the respondent to refund the amount which was illegally collected under the garb of possession with equal penalty charges on percentage basis for delay possession and penalty charges for holding the illegal demand should be directed by the Court.
- 14. The factual matrix of the case reveals that the complainants were allotted plot no. 39 in Block-J, admeasuring 282.72 sq. yards in the project "Central Park Flower Valley" situated at Sector-29, 30 and 32, Sohna, Gurugram by the respondent-promoter at a sale consideration of Rs.1,91,40,879/-. Thereafter, a builder buyer agreement dated 26.02.2021 was executed between the parties. The complainants paid the entire sale consideration of Rs.1,91,40,879/-.
- 15. Herein, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them 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, —
(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

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."

16. Due date of handing over of possession: Clause 7.1 of the buyer's agreement provides for due date of possession, i.e., June 2025. Same is reiterated as under:

7.1 Schedule for possession of the said Plot

"......The company agrees to handover possession of the Plot as per agreed terms and conditions **on or before June- 2025**, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure",

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Court orders, Government Policy/ Guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority........."

(Emphasis supplied)

- 17. It is pertinent to note that the completion certificate with respect to the project in which plot of the complainants is situated was obtained on 23.11.2022 and thereafter, the possession was offered to the complainants on 05.12.2022, i.e., much prior to the due date of handing over possession (June 2025) as per the terms of the buyer's agreement executed inter se parties. Therefore, keeping in view the aforesaid factual and legal provisions, since there is no delay on part of the respondent in handing over the possession of the allotted plot to the complainants, therefore, no case of delay possession charges is made out under Section 11(4)(a) of the Act read with Proviso to Section 18(1) of the Act. Thus, no direction to this effect can be given.
- 18. The Authority shall now discuss the issue pertaining to delay in handing over of possession of the plot to the complainants owing to decrease in area of the plot. The complainants state that vide letter dated 20.01.2025, the respondent communicated to the complainants that the area of the plot allotted to the complainants decreased from 282.72 sq. yards to 278.52 sq. yards. The respondent in its defence submitted that possession could not be handed over due to certain issues pertaining to GAIL gas pipeline issue due to which the zoning of the project is affected. Even during the course of proceedings dated 22.01.2025, the respondent agreed to compensate the complainants for the area under GAIL pipeline corridor which has been reduced from the area of the plot in question.
- 19. Further, the Authority observes that by virtue of clause 1.5 of the buyer's agreement executed between the parties, the respondent undertook to refund the excess money paid by the complainant-allottees in case there is reduction in area of the plot allotted to the complainants along with interest

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at the prescribed rate. Relevant clause of the agreement is reproduced hereunder:

- "1.5 The Company shall confirm the area of the plot as per approved demarcation-cum-zoning plan that has been allotted to the Allottee(s) after the development of the plotted area along with essential services [as mandated by the Rules and Regulations of competent authority] is complete. The Company shall inform the Allottee(s) about any details of the changes, if any, in the area. The total price payable for the area shall be recalculated upon confirmation by the Company. If there is a reduction in the area then the Company shall refund the excess money paid by the Allottee(s) within 90 days with annual interest at the rate prescribed in the Rules, from the date when such excess amount was paid by the Allottee(s). If there is any increase in area, which is not more than five percent of the area of the plot, allotted to the Allottee(s), the Company may demand that from the Allottee(s) as per the next milestone of the Payment Plan. All these monetary adjustments shall be made at the same rate per square yard as agreed in Clause 1.2 of this Agreement."
- 20. Considering the above-mentioned facts, the authority observes that the respondent has decreased the area of the plot from 282.72 sq. yards to 278.52 sq. yards vide letter dated 20.01.2025 i.e., decrease of 4.20 sq. yards post making an offer of possession dated 05.12.2022 to the complainants. Therefore, the respondent is liable to refund the excess money paid by the complainants along with interest at the prescribed rate under the provision of Rule 15 of the Rules, 2017 i.e., State Bank of India marginal cost of lending rate as on date (19.03.2025) +2% i.e., @ 11.10% p.a. from the date when such excess amount was paid by the complainants, i.e., from the date of making the last payment towards the basic sale consideration of the plot in question, which comes out to be 03.01.2023 till its actual realization.
- 21. Also, the respondent had itself stated in their reply dated 03.07.2024 that they are still awaiting the approval of the zoning plan from the DTCP. No building plans can be approved without obtaining the demarcation-cumzoning plan from DTCP. Therefore, offer of possession dated 05.12.2022 stands redundant owing to change in zoning plan of the plot in question.



In lieu of the same, the respondent is directed to issue a fresh offer of possession to the complainants after fresh zoning plans are being approved by the DTCP.

22. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the allotted plot as per specification of the buyer's agreement entered into between the parties after making a fresh offer of possession to the complainants post fresh zoning plans are being approved by the DTCP, failing which legal consequences as per provisions of the Act will follow.

H. Directions of the Authority:

- 23. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.
 - I. In view of the findings recorded by the authority above, no case of delay possession charges is made out. However, the respondent is directed to handover physical possession of the allotted plot as per specification of the buyer's agreement entered into between the parties after making a fresh offer of possession to the complainants post fresh zoning plans are being approved by the DTCP, failing which legal consequences as per provisions of the Act will follow.
 - II. The respondent is directed to refund the excess money paid by the complainants along with interest at the prescribed rate i.e., @ 11.10% p.a. from the date when such excess amount was paid by the complainants, i.e., from the date of making the last payment towards the basic sale consideration of the plot in question, which comes out to be 03.01.2023 till its actual realization.
 - III. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

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24. The complaint stands disposed of.

25. File be consigned to the registry.

Dated: 19.03.2025

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JRUGI

Ashok Sangwan (Member)

Haryana Real Estate Regulatory Authority, Gurugram

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