

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

Complaint no.: 3384 of 2023
Date of filing: 28.07.2023
Date of order: 27.02.2025

1. Prashant Yadav
2. Saara Ahmed

Both R/o: - 210, Deepchand Pradhan, Mohalla Rajokari
Village, New Delhi - 110038.

Complainants**Versus**

M/s Vatika Limited

Regd. Office at: - Unit no. A-002, INXT City
Centre, Ground Floor, Block-A, Sector-83, Vatika
India Next, Gurugram-122002.

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Gaurav Rawat (Advocate)

Shri Anurag Mishra (Advocate)

Complainants**Respondent****ORDER**

1. This complaint has been filed by the complainant/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 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. N.	Particulars	Details
1.	Name and location of the project	"Vatika Town Square-2" at Sector- 82, Vatika India Next, Gurugram.
2.	Project area	1.60 acres (Area for project land) [Total licensed area 489.71225 acres]
3.	Nature of Project	Commercial Complex
4.	DTCP license no. and validity status	1. 113 of 2008 dated 01.06.2008 Valid upto 31.05.2018 2. 71 of 2010 dated 15.09.2010 Valid upto 14.09.2018 3. 62 of 2011 dated 02.07.2011 Valid upto 01.07.2024 4. 76 of 2011 dated 07.09.2011 Valid upto 06.09.2024 5. 66 of 2017 dated 15.07.2014 Valid upto 14.07.2019
5.	Rera registered/ not registered and validity status	Registered Vide no. 40 of 2021 dated 10.08.2021 Valid upto 31.03.2022
6.	Unit No.	263, 1st Floor, Block -B (page 51 of complaint)
7.	Unit area admeasuring (Super Area)	520 sq. ft. (page 51 of complaint)
8.	Allotment Letter (in the name of original allottee i.e., Prashant Yadav)	11.09.2014 (page 28 of complaint)
9.	Addition of Joint allottee on request of original allottee (Name of Joint Allottee = Saara Ahmed)	25.05.2016 (page 29 of complaint)

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10.	Date of buyer's agreement	20.05.2016 (page 49 of complaint)
11.	Possession clause	17.Handing Over Possession of the Commercial Unit The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments. (Emphasis supplied)
12.	Due date of possession	20.11.2020 (calculated from the date of execution of buyer's agreement) [Note - grace period of 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
13.	Total Sale consideration [inclusive of BSP, PLC, EDC & IDC]	Rs.63,59,583/- (page 52 of complaint)
14.	Basic Sale Consideration	Rs.56,05,582/- (page 52 of complaint)
15.	Amount paid by complainant	Rs.58,07,294/- (as per SOA dated 13.06.2023 at page 32 of complaint)
17.	Occupation certificate	Not obtained (as confirmed during the proceeding dated 27.02.2025)
18.	Offer of possession	20.11.2018 (page 12 of reply)
19.	Reminder for Intimation of Possession	03.12.2018 (page 16 of reply)

B. Facts of the complaint.

3. The complainants have made the following submissions in the complaint:
- i. That the respondent advertised about its new "Town Square-2" at Sector - 82, Gurugram was launched and on representations and assurances given by the respondent and on belief of such assurances, the complainant namely Prashant Yadav, booked a commercial unit in the project by paying an amount of Rs.4,50,000/- dated 14.08.2014 towards the booking of the said unit bearing no.263, 1st Floor, Block-B, in Sector 82, having super area measuring 520 sq. ft. and the same was acknowledged by the respondent.
 - ii. That the respondent confirms the booking of the unit to the original allottee vide allotment letter dated 11.09.2014 and providing the details of the project, confirming the booking of the unit dated 14.08.2014, allotting a Unit 263, 1st Floor, Block-B measuring 520 sq. ft. in the aforesaid project of the developer for total sale consideration of Rs.61,25,584/- and other specifications of the allotted unit and providing the time frame.
 - iii. That a buyer's agreement was executed between the complainants and respondent on 20.05.2016. As per the buyer's agreement the sale price of the said apartment shall be Rs.61,25,584/-. That would include the basic sale price, EDC, IDC, preferential location charges. That the booking of said unit was done on 14.08.2014, after repeated request and reminders by the complainants, respondent on 20.05.2016 got the said agreement executed without any justification for delay of almost 2 years and also made the complainants to sign on the dotted line one sided agreement under undue influence and force. As per clause 17 of the buyer's agreement the respondent has to deliver the possession of the unit within period of 48 months from the date of the agreement. The due date of possession comes out to be 20.05.2020.

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- iv. Further, the complainant having dream of its own commercial unit in NCR signed the agreement in the hope that the unit will be delivered on or before by 2020. The complainants were also handed over one detailed payment plan which was down linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondents.
- v. The original allottees subsequently requested to add/endorsed the property in favour of the second allottee i.e., Ms. Saara Ahmed in favour of the second allottee. The respondent, vide their nomination/endorsement dated 25.05.2016, recorded their consent to the transfer by stating: "Accordingly, now the captioned property stands in the name of the complainants." That a nomination confirmation of the unit is executed on 25.05.2016 in favour of complainants.
- vi. That as per agreed terms of the booking, allotment letter and agreement area of the said unit was 520 sq. ft. and same is evident from the documents annexed herewith but complainants got shocked when respondent issued statement of account dated 30.07.2019 mentioning that the area of the unit is 435 sq. ft. The complainants contacted the respondents on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response regarding the area of the said unit and were never definite about the delivery of the possession. Thereafter, respondent issued statement of account dated 13.06.2023 mentioning the area 232.87 sq. ft. instead of 520 sq. ft.
- vii. As per the demands raised by the respondent, based on the payment plan, the complainants already paid a total sum of Rs.58,07,294/-, towards the said unit against total sale consideration of Rs.61,25,584/-.
- viii. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure,

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BBA and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

- ix. That the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the BBA executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- x. The complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
- xi. That during the period the complainants went to the office of respondents several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- xii. The complainants contacted the respondents on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response regarding the status of the possession and were never definite about the delivery of the possession.



- xiii. The complainants kept pursuing the matter with the representatives of the respondents by visiting their office regularly as well as raising the matter to when will they deliver the possession and why handing over of possession is going on at such a slow pace, but to no avail. Some or the other reason was being given.
- xiv. That as per 5.2 of the buyer's agreement, the respondent agreed that in case of increase/decrease in the size of the plot upto + - 10% the same shall be within the permissible limit and the price of the same shall be charged / refunded at the same price and shall be adjusted in the subsequent instalment after intimation by the company. However, in case of any major alteration resulting more than 10% change in size the allottee will be informed in advance and the difference in the price of the said plot to be paid or refunded to him by the company which shall be charged area variation upto +-10% at the same price and in excess of +-10% shall be calculated at the rate prevailing at the time of offer of possession. It is pertinent to mention here that despite repeated request and reminder emails & letters respondents till date fail to provide any justification to the same.
- xv. The fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- xvi. The buyer's agreement issued to the complainants by the respondent stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The so-called compensation payable as per the said agreement is Rs.5/- per sq. ft. per month. Moreover, the said

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clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 itself which has clarified the position that the interest payable by the promoter in case of default shall be the same as the interest payable by the allottees in case of any default made by them.

- xvii. That the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15% to 24% whereas the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft. The complainants are actually entitled to interest @ 9.30% per annum on the total sum paid by them.
- xviii. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and Rules, 2017. The complainants have suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the Rules, 2017.
- xix. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
- xx. That the complainant(s) being an aggrieved person filing the present complaint under section 31 with the Authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph.

- xxi. That as per section 18 of the RERA Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale and the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainants are also entitled for any other relief which they are found entitled by this Hon'ble Authority.
- xxii. That the present complaint is within the prescribed period of limitation. That the complainants have not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law. Hence the present complaint.
- C. Relief sought by the complainants:**
4. The complainants have sought following relief(s):
- Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
 - Direct the respondent to obtain occupancy certificate and provide copy of the same.
 - Direct the respondent to handover the physical possession of the unit having super area 520 sq. ft.
 - Direct the respondent to provide actual area of Unit.
 - Direct the respondent to refund the excess amount along with interest.
 - Restrain the respondent from charging the illegal advance maintenance charges.
 - Direct the respondent to get the conveyance deed registered in favor of complainants.
 - Direct the respondent to set aside one-sided indemnity bond.
 - Restrain the respondent from raising fresh demand for payment under any head.
 - Direct the respondent not to charge irrelevant (Labour cess, electrification charges, maintenance charges etc.)

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- k. The Hon'ble Authority be pleased to taken penal action against the respondent for violation of various provisions of RERA Act, 2016.
- l. Pass such other or further order, which the Hon'ble Authority deems fit and proper in the facts and circumstances of the present case.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:

- i. That the complaint is liable to be dismissed as the complainants has come before this Hon'ble Authority, with unclean hands and has hidden facts with an attempt to mislead this Hon'ble Authority. The complainants have tried to mislead this Hon'ble Authority by false and frivolous averments.
- ii. That the "Town Square-2" is a commercial complex project being developed by the respondent on the licensed land admeasuring 1.6 acres situated at Village Shikhopur, Tehsil- Manesar, Sector 82, Gurugram. That the license no.113 of 2008 dated 01.06.2008 valid upto 31.05.2018, 71 of 2010 dated 15.09.2010 valid upto 4.09.2018, 62 of 2011 dated 02.07.2011 valid upto 01.07.2024 and approval of building plan and other approvals granted for the project has been obtained by respondent and the construction whereof was started in terms thereof.
- iii. That the Director Town and Country Planning Department, Haryana, Chandigarh (DTCP) had approved the zoning plan of the said commercial complex vide their memo no.5035 dated 13.01.2015.
- iv. That after issuance of the allotment letter, the respondent had sent the builder buyer agreement to the complainant for signatures on 17.07.2015 however the same was never returned by the complainants on time. And the respondent had issued repeated reminders to the complainant for execution of the said builder buyer agreement for more than one year.



- v. The builder buyer agreement was executed on 20.05.2016 and construction of the said commercial unit was completed within time and the possession of the said unit was offered by the respondent on 22.11.2018.
- vi. That the complainants never came forward to take over the possession of the said commercial unit and therefore the respondent sent repeated reminders to the complainant never came forward to take over the possession of the said unit and therefore the respondent is not at all delayed in any manner whatsoever. But it is the complainant who is violation of Section 19 of the RERA, 2016.
- vii. That the present is time barred as the offer of possession of the said commercial unit had already been offered to the complainant on 22.11.2018 i.e., over 6 years now however, instead of taking over the possession of the same the complainant is filing the present complaint after 6 years' time and thus the same is barred by limitation.
- viii. That prior to making the application for booking/endorsing, every allottee has visited the project site, seen and verified the access/approach roads, key distances, looked at the vicinities, physical characteristic of the project etc. and then filed an application for allotment with the respondent which factum is also recorded in the builder buyer agreement executed with each of the complainants. Not only this, basis the individual requests, the respondent also caused site visits for the prospective buyer's who had made requests for visiting the project site before making application for allotment.
- ix. That as per clause 1 of the said builder buyer agreement it can be seen that the area of the commercial unit has been mentioned as 520 sq. ft. super area. Further, clause 5.4 of the said builder buyer agreement has clearly defined the definition of super area which shall be sum of covered area and its pro-rata share of the common area in the entire building. Therefore, the

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allegation raised the complainants that the respondent has decreased the area of the said commercial unit is absolutely frivolous and baseless.

- x. That the complainants have not made entire payment of the agreed sale consideration and has defaulted on making the payment of the same even after repeated reminders. That as per the provisions, it is respondent who is entitled to recover holding charges from the complainants and this Hon'ble Tribunal must grant the same to the respondent so that such frivolous complaints are not filed before this Hon'ble Tribunal and precious time of the tribunal is not wasted.
- xi. That it may be pointed out that almost all the buyers of the project had agreed for a payment schedule which is known as "construction link payment plan". The pace of construction and timely delivery of apartments in a project where majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the respondent. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. However, the respondent has delivered the entire project on time and the same is fully functional and operational.
- xii. 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 herein, have 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 are sustainable before this Hon'ble Authority and in the interest of justice.
- xiii. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the Authority:

8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

11. So, in view of 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 relief sought by the complainants.

- F.I. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.**

12. On consideration of the documents available on records and submissions made by both the parties. The Authority observes that on 11.09.2014, the complainant no.1 (i.e., Mr. Prashant Yadav) was allotted a unit bearing no.263, 1st floor in block-B in project "Vatika Town Square-2" being developed by respondent, for a total sale consecration of Rs.63,59,583/- (inclusive of BSP, PLC, EDC & IDC) against which the complainants have paid an amount of Rs.58,07,294/- till date. Thereafter on 20.05.2016, a buyer's agreement was executed between complainant no.1 and respondent. Further, on request of complainant no.1 (Mr. Prashant Yadav) for addition/ nomination of Ms. Saara Ahmed as joint allottee, the respondent has accepted the request for addition/ nomination of Ms. Saara Ahmed as joint allottee and endorsed the allotted unit in their name on 25.05.2016.

13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,—

.....
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."

14. Clause 17 of the buyer's agreement dated 20.05.2016 provides for time period for handing over of possession and is reproduced below:

"17 Handing over possession of the commercial unit.

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.

(Emphasis Supplied)

15. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said unit within 48 months from the date of execution of the buyer agreement. In the present complaint, the buyer agreement was executed on 20.05.2016. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 20.05.2020. Further, as per HARERA notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 05.09.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 20.11.2020 (including grace period).

16. **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]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the 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.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the 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—

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 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;"
20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.

21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the buyer's agreement was executed on 20.05.2016 and the possession of the subject unit was to be offered with in a period of 48 months from the date of execution of the buyer's agreement. Therefore, the due date of handing over possession is 20.11.2020. The respondent has sent intimation of possession of the plot to the complainants on 20.11.2018 and reminder to intimation of possession on 03.12.2018.
22. The authority would like to clarify regarding the concept of "valid offer of possession". It is necessary to explain this concept because after valid and lawful offer of possession, the liability of promoter for offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:
- i. Possession must be offered after obtaining completion certificate.
 - ii. The subject unit must be in habitable condition.
 - iii. Possession should not be accompanied by unreasonable additional demands.
23. However, in the present case, there is no record available on the paper book to show why the occupancy certificate has not been granted by the competent authority. Neither the respondent has given any valid or specific reason to justify this delay. Accordingly, the authority keeping in view the above-

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mentioned facts considers that the respondent must not have applied a complete application for grant of occupancy certificate and has not rectified the defects, if any pointed out by the concerned authority. Further during the proceedings dated 27.02.2025, the counsel for the respondent states that the occupancy certificate of the project in which the unit in question is located is not yet received. So, without getting occupancy certificate, the builder/respondent is not competent to issue any offer of possession to the complainants. Hence, the intimation regarding the offer of possession offered by respondent/promoter on 20.11.2018 and reminder for intimation of possession on 03.12.2018 to the complainants are not a valid or lawful offer of possession.

24. Accordingly, it is the failure of the respondent/promoter to fulfil 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 delay on the part of the respondent to make a valid offer of possession after receipt of occupancy certificate of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 20.05.2016 executed between the parties. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupancy certificate or what is the status of the project. Also, during the proceedings dated 27.02.2025, the counsel for the respondent states that the occupancy certificate of the project is not yet received. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
25. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession

charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 20.11.2020 till valid offer of possession plus two months after obtaining of occupancy certificate 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.

26. However, during the proceedings dated 27.02.2025, it is inadvertently recorded as "...from due date of possession after obtaining occupation certificate plus two months or actual handing over of possession..." instead of "...from due date of possession **till offer of possession** after obtaining occupation certificate plus two months or actual handing over of possession..."

F.II. Direct the respondent to get the conveyance deed registered in favor of complainants.

27. The complainants are also seeking relief of possession and execution of conveyance deed in accordance with Section 17 of the Act of 2016 and also as per clause (10) of buyer's agreement dated 20.05.2016, the relevant clause of the buyer's agreement is reproduced for ready reference: -

"Subject to the approval/ no objection/ clearances of the appropriate authority, as may be required in terms of statutory laws / rules, the Developer will execute and get registered the Conveyance Deed in respect of the Said Unit, after all dues of the Developer and other statutory dues have been paid in full by the Buyer and the Said Commercial Unit is ready for occupation, to confer upon the Buyer/ his nominee, marketable title to the Said Commercial Unit free from all encumbrances in due course of time. The Conveyance Deed shall be in the form and content as approved by the Developer's advocate. The Buyer undertakes to execute Conveyance Deed within the time stipulated by the Developer in its written notice. The Buyer will be solely responsible and liable for compliance of the provisions of Indian Stamp Act 1899 including any actions taken or deficiencies / penalties imposed by the competent authorities). The Buyer, subject to the income tax and other clearances, permissions, sanctions and NOC's as may be required, will get the conveyance deed executed and registered in his own name or in the name of his nominee."

[Emphasis Supplied]

28. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to

the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.

29. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17 (1) of the Act provide for transfer of title by registering conveyance deed in favor of complainant/allottee within three months from the date of issue of occupancy certificate from the competent authority and the relevant provision is reproduced below:

"Section 17: Transfer of title.

17(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."

30. The Authority hereby directs the respondent to execute the conveyance deed in favor of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.
- F.III. Direct the respondent to obtain occupancy certificate and provide copy of the same.**
- F.IV. Direct the respondent to handover the physical possession of the unit having super area 520 sq. ft.**
31. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
32. As per Section 11(4)(b) of the Act, 2016, the respondent is under obligation to get the occupancy certificate and make it available to the allottees individually

or to the associations of allottees, as the case may be, the relevant section is reproduced below:

"11(4): The promoter shall –

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

33. As per Section 19 (3) of the Act, 2016, the complainants-allottees are well within right to claim possession and it is also agreed in clause 17 of buyer's agreement dated 20.05.2016 executed inter-se parties, that the developer on completion of construction shall offer in writing to such buyer to take physical possession of his commercial unit for his occupation. The relevant clause is reproduced below:

"17 Handing over possession of the commercial unit.

... and dues in accordance with the Schedule of Payments. The developer on completion of construction shall offer in writing to such buyer to take physical possession of his commercial unit for his occupation...

(Emphasis Supplied)

34. Therefore, the respondent is directed to get the occupancy certificate/ part occupancy certificate of the project after completion of construction and handover the physical possession of the allotted unit to the complainants-allottees after receipt of occupation certificate/ part occupancy certificate of the project, as per agreed terms of buyer's agreement dated 20.05.2016.
- F.V. Direct the respondent to refund the excess amount along with interest.
- F.VI. Direct the respondent to provide actual area of Unit.
- F.VII. The Hon'ble Authority be pleased to taken penal action against the respondent for violation of various provisions of RERA Act, 2016.
- F.VIII. Pass such other or further order, which the Hon'ble Authority deems fit and proper in the facts and circumstances of the present case.
35. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.



36. In the present complaint, the complainants are seeking refund of excess amount, which was received by the respondent against the 520 sq. ft. (super area originally allotted) and has revised the super area three times to the complainants by only mentioning in statement of account, which is clear violation of provisions of the Act, 2016.
37. During the proceedings dated 27.02.2025, the counsel for the respondent, clarifies that the actual area of the allotted unit to the complainants-allottees is 520 sq. ft. which is also mentioned in clause 1 of buyer's agreement dated 20.05.2016.
38. On perusal of documents available on record and submissions made by both parties it has been observed by the Authority, that as per buyer's agreement dated 20.05.2016, the total sale consideration for 520 sq. ft. super area is Rs.63,59,582/- (i.e., inclusive of BSP, PLC, EDC & IDC) against which the complainants-allottees paid an amount of Rs.58,07,294/-, which is 91.30 % of total sale consideration.
39. Thus, the complainants have not paid any excess amount over and above total sale consideration agreed and there is no revision in super area allotted to the complainants and hence, no relief is granted for the same.
- F.IX. Direct and restrain the respondent to set aside one-sided indemnity bond.**
40. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**
- F.X. Restrain the respondent from raising fresh demand for payment under any head.**
- F.XI. Restrain the respondent from charging the illegal advance maintenance charges.**
- F.XII. Direct the respondent not to charge irrelevant (Labour cess, electrification charges, maintenance charges etc.)**

41. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
42. The Authority, after carefully considering the submissions presented by the parties, finds that the complainants have failed to substantiate their claims with any documentary evidence. Further, the Authority has already deliberated the issue w.r.t labour cess in complaint no.962 of 2019 titled as **Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** and w.r.t electrification connection charges, advance maintenance charges and other charges in complaint no.4031 of 2019 titled as **Varun Gupta V. Emaar MGF Land Ltd.**

- **Labour Cess.**

43. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O. 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as **Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottees are neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants cannot be made liable to pay any labour cess to the respondent

- **Electric connection charges:**

44. The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainants/allottees on pro-rata basis on

account of electricity connection charges i.e., depending upon the area of the unit allotted to the complainants vis-à-vis the area of all the units in this particular project. The complainants would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

• **Advance Maintenance Charges.**

45. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the buyer's agreement at the time of valid offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
46. The respondent is directed to raise the demands as per the agreed payment plan and further directed not to charge anything from the complainants, which is not the part of buyer's agreement dated 20.05.2016.

G. Directions of the authority

47. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay the interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10 % p.a. from the due date of possession i.e., 20.11.2020 till valid offer of possession after obtaining of OC from the competent authority plus two months 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.



- b. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- c. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The respondent shall handover the physical possession of the allotted unit after receipt of occupation certificate.
- d. The respondent-promoter is further directed to execute the registered conveyance deed in favor of the complainants-allottees within 3 months after receipt of occupation certificate from the competent authority.
- e. The rate of interest chargeable from the complainants/ allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent-promoter which is same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.
- f. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
48. Complaint stands disposed of.
49. File be consigned to registry.

Date: 27.02.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram