

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

Complaint no.	2540 of 2024
Date of filing complaint	07.06.2024
First date of hearing	25.09.2024
Order pronounced on	07.05.2025

Anupam Jain and Nora Jain  
**Both Resident of:** 502/23, Heritage City, M.G.  
Road, Gurugram, Haryana- 122009

**Complainants**

Versus

M/s Vatika Limited  
**Regd. office:** Vatika Triangle, 4<sup>th</sup> Floor,  
Sushant Lok, Phase I, Block A, Mehrauli-  
Gurgaon Road, Gurgaon- 122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Sunil Kumar Jain (Advocate)

Complainants

Sh. C.K. Sharma and Sh. Dhruv Dutt Sharma (Advocates)

Respondent

**ORDER**

1. 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 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Xpressions by Vatika", Sector- 88B, Village Harsaru, Gurugram
2.	Project Area	133.022 acres
3.	Nature of Project	Independent Residential Floor
4.	RERA Registered or not registered	271 of 2017 dated 09.10.2017 valid upto 08.10.2022
5.	DTCP License and validity status	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
6.	Date of allotment	05.02.2016 (Page 42 of complaint)
7.	Date of execution of builder buyer agreement	20.04.2016 (Page 47 of complaint)
8.	Unit no.	HSG-028-Sector-88B, Plot No-24, ST. H-32, Level 1 (Page 53 of complaint)
9.	Unit area	1350 sq. ft. Super area (Page 53 of complaint)
10.	Possession Clause	<b>Clause 13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR</b> <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said residential floor <b>within a period of 48 (Forty Eight) months from the date of execution of this agreement</b> unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein or due to failure of the Allottee(s) to pay in time price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-1 or as per demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."</i>



		(BBA at page 60-61 of complaint)
11.	Due date of possession	20.10.2020 (Calculated to be 48 months from the date of execution of builder buyer agreement dated 20.04.2016 + Grace period of 6 months in as per HARERA notification no. 9/3-2020 dated 26.05.2020, for the projects having completion/due date on or after 25.03.2020)
12.	Basic Sale Consideration	Rs. 79,31,959/- (BBA at page 53 of complaint)
13.	Amount paid by the complainant	Rs. 99,97,963/- (As per Account statement dated 14.03.2019 at page 44 of complaint)
14.	Occupation certificate	10.01.2023 (Page 81 of reply)
15.	Offer of possession	21.02.2023 (Page 91 of complaint)
16.	Possession Letter	21.02.2023 (Page 89 of complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- That the complainants are bona fide purchasers of a residential flat unit (including two dedicated car parking slots) measuring 1350 sq. ft. of super area at "Xpressions by Vatika," Sector 88 B, Plot No. 24, Street H-32, Level 1, identified by customer ID 15-10-0254085. The grievance pertains to the breach of contract, false promises, unfair trade practices, and deficiencies by the respondent.
- That from 2015 onwards, the respondent collected substantial sums from innocent buyers, including the complainants for the booking in the project, wherein the complainants also booked vide application dated 15.10.2015, and promised timely possession. The total payment made by the complainants until 12.07.2018 amounted to Rs.99,97,964/-.
- That as per the builder buyer agreement dated 20.04.2016, Clause 13 stipulated possession delivery within 48 months, i.e., by 19.04.2020. The drafting of the clauses and incorporation of conditions in this agreement are



vague, uncertain and heavily loaded in favour of the promoters and so much against the allottees that a single lapse on the part of allottees can make the possession clause lose its meaning. The respondent has misused his position and drafted such mischievous clauses in the agreement and the allottees are left with no option but to sign on the dotted lines.

- d) That the respondent failed to deliver possession timely as per agreement and was eventually given on 21.02.2023, instead of the agreement date being 19.04.2020, which was in violation of section 18(1) of the Haryana Real Estate Regulation Act, 2016.
- e) That the complainants paid instalments as demanded and to avail an early payment rebate / interest scheme intimated by the respondent. It was during February 2018, that the complainants learned of an early payment rebate / interest of 7.5% per annum being offered by the respondent following an e-mail from the client Account Manager on 08.02.2018 detailing the example in an excel format of the rebate / interest calculation on the early payments made by allottees before the due dates. The complainants were having surplus money in FDR in their banks and in view of the e-mail received from the client Account Manager dated 08.02.2018 deposited surplus funds totalling Rs.65,03,685/- after liquidating their fixed deposits and other savings to benefit from the early payment rebate / interest scheme of the respondent.
- f) The aforesaid surplus funds of Rs. 65,03,685/- are duly reflecting in the statement of account dated 14.03.2019 which has again been confirmed vide e-mail attachment dated 18.07.2022 by the respondent's Senior Manager/Client Experience Manager, having following dates of above surplus deposit-

Date	Amount (in Rs.)
20.03.2018	16,00,000/-



20.03.2018	1,60,895/-
04.06.2018	13,50,000/-
04.06.2018	3,00,000/-
04.06.2018	1,10,895/-
11.07.2018	29,81,895/-
<b>Total</b>	<b>65,03,685/-</b>

- g) The above Annexure sent vide mail dated 18.07.2022 was sent to us in response to our mail dated 15.07.2022, wherein we requested for calculation of our surplus amount which was left to be paid back to the complainants after adjusting the surplus funds of Rs. 65,03,685/- paid by the complainants at respective milestones. The six figures shown in the attachment of e-mail dated 18.07.2022 under the head amount paid totals up Rs.65,03,685/- paid by us under the early payment rebate/interest scheme invited by the respondent.
- h) That despite assurances and written communications from the respondent promising monthly rebate payments and milestone-based adjustments, the respondent failed to honour its commitment, instead they promised to settle the rebate/interest at the time of possession of the property, which was also not fulfilled.
- i) That upon possession, the complainants were coerced into signing possession documents under duress, within a 15-minute window, to safeguard the large sales consideration paid to the respondent. This signing was done without fair consideration of the delay compensation and other dues claimed and was a clear case of arm-twisting.
- j) That at the time of possession on 21.02.2023, the complainants were entitled to a surplus amount paid to builder totalling Rs.8,74,364.57, calculated after adjusting the milestone payments made on 20.04.2021, 15.06.2022, and 21.02.2023. The total rebate due under the early payment scheme was Rs. 21,02,795/- .



- k) That the respondent obtained a forced undertaking from the complainants to accept the unpaid surplus amount in two equal instalments in December 2023 and January 2024, without claiming any dues towards interest on surplus amount of Rs. 8,74,365/-. This undertaking was procured under pressure but still not honoured and is thus null and void, especially since the respondent only paid Rs. 2,00,000/- in March 2024 and Rs. 1,00,000/- in April 2024 out of Rs.8,74,365/-.
- l) That the respondent has not executed the conveyance deed despite 15 months passing since possession. This is a violation of section 11(4)(f) and section 17(1).
- m) The respondent's failure to deliver timely possession as per the agreement, not paying the agreed early payment rebates/interest, and not executing the conveyance deed as per the agreement and as per the provisions of RERA Act 2016, constitutes a serious violation of provisions.

**D. Relief sought by the complainants:****4. The complainants have sought following relief(s):**

- I. Direct the respondent to pay compensation as per section 18(1) of the Act for the 46-month delay in possession, (due from 19.04.2019 to 21.02.2023 date of possession) on the amount of Rs.99,97,964/- paid by us @11% p.a. i.e., Rs.42,15,808/- for the aforesaid period of delay.
- II. Direct the respondent to pay Rs.21,02,795/- as early payment rebate/interest on the committed early payment scheme as per Section 12 of the Act at 11% instead of 7.5% as promised but not paid as yet, (due from 19.04.2019 to 21.02.2023) i.e., Rs.30,84,099/-. Further, from 21.02.2023 to 31.05.2024 on amount of Rs.30,84,099/- @ 11%, thus total claim amount comes to Rs.35,16,295/-.
- III. Direct the respondent to pay Rs.5,74,365/- on account of balance surplus amount along with compensation for breach of commitment.
- IV. Direct the respondent to execute the conveyance deed without further delay which was due atmost Award Rs. 1,00,000/- most within 3 months i.e., by 10.04.2023 from the date of occupancy certificate i.e., 10.01.2023.
- V. Direct the respondent to pay compensation for delay in executing the conveyance deed from 10.04.2023 till date.
- VI. Award Rs. 1,00,000/- for harassment and mental agony.
- VII. Award Rs.1,00,000/- as litigation costs.



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.

**E. Reply by the respondent.**

6. The respondent has contested the complaint by filing reply on the following grounds: -

- a) That from the conjoint reading of Rule 8 and Rule 15 Form and Annexure 'A' of the Haryana RERA Rules, 2017, it is evident that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure 'A', which is required to be executed inter se the promoter and the allottee.
- b) That 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 complainants.
- c) That adjudication of the complaint for interest and delay possession charges, as provided under Sections 12, 14, 18 and 19 of 2016 Act, if any, must be in reference to the agreement for sale executed in terms of the 2016 Act and the Haryana Rules, 2017 and no other agreement. Thus, no relief as claimed can be granted to the complainants.
- d) That it has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the buyer's agreement and not being in default under the provisions of the said agreement and having complied with all provisions, formalities, documentation, etc. the developer contemplates to complete the construction of the said residential floor unit within a period of 48 months from the date of execution of this agreement, unless there shall be delay due to force majeure events and failure of the allottee(s) to pay in time the price of the said residential floor. In terms of clause 16 of the agreement, if delay is due to reasons beyond control of the



respondent, then the developer is entitled to extension of time for delivery of possession.

- e) That in the present case, there has been a delay due to various reasons which were beyond the control of the respondent and same are enumerated below: -
- i. Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Initially HUDA has to develop the major sector roads for connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana Government had transferred the land falling in sector 87, 88 and others sectors to GMDA for constructing new highway 352 W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 metres. The respondent has already laid down its facilities before such upliftment and is constrained to uplift the project land and re-align the facilities. Thereafter GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W.
  - ii. The GMDA vide its letter dated 08.09.2020 handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
  - iii. Further, initially, when HUDA acquired sector road and started construction, an area by 4 to 5 metres was uplifted. Before the start of the acquisition and construction process, respondent no. 1 already laid down services according to the earlier sector road levels, however due to upliftment caused by HUDA in



NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of the construction of project but also attract costing to the respondent.

- iv. Re-routing of High-Tension lines passing through lands resulting in inevitable change in the layout plans and cause unnecessary delay in the project.
- v. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter the deterioration in Air Quality in the Delhi-NCR region, especially during the winter months. Among these measures were the bans imposed on construction activities for a total period of 70 days between November 2016 to December 2019.
- vi. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- vii. Disruptions caused by unusually heavy rains in Gurugram every year.
- viii. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as the respondent was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower.
- f) Further, it had been also agreed and accepted that in case the delay is due to the force majeure then the developer shall not be held responsible for delay in delivery of the possession in terms of the clause 37 of the buyer's agreement.
- g) That the respondent has already received the occupation certificate dated 10.01.2023 and also offered possession to the complainants on 21.02.2023. The complainants after fully satisfying themselves with regard to the meas-



urements, specifications and fittings/fixtures had taken possession vide possession letter dated 21.02.2023.

7. All other averments made by the complainants were denied in toto.
8. 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.

#### **F. Jurisdiction of the authority**

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

##### **F.I Territorial jurisdiction**

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

##### **F.II Subject matter jurisdiction**

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

##### **Section 11. ....**

*(4) The promoter shall-*

*(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.*

12. 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.

**G. Findings on the objections raised by the respondent:**

**G.I Objections regarding force majeure.**

13. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-acquisition of sector roads by HUDA, handing over of possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W by GMDA, etc. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**G.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.**

14. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:



*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

15. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 20.04.2020. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due 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 20.04.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 20.10.2020.

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

**H.I Direct the respondent to pay compensation as per section 18(1) of the Act for the 46-month delay in possession, (due from 19.04.2019 to 21.02.2023 date of possession) on the amount of Rs.99,97,964/- paid by us @11% p.a. i.e., Rs.42,15,808/- for the aforesaid period of delay.**

16. The complainant was allotted unit no. HSG-028-Sector-88B, Plot No-24, ST. H-32, Level 1 in the respondent's project. A buyer's agreement was executed between the parties on 20.04.2016. The complainants paid an amount of Rs.99,97,963/- against the total sale consideration of Rs.91,68,362/-. The possession of the unit was to be offered within a period of 48 months from the date of execution of the agreement i.e., by 20.04.2020. However, as per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. Therefore, the due date for handing over of possession comes out



to be 20.10.2020. The respondent obtained the occupation certificate from the concerned authority on 10.01.2023 and thereafter, offered the possession of the unit to the complainants vide the offer of possession letter dated 21.02.2023. The possession of the unit was also handed over to the complainants vide possession letter dated 21.02.2023.

17. The complainants herein intends to continue with the project and are seeking delay 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."*

- 18. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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, *ibid*. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

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

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

19. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

20. 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., 07.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. The definition of 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 which the promoter shall be liable to pay the allottee, in case of default.***
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"***

22. 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.

23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the buyer's agreement executed between the parties on 20.04.2016, the possession of the said unit was to be delivered within a period 4 years from the date of execution of buyer's agreement, subject to grace period of six



months in lieu of Covid-19. Therefore, the due date of handing over of possession comes out to be 20.10.2020.

24. There is failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. 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. 20.10.2020 till the date of offer of possession(21.02.2023) plus two months i.e., till 21.04.2023 or actual handing over of possession i.e., till 21.02.2023, whichever is earlier. The date of actual handing over of possession being earlier than offer of possession plus two months, the respondent is directed pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by complainants from due date of possession i.e., 20.10.2020 till the date of actual handing over of possession i.e. up to 21.02.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

25. The authority further observes that Section 17 of the Act obligates the promoter to handover the physical possession of the subject unit complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act. However, the possession had already been handed over to the complainants in the present case. Same is evident from possession certificate dated 21.02.2023 issued in favor of the complainants.

Therefore, no direction to this effect is required.

**H.II Direct the respondent to pay Rs.21,02,795/- as early payment rebate/interest on the committed early payment scheme as per Section 12 of the Act at 11% instead of 7.5% as promised but not paid as yet, (due from 19.04.2019 to 21.02.2023) i.e., Rs.30,84,099/-. Further, from**



**21.02.2023 to 31.05.2024 on amount of Rs.30,84,099/- @ 11%, thus total claim amount comes to Rs.35,16,295/-.**

26. Clause 3 of the buyer's agreement executed between the parties on 20.04.2016 provides for payment of early payment rebate to the complainants. The relevant part of the same is reiterated as under:-

*".....The **Developer may give Early Payment Rebate (EPR)** in the basic sale price of the Residential Floor equivalent to simple interest @ 12% per annum on such payment as received in advance, for the period of advance payment of the amount/installment paid in advance as per the terms and conditions of the applicable policy of the Developer, if any. The said EPR is subject to withdrawal and the rate of EPR is subject to change without any prior notice to the Allottee."*

27. The Authority, after carefully considering the submissions presented by the parties, finds that the respondent appears to have exercised its discretion in providing the early payment rebate to the complainants, which falls within the scope of the respondent's right which it may withdraw without any prior notice to the complainants as provided above. In the absence of such material proof, that bounds the respondent to pay early payment rebate, the Authority is unable to ascertain the legitimacy of the complainants' concerns as it was specifically agreed between the parties that the respondent "may" give early payment rebate to the complainants.

**H.III Direct the respondent to pay Rs.5,74,365/- on account of balance surplus amount along with compensation for breach of commitment.**

28. Perusal of case file reveals that an undertaking dated 30.11.2023 has been signed by the complainants, wherein the respondent undertakes to pay the surplus amount of Rs.8,74,365/- in two monthly installments. The relevant part of the same is reiterated as under:-

*"(ii) Following the discussions between me/us and M/s Vatika Limited, over the present market conditions, and I/we hereby confirm that I/we have no objection in accepting the refund of 8,74,364.57/- paid as excess amount in 2 monthly installments i.e., in Dec'23 and Jan'24 respectively. I/we also confirm that I/we shall not be claiming any dues*



*towards interest against the excess amount of INR  
8,74,364.57/-"*

29. Further, the complainants admitted that they have already received Rs.3,00,000/- as surplus amount. Therefore, the respondent is liable to pay the remaining surplus amount as agreed by the respondent i.e., Rs.5,74,364/- in terms of the undertaking dated 30.11.2023.

**H.IV Direct the respondent to execute the conveyance deed without further delay which was due atmost Award Rs. 1,00,000/- most within 3 months i.e., by 10.04.2023 from the date of occupancy certificate i.e., 10.01.2023.**

30. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favor of the complainants. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. Section 17(1) of the Act is reproduced below for ready reference:

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

**(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, .....**

**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.*"**

31. The respondent/promoter is under an obligation as per Section 17 of Act to get the conveyance deed executed in favour of the complainants. Since the occupation certificate for the project had already been received on 10.01.2023, the respondent is obligated to execute the conveyance deed in favour of complainant within 60 days upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government in terms of Section 17 of the Act, failing which the complainant may approach the Adjudicating Officer for execution of order.



**H.V Direct the respondent to pay compensation for delay in executing the conveyance deed from 10.04.2023 till date.**

**H.VI Award Rs. 1,00,000/- for harassment and mental agony.**

**H.VII Award Rs.1,00,000/- as litigation costs.**

32. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

33. The complainants are seeking the said reliefs with respect to compensation. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP and Ors. 2021-2022(1) RCR(c),357* has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation.

#### **H. Directions of the Authority:**

34. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 20.10.2020 till actual handover of possession i.e., till 21.02.2023, as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.



- II. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- III. The rate of interest chargeable from the 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 the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- IV. The respondent is directed to pay the remaining surplus amount as agreed by the respondent i.e., Rs.5,74,364/- in terms of the undertaking dated 30.11.2023.
- V. The respondent is directed to execute the conveyance deed in favor of the complainants within 60 days upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government in terms of Section 17 of the Act, failing which the complainant may approach the Adjudicating Officer for execution of order.
- VI. The respondent shall not charge anything from the complainants which is not part of buyer's agreement.
35. Complaint stands disposed of.
36. File be consigned to the registry.

**Dated: 07.05.2025**  
**Ashok Sangwan**  
**(Member)**Haryana Real Estate Regulatory  
Authority, Gurugram