

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

Complaint no.: 1199 of 2023  
Date of filing: 16.03.2023  
Order pronounced on: 24.04.2025

1. Mr. Virendra Singh  
2. Mr. Shashank Nirwan  
**Both R/o:-** A-173-A, Defence Colony, Mawana Road,  
Meerut, Uttar Pradesh-250001.

**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 Yogesh Kumar Goyal (Chartered Accountants)

Complainants

Ms. Ankur Berry (Advocate)

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	"Signature 2 Villas" (formerly known as Bellevue Residences), Vatika India Next, Gurgaon, Haryana
2.	Rera registered/ not registered and validity status	<b>Registered</b> (for Vatika India Next Phase-II) Vide no. 36 of 2022 dated 16.05.2022 Valid upto 31.03.2029
3.	Unit no.	26/360/simplex/6R <b>(Old unit)</b> (on BBA page 33 of complaint) 42/360/simplex/ST.82D1-7 <b>(New unit)</b> (page 17 of complaint)
4.	Unit Size	360 sq. yards (on BBA page 33 of complaint)
5.	Date of booking	31.10.2008 (page 17 of complaint)
6.	Date of buyer agreement (With Pawan Kumar Singh)	22.09.2009 (Page 30 of complaint)
7.	Endorsement (in favor of complainants)	11.03.2011 (As per signature of accountant at endorsement at page 73 of complaint)
8.	Addendum to the villa (For change in unit no.)	06.02.2012 (page 76 of complaint)
9.	Re-allotment letter (in favor of complainants)	23.02.2012 (page 81 of complaint)
10.	Possession clause	<b>11.1 Schedule for possession of the said unit</b> "The company based on its present plans and estimates and subject to all just exceptions, contemplates <b>to complete construction of the said unit within a period of three years from the date of execution of this Agreement.</b> However, in case the Company is not able to adhere to the said time frame, it



		shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clause (12.1)(12.2)(12.3) and clause (38) or due to failure of Applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by any of the terms or conditions of this Agreement." <b>(Emphasis supplied)</b>
11.	Due date of possession	22.09.2012 [Note: due date of possession is calculated from the date of execution of buyer's agreement.]
12.	Total sale consideration	Rs.1,27,08,000/- (as per BBA page 33 of complaint)
13.	Amount paid against the allotted unit/ villa	Rs.40,70,380/- (as per receipt at page 77 to 80 of complaint)
14.	Completion certificate/ Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Notice for termination (As the company is unable to deliver the unit due to uncertain backdrops)	08.12.2021 (page 86 of complaint)

#### B. Facts of the complaint.

3. The complainants have made the following submissions in the complaint:
  - i. That the first allottee had applied for allotment of a villa having area of 360 Sq. yards vide an application for booking dated 31.10.2008 in "Bellevue Residences" of the project "Vatika India Next" in Sector 82, 82A, 83, 84 & 85 at Gurgaon Manesar Urban Complex, 2021, Tehsil and District Gurugram,

Haryana, Pin- 121009 located Adjacent to Delhi Jaipur Highway of the Respondent M/s Vatika Limited.

- ii. That the respondent had allotted a 26/360/Simflex/6R having super area 360 sq. yard approx. to the first allottee.
- iii. That the buyer agreement was executed between the first allottee and the respondent on 22.09.2009 for the abovesaid allotted unit. As per this agreement the respondent was under obligation to hand over the possession of the property by September, 2012 in normal conditions, i.e. 3 years from the date of builder buyer agreement as the same is as per the clause No.11.1 of builder buyer agreement on Page No. 12 of that agreement.
- iv. That the respondent had changed the numeric of the address of the allotted villa. Earlier the address of the villa was 26/360/Simflex/6R and now the address was changed to 42/360/Simplex/ST.82D1-7 vide letter dated 23.02.2012. However, the other terms and conditions of the builder buyer agreement remains same.
- v. That the first allottee had submitted assignment application of the villa with the respondent in favour of the complainants on 06.02.2012. The amount paid by the first allottee till date of assignment Rs.30,07,450/- was transferred in the name of complainants by the respondent against the villa.
- vi. That the complainants have paid a total of Rs.40,70,380/- towards the instalments of the said villa against the demand letters issued by the respondent time to time.
- vii. That the respondent had issued notice for termination of villa to the complainants. The termination of villa is not acceptable by the complainants.
- viii. That the respondent failed to give possession of the villa till date despite various communications were done with the respondent. The complainants want possession of the villa.



- ix. So, the complainants have filed the present complaint before this Hon'ble Authority for possession of villa along with interest and executions of sale / transfer deed in favour of complainants. As there is grave deficiency of service on the respondent's part so the complainants also want compensation from the respondent also so after the judgment of this Hon'ble authority the complaint must be transferred before hon'ble Adjudicating officer for compensation.

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

4. The complainants have sought following relief(s):
- Direct the respondent to issue valid and legal possession along with execution of sale/ transfer deed of Villa (including all the amenities as committed in the brochure).
  - Direct the respondent to pay interest at prescribed rate for every month of delay for delayed period as per Section 18(1) read with Section 2(za) of Act, 2016.
  - Transfer the complaint of the complainants to the Hon'ble Adjudicating Officer for compensation.
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:
- That the present complaint has been filed by Mr. Virendra Singh, who is one of the two allottees of the unit in question, which is very much evident from the Performa-B of the complaint which only shows Mr. Virendra Singh as the Complainant. That the unit in question belongs to Mr. Virendra Singh as well as Mr. Shashank Nirwan, who is also one of the co-allottees. That in light of the said fact, that the present complaint is liable to be dismissed solely on the ground on non-joinder on necessary parties as the complaint has only been filed by Mr. Virendra Singh.



- ii. That the respondent utterly denies and rebuts all the averments made and contentions raised by the complainants in the present complaint as the same are fallacious, unfounded, baseless, vexatious, and contrary to the facts of the present matter as the complainants with malafide intention have conveniently concealed the material facts and made the vital misrepresentations before this Hon'ble Authority. As such, the complaint filed by the complainants is entirely bereft of merits and the complainants are not entitled to the relief sought including equitable relief as the complainant has not approached this Ld. Authority with clean hands with the sole rationale to mislead the Ld. Authority.
- iii. That the present complaint is not maintainable in law. As the present complaint raises several such issues which cannot be decided by this Hon'ble authority.
- iv. That the complainants have not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply. It is vehemently and most humbly stated that to bring out the true and correct facts and circumstances is subject to the contention of the respondent that the Hon'ble Authority has no jurisdiction to deal with the present matter and that the present complaints is not maintainable for reasons stated in the present reply.
- v. That the first allottees after extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that it took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question and booked a unit in the said project of project "Bellevue Residences".
- vi. That the first allottee approached the respondent for allotment of a unit in the project of the respondent for allotment of a plot. That pursuant to the



booking of the said unit, the First Allottees executed the builder buyer agreement dated 22.09.2009 whereby a unit bearing no. 26/360/Simflex/6R was allotted to the First allottees, which was changed to unit bearing no. 42/360/Simplex/ST.82D1-7. The complainants consciously and willfully accepted the terms and conditions of the allotment and for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favor.

- vii. That the first allottees, on 06.02.2012 had submitted the endorsement application in the name of the present complainants of the unit and a sum of Rs.30,07,450/- so paid by the first allottees was transferred in the name of the present complainants.
- viii. Further it is pertinent to note that despite the sincerest efforts of the respondent to complete the construction of the project, due to unforeseeable circumstances, the construction of the Villas could not be completed. These circumstances include, but are not limited to delay in acquisition of sector roads by HUDA to enable access to its various projects, unauthorized occupation of certain parcels of lands by farmers and other various obstructions which were beyond the control of the respondent, which have affected the construction of the project, leading to which, the respondent is not in the position to develop the Villas of the complainants. It is pertinent to bring on record the pursuant to these unforeseen circumstances, the unit of the complainants was cancelled vide termination letter dated 08.12.2021 invoking the clause 12.5 of the buyer's agreement.
- ix. That the rights and obligations of the respondent and complainants are defined by the builder buyer agreement duly executed by both the

complainant and the respondent, by virtue of which, as per clause 12.5 of the agreement, the unit of the complainant was cancelled and the allotment of the complainant was terminated.

- x. That by virtue of the said termination letter, the complainants were invited to visit the office of the respondent to collect the refund cheques.
  - xi. That the respondent has communicated such termination and abandonment of the unit to the complainants whereby the calculation sheet was also provided to the complainants, calculating the simple interest @6% without any deduction (earnest money, brokerage, Tax, VAT & interests).
  - xii. That the complainants have intentionally distorted the real and true facts and has failed to mention that refund has already been offered to the complainants vide termination letter dated 08.12.2021.
  - xiii. That in light of the bona fide conduct of the respondent, non-existence of cause of action, and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with costs in favor of the respondent
  - xiv. 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. Written Submissions made by both the parties:**
8. The complainants have filed the written submissions on 21.03.2025 and the respondent has filed the written submissions on 11.04.2025 and same are taken on record. No additional facts apart from the complaint, reply and submissions have been stated in the written submissions.



**F. Jurisdiction of the Authority:**

9. The authority observes that it has complete territorial and 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 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.*

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 objection raised by the respondent:****G.I Objection w.r.t maintainability of complaint.**

13. The respondent-promoter has raised contention that the present is not maintainable due to non-joinder of necessary party as the complainant has not impleaded co-allottee as complainant no.2 being necessary party (i.e., Mr. Shashank Nirwan) in the present complaint. The plea advanced in this regard are devoid of merits. The Authority observes that, in the present complaint both the complainants-allottees name is mentioned in case title, memo of parties, and affidavit of the both is on record as well as the complaint and affidavit was signed by both the complainants. Therefore, the Authority finds no inconsistency or error in the complainant's filings, as the complaint and affidavit filed comprises signature of both the complainants-allottees (i.e., Mr. Virendra Singh & Mr. Shashank Nirwan). Accordingly, the objection raised by the respondent is dismissed being devoid of merit.

**H. Findings on the relief sought by the complainants.****H.I. Direct the respondent to pay interest at prescribed rate for every month of delay for delayed period as per Section 18(1) read with Section 2(za) of Act, 2016.**

14. In the present complaint, the original allottee was allotted a unit vide buyer's agreement dated 22.09.2009 and thereafter on 17.01.2011, the original allottee sold the subject unit to the first subsequent allottees being the complainants and the same was endorsed in favour of the complainants vide endorsement dated 11.03.2011. Therefore, the complainants stepped into the shoes of original allottee on 11.03.2011.
15. The complainants intend to continue with the project and is 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,—*

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*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. Clause 11.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"11.1 Schedule for possession of the said unit.**

*That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee (S) to abide by any of the terms or conditions of this Agreement. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same.*

**(Emphasis Supplied)**

17. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.
18. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc.

between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.

19. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the buyer agreement. In the present complaint, the buyer agreement was executed on 22.09.2009. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 22.09.2012.
20. The Authority observes that, in the present complaint, the Original allottee i.e., Mr. Pawan Kumar Singh booked a unit/ Villa in the project Signature 2 Villas "earlier known as Bellevue Residences" in Vatika India Next and was allotted a unit/ Villa bearing no. 26/36/simplex/6R having admeasuring super area 360 sq. yds. Thereafter, a builder buyer's agreement was executed on 22.09.2009 between the respondent and original allottee for a total sale consideration of Rs.1,27,08,000/- plus other charges (exclusive of Rs.10,80,000/- on account of PLC) against which respondent has received an amount of Rs.40,70,380/-. As per clause 11.1 of the said agreement the respondent was obligated to deliver the possession of the unit within 3 years from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 22.09.2012. Thereafter, the Original allottee (i.e., Mr. Pawan Kumar Singh) made a request to respondent for assignment of unit in favor of complainants and the same was acknowledged by the respondent on 17.01.2011, upon which on 11.03.2011, the unit/ villa was endorsed in favor of the present



complainants (i.e., Mr. Virendra Singh & Mr. Shashank Nirwan). Therefore, the complainants stepped into the shoes of original allottee on 11.03.2011. Thereafter, the complainants were allotted villa no. 42/360/simplex/ST.82D1-7/ having 2161 sq. ft. in the project Signature 2 Villa by "Vatika India Next" situated in Gurugram vide addendum agreement 06.02.2012. That the addendum agreement states that '*all other terms and conditions of the builder buyer's agreement dated 22.09.2009 shall remain unaltered and effective*'. And the respondent re-allotted the above said unit of the complainants without his consent vide letters dated 23.02.2012. The complainants have filed the present complaint on 16.03.2023 seeking possession of villa no.42/360/simplex/ ST.82D1-7/ having 2161 sq. ft. in the project Signature 2 Villa by "Vatika India Next" and delay possession charges as per proviso to section 18 (1) of the Act.

21. The respondent has cancelled the subject unit vide cancellation letter dated 08.12.2021 wherein the respondent stated that the said unit is not deliverable due to change in the alignment of the GAIL pipeline and the respondent is ready to refund the amount paid along with simple interest at the rate 6% per annum by invoking clause 12.5 of the BBA. However, the authority observes that the GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 mtrs. to 20 mtrs. The GAIL notification and permission letter was prior to the execution of agreement dated 22.09.2009 and addendum to the buyers' agreements dated 06.02.2012. If the unit in question had truly been affected by the GAIL pipeline, it is unlikely that the respondent would have allocated same to the complainants. This, inconsistency casts doubt on the respondent reasoning for cancelling the unit. The respondent/promoter has failed to develop the unit and cancelled the unit on account of its own fault/omission. Accordingly, the respondent is liable to offer alternative unit to the

complainant at the same rate as per the agreed terms of subject agreement dated 22.09.2009 and addendum to the agreement dated 06.02.2012 on account of its inability to develop the subject unit. The rationale behind the same is that the allottee purchased the subject unit way back in 2009 and paid the demanded amount in hope to get possession of the allotted unit.

22. It is noteworthy that the respondent despite expressing readiness to offer an alternative unit to the complainant in its reply and has failed to offer the same. In light of these observations, the respondent is directed to offer an alternative unit to the complainants at the same rate as per the agreed terms of the subject agreement and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.
23. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of section 2(za) of the Act. The complainant cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.
24. **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.*

25. 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.
26. 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., 24.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. 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:

*"(z) '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;"*

28. 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.
29. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit/ villa to the complainants as per the terms and conditions of the buyer's agreement dated

22.09.2009. Accordingly, it is failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period.

30. Accordingly, the respondent is liable to offer alternative similar situated unit to the complainants as per specifications, at the same rate at which the unit was earlier purchased and on a similar location of original BBA dated 22.09.2009 and addendum to the buyer's agreement dated 06.02.2012 on account of its inability to deliver the said unit. The rationale behind the same that the allottee booked the unit in the project way back in 2009 and paid the demanded amount in a hope to get the possession of allotted unit.

31. 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 prescribed rate of the interest @ 11.10% p.a. w.e.f. due date of possession i.e., 22.09.2012 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.

**H.II. Direct the respondent to issue valid and legal possession along with execution of sale/ transfer deed of Villa (including all the amenities as committed in the brochure).**

32. 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 (14) of buyer's agreement, the relevant clause of the buyer's agreement is reproduced for ready reference: -

*"The company, its associate's companies, its subsidiary companies as stated earlier shall prepare and execute along with the applicant a conveyance deed to convey the life of the said unit in favour of applicant but only after receiving full payment of the total price thereof and payment of all securities including maintenance security deposits and charges for bulk supply of electrical energy, interest, penal interest etc. on delayed instalments stamp duty, registration charges, incidental expenses for*





*registration, legal expenses for registration and all other dues as set forth in this agreement or as demanded by the company from time to time prior to the execution of the conveyance deed. If the applicant is in default of any of the payments as set forth in this agreement, then the applicant authorizes the company to withhold, at his/her risk and cost, the registration of the conveyance deed in his/ her favour till full and final settlement of all dues to the company is made by the applicant and agrees to bear the resultant consequences...*

**[Emphasis Supplied]**

33. 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.
34. 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."*

35. 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.

**H.III. Transfer the complaint of the complainants to the Hon'ble Adjudicating Officer for compensation.**

36. This is without prejudice to any other remedy available to the allottee(s) including compensation for which allottees may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

**I. Directions of the authority**

37. 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 cancellation letter dated 08.12.2021 is bad in law and is hereby set aside and the respondent is directed to restore the allotted unit/ villa or if the same is not available, an alternative unit/ villa of same size, similar location and at the same rate and specifications at which the unit was earlier purchased within two months from the date of this order and handover the possession of alternative unit/ villa to the complainants after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- b. 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., 22.09.2012 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.



- c. 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.
- d. The respondent-promoter is 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 respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- f. 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 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(zb) of the Act.
38. Complaint stands disposed of.
39. File be consigned to registry.

**Date: 24.04.2025**

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