

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

Complaint no.	3400 of 2023
Date of filing complaint	28.07.2023
Order reserved on	30.10.2024
Date of decision	26.03.2025

Deepak Gupta
R/o: Flat no.236, Desh Bandhu Apartment,
Kalkaaji, South Delhi- 110019

Complainant

Versus

Vatika Limited
Registered office: Vatika Triangle, 4th floor,
Sushant Lok, Phase 1, Block A, Mehrauli- Gurugram
Road, Gurugram- 122002

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Rajan Kumar Hans (Advocate)

Complainant

Shri Pankaj Vivek (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottee 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	"Emilia by Vatika India Next", Sector-83, Gurugram
2.	Project Area	182 acres
3.	Type of colony	Residential Plotted Colony
4.	Registered/ not registered	Registered (for Vatika India Next Phase-II) 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
5.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018
6.	Name of Licensee	M/s Buzz Technologies Pvt. Ltd. & Others.
7.	Allotment letter (Issued in favour of the original allottee, Mr. Surender Singh)	01.10.2012 (Page no. 71 of complaint)
8.	Date of execution of builder buyer agreement (Executed between the respondent and original allottee, Mr. Surender Singh)	23.03.2011 (Page no. 31 of complaint)
9.	Endorsed in favour of the complainant on	30.05.2013 (Page no. 68 of complaint)
10.	Old Plot no. (Allotted to original allottee, Mr. Surender Singh)	Plot no.41, 1 st floor, 16 th street, Block E (Page 27 of complaint)
11.	Addendum to BBA (Allotted to original allottee, Mr. Surender Singh)	30.11.2012 Allotment of New Plot no.17, First Floor, Emilia, ST, 82F-14, Sector 82F Vatika India Next (Page 69 of complaint)
12.	Welcome letter issued in favour of the complainant	03.06.2013 (Page 73 of complaint)
13.	Second Addendum to BBA	09.05.2018



		Allotment of New Plot no.1C, Sector 83, ST, K-15, Level 2 (Increase in area from 925.26 sq. ft. to 940 sq. ft.) (Page 90 of complaint)
14.	Possession clause	Clause 10.1 – Schedule for possession of the said independent dwelling unit <i>That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in 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.</i> (Emphasis supplied) (BBA at page 14 of complaint)
15.	Due date of possession	23.03.2014 (Calculated to be 3 years from the date of execution of the agreement)
16.	Basic sales price	Rs.27,29,925.41/- (As per SOA dated 18.01.2019 on page 87 of complaint)
17.	Total sale consideration	Rs.31,01,925.41/- (As per SOA dated 18.01.2019 on page 87 of complaint)
18.	Paid up amount	Rs.10,78,935/- (As per SOA dated 18.01.2019 on page 87 of complaint)
19.	Last instalment paid by complainant	07.05.2013- No further demands beyond the demand of "within 60 days from allotment or

		commencement of earthwork at site" was raised by the respondent. (As pleaded by complainant in para 14 at page 13 of complaint)
20.	Cancellation Notice issued by respondent owing to GAIL pipeline issue	31.07.2021 In terms of Clause 11.5 of the agreement which states as under: <i>"That the Allottee agrees that in consequence of the Company abandoning the Scheme or becoming unable to give possession within three years from the date of execution of this agreement or such extended periods as permitted under this Agreement, the Company shall be entitled to terminate this Agreement whereupon the Company's liability shall be limited to the refund of the amounts paid by the Allottee with simple interest @ 6% per annum for the period such amounts were lying with the Company and to pay no other compensation whatsoever."</i> (Emphasis Supplied) (Page 18 of reply)
21.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions: -
 - a) That unit in question is plot no. - 1C, ST.K-15, Level-2, Sector 83, having super area 940 sq. ft. in the project "Vatika India Next."
 - b) That the original allottee Mr. Surender Singh booked a floor in "Emilia-Independent floors - Vatika India Next" for which he remitted Rs.2,22,164/- as the booking amount on 29.12.2009.
 - c) That on date 23.03.2011, a pre-printed one-sided, arbitrary and unilateral flat buyer agreement for allotted unit was executed between respondent and original allottee which was further endorsed in the name of the present complainant Mr. Deepak Gupta on 30.05.2013.
 - d) That as per Clause 10.1, the respondent had to complete the construction of the flat and handover the possession within 3 years from the date of



execution of the agreement. Thus, the due date of possession becomes 23.03.2014.

- e) That on 01.10.2012 the respondent sent a new allotment letter in favour of the original allottee whereas the respondent changed the unit number.
- f) That the unit allotted was changed from Plot No.41, 1st floor, 16th Street, E Block, Sector 83 to Plot No.17, ST.82F-14, First Floor, Sector 82F by the respondent vide addendum to the Emilia Floors (Vatika India Next) builder buyer agreement dated 30.11.2012.
- g) That the complainant bought the above said unit in resale from the original allottee, and this unit was subsequently a unit which was further endorsed in the name of the complainant on 30.05.2013 and welcome letter dated 03.06.2013 was issued by the respondent in favour of the present complainant.
- h) That till date complainant had paid an amount of Rs.10,78,935/- i.e., approximately 100% of the demanded price. The details of receipts are:

Sr. No.	Date	Instrument	Receipt No.	Amount
1	29.12.2009	Booking Amount	36802	Rs. 2, 22,164/-
2	03.02.2011	CHQ No. 196603	919437262	Rs.2,27,886/-
3	24.02.2011	CHQ No. 196605	919440823	Rs.3,41,828/-
4.	12.06.2012	CHQ No. 376641	919481521	Rs.1,46,256/-
5.	07.05.2013	CHQ No. 065664	919500664	Rs.1,29,953/-
6,	07.05.2013	CHQ No. 065663	919500665	Rs.10,848/-
Total Paid-up amount				Rs.10,78,935/- (Inclusive of VAT and taxes)

- i) That the nomenclature of above-mentioned unit was again changed by the respondent from Plot No.17, ST.82F-14, First Floor, Sector 82F to Sector 83, Plot no. 1C, ST. K-15, Level 2 and also increased the area from 925.26 sq. ft.



to 940 sq. ft. vide Addendum to the Floors (Vatika India Next) builder buyer agreement dated 09.05.2018.

- j) That the complainant has always paid the instalment(s) on time and the last instalment was paid on 07.05.2013 and no further demands beyond the demand of "within 60 days from Allotment or Commencement of earthwork at site" was raised by the respondent till date. That there is slow progress in the construction of the flat and the completion time is unknown to the present complainant.
- k) That the main grievance of the complainant in the present complaint is that the complainant having paid approximately 100% of the amount called up, the respondent failed to start construction and deliver possession of flat.
- a) That the complainant had purchased the flat with the intention that after purchase, his family would use the flat for their personal use. That it was promised by the respondent at the time of receiving payment for the flat that the possession will be given as per the terms and condition of the BBA.
- b) That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, they are liable to be punished and compensate the complainant.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. Direct the respondent to pay delayed possession from the due date of possession charges from 23.03.2014 till date of actual possession.
 - II. Direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over the possession of the flats.
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 contested the complaint on the following on the following grounds vide its reply dated 07.02.2024:
- a) That the complainant applied for allotment of plot no. 1C, ST.K-15, Level-2, Sector-83, having super area 940 sq. ft. in Sector 83, Gurugram, Haryana vide application dated 29.12.2009.
 - b) That thereafter the respondent sent two copies of buyer's agreement on 23.03.2011 for execution to the complainant, but the complainant did not sign and deliver the agreement back to the respondent for a very long time. Various reminders were sent for execution of buyer's agreement and after a lot of persuasion, the builder buyer agreement dated 23.12.2015 was executed between the parties.
 - c) That as per clause 12 of the agreement, the complainant has agreed that time is the essence of the agreement with respect of allottee obligations to pay price of the said residential flat to be paid on or before the due date or as when demanded by the developer. However, the said clause specified that it is not obligatory on the part of the developer to send demand notices/ reminders regarding the payments and in case of default /delay in the payments by the allottee, the allotment shall be liable to be cancelled and entire earnest money deposited by the allottee is liable to be forfeited, however, in spite of the default of the complainant in making the schedule of the payments, the respondent has been lenient and forbade from the cancelling of the booking/allotment.
 - d) That as per clause 15 of the booking and buyer's agreement, for construction of the said house/residential floor, the period of completion was 4 years from the date of agreement. Hence, the respondent had time up to 23.12.2019 for completion of the unit but the same could not be constructed due to unavoidable and force majeure reasons beyond the control of the respondent.

- e) That as per clause 8 of the buyer's agreement, in the event the completion of the said house/residential floor is delayed on account of various reasons cited for instance due to delay in sanction plan/ building plans by the competent authority, as per clause 13 of the agreement, the layout was tentative and subject to change.
- f) That the respondent was constrained to change the layout plans and the respondent vide letter dated 14.06.2016 made an offer to allot alternative unit to the complainants and requested them to visit the office of the respondent for re-allotment on 29.06.2018 at 3 pm.
- g) That the main reason for deferment of unit allotted to the complainant was due to non-acquisition of sector roads by HUDA, initiation of GAIL corridor passing through the "Vatika India Next" project, non-shifting of defanged high-tension lines passing through the project by DHBVN. Further compounded by non-removal or shifting of the defunct high-tension lines passing through these lands, which also contributed to inevitable change in the layout plans. The respondent in good faith offered re-allotment to the complainant and asked him to visit the office for re-allotment of alternate unit.
- h) That the complainant refused to accept the offer for re-allotment and raised a number of irrelevant and vague questions vide e-mail dated 17.04.2018.
- i) That the complainant did not seek refund till 03.10.2019 as earlier he was insisting for allotment of the same unit, which was booked by him, in spite of the fact that the complainant was aware that an alternate allotment was offered by the respondent.
- j) That the complainant was a mere investor, whose intention was only to keep holding the unit by making part payment and thereby earn premium due to increase in re-sale price of the unit. However, when the real estate market crashed, the complainant was unable to sell the unit for a premium,

thus they started demanding refund with heavy interest. Same is evident from the fact that the wife of the complainant had booked a unit on 15.04.2015 which was further re-sold for speculative gains and profit to Mr. Walia Babloo Singh.

- k) That the complainant demanded refund after a gap of more than 3.5 years of respondent's offer of alternate allotment and lastly vide e-mail dated 03.10.2019, the respondent offered an upgraded unit for the amicable settlement of the issue. However, the complainant did not accept the same.
 - l) That the respondent had already cancelled the allotment of the said unit vide letter dated 31.07.2021 due to various reasons mentioned in the cancellation letter.
 - m) That the present complaint is without a cause of action as the respondent had performed its part of the agreement by offering ready to move in unit which was well before the agreed date for completion of agreement dated 23.03.2011.
7. All other averments made in the complaint 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.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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.

E.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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding delay on account of GAIL Pipeline.

13. The respondent has raised a contention that the completion of project was hindered due to passing of GAIL Pipeline through the project. However, the plea advanced in this regard is devoid of merits. Firstly, the unit was allotted to the original allottee on 01.10.2012 and the GAIL notification regarding lying of pipeline came out in the year 2009, which is prior to the allotment, and subsequently the allotted unit was cancelled due to non-availability of unit on account of passing of GAIL pipeline through the township in the year of 2021, which is after 12 years (approximately) of

notification and thereafter permission for reducing ROU from 30 mtrs. to 20 mtrs. in the year 2011. However, there is no justification for the wait for such long period as it is well settled principle of law that a person cannot take benefit of his own wrong.

G.II Objections regarding force majeure.

14. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as non-acquisition of sector roads by HUDA and non-shifting of defanged high-tension lines passing through the project by DHBVN. 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 as it is well settled principle that a person cannot take benefit of his own wrong and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay interest for every month of delay in handing over the possession of the floor since 22.03.2020 to the complainant on the amount taken from the complainant towards sale consideration for the aforesaid floor, with interest at the prescribed rate as per the Act, 2016 till the date of offer of possession plus two months.

G.II Direct the respondent to complete the development of the project and deliver the floor along with all the facilities and amenities like water, electricity, roads, green belt, etc. immediately and obtain completion certificate.

15. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
16. In the present case, the original allottee i.e., Mr. Surender Singh booked a unit in the project of the respondent namely "Emilia Floors" by Vatika India Next,

Sector 83, Gurugram. He was allotted plot no. 41, 1st floor, 16th street, block E admeasuring 925.26 sq. ft. vide a builder buyer agreement executed between the original allottee and the respondent-promoter on 23.03.2011. Further, on 30.11.2012 an addendum to the buyer's agreement was executed between the original allottee and the respondent, in which the unit was reallocated from plot no. 41, 1st floor, 16th street, block E, to Plot no.17, First Floor, Emilia, ST, 82F-14, Sector 82F Vatika India Next, admeasuring 825.25 sq. ft. Unit was endorsed and a welcome letter dated 03.06.2013 was issued in favour of the complainant-allottee. However, another addendum to the buyer's agreement dated 23.03.2011 was executed between the complainant and the respondent, in which the unit was reallocated from Plot no.17, First Floor, Emilia, ST, 82F-14, Sector 82F Vatika India Next, admeasuring 825.25 sq. ft., to Plot no.1C, Sector 83, ST, K-15, Level 2 admeasuring 940 sq. ft., wherein it was further stated that "All other terms and conditions of the executed buyer's agreement shall remain unaltered and effective."

17. The possession of the unit was to be offered within a period of 3 years from the date of execution of the agreement, in terms of clause 10.1 of the agreement. Therefore, the due date of handing over possession comes out to be 23.03.2014. The complainants have paid an amount of Rs.27,29,925.41/- against the total sale consideration of Rs.31,01,925.41/- and are ready and willing to retain the allotted unit in question.
18. Further, perusal of case file reveals that the plot allotted to the complainant was cancelled by the respondent by invoking clause 14 of the agreement vide cancellation letter dated 26.07.2021 owing to unforeseen eventualities like GAIL pipeline issue and non-acquisition of sector roads by HUDA, etc. Now, the question before the authority is whether the cancellation is valid or not?

19. The Authority observes that the subject plot has been cancelled vide cancellation letter dated 31.07.2021 narrating the detailed reasons for cancellation of the plot and termination of allotment of the complainant on account of inability of the promoter to develop the subject plot due to various reason precisely initiation of GAIL corridor. The GAIL notification regarding laying of pipeline came out in the year 2009 and thereafter, GAIL granted permission for reducing ROU from 30 metres to 20 metres vide letter dated 04.03.2011 as submitted by respondent in his reply. GAIL notification and permission letter was prior to the signing of allotment letter dated 01.10.2012. 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 complainant. This, inconsistency casts doubt on the respondent's reasoning for cancelling the plot. Further, thorough perusal of cancellation letter dated 31.07.2021 reveals that the said cancellation is effectuated in terms of clause 11.5 of the buyer's agreement. The relevant portion of the cancellation letter dated 31.07.2021 is reproduced below for ready reference:

*".....Having faced various unforeseen hardships, the Company hereby invokes **clause 11.5 of the Agreement** which states:*

"That the Allottee agrees that in consequence of the Promoter abandoning the Project or being unable so give possession of the said Plot within three years from the date of execution this agreement or such extended periods as permitted under this Agreement, the Promoter shall be entitled to terminate this Agreement where upon the Promoter's liability shall be limited to the refund of the amounts paid by the Allottee (after deducting interest on delayed payments and other amounts of non-findable nature) with simple interest @8% per annum for the period such amounts were lying with the Promoter and to pay no other compensation whatsoever"

In view hereof, the Company is required to refund the amount after deduction of the interest on delayed payments and other non-refundable deposits. However, in a good gesture and being a customer centric Company, we are ready to refund your principal amount along with 8% simple interest p.a. from Date of Payment received till 31-July-21.

....."

20. Therefore, the respondent has failed to develop the unit and cancelled the plot on account of its own fault/omission. Therefore, the Authority is of the view that cancellation letter dated 31.07.2021 is set aside and the respondent is obligated to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said plot, the respondent is directed to allot an alternative plot of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant 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 complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. The rationale behind the same is that the allottee purchased the subject plot way back in 2012 and paid the demanded amount in hope to get possession of the allotted unit.
21. Herein, the complainant intends to continue with the project and is 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. -

*in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act **or for any other reason,**
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

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."

22. The interest (DPC) component is levied 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(z) of the Act. The complainant cannot be made suffer due to fault of the respondent and to pay for the unit as per today's rate.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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.

24. 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.

25. 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., 26.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

26. 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;"*

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.

27. 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. The due date of handing over possession was 23.03.2014. Occupation certificate has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject plot and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 23.03.2014 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is

earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

H. Directions of the authority

28. 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. Cancellation of the plot allotted to the complainant is set aside. The respondent is directed to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative plot of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the plot shall be handed over to the complainant 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 complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- II. The respondent is directed to pay interest to the complainant against the paid-up amount 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., 23.03.2014 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the Rules, *ibid*.

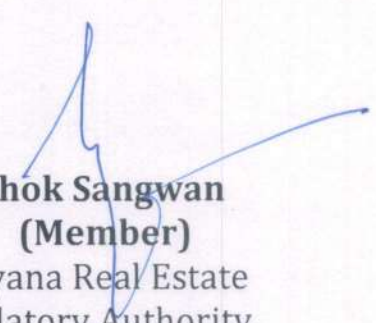
III. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

IV. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated:26.03.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM