

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

Complaint no.: 1012 of 2024  
Date of filing: 09.04.2024  
Order pronounced on: 22.05.2025

Vivek Bhargava  
(Through GPA Holder Mr. Abhimanyu Bhargava)  
**Resident of:** - Unit no.431, 4th Floor, Tower-B, Spazedge,  
Sohna Road, Gurugram-122004.

**Complainant**

Versus

M/s Vatika Sovereign Park Private Limited  
**Regd. Office at:-** Flat no. 621A, 6th Floor, Devika Towers  
6, Nehru Place, New Delhi-110019.

**Respondent no.1**

M/s Vatika Limited  
**Regd. Office at:-** Vatika Triangle, 4th Floor, Sushant Lok  
Phase-I, Block-A, MG Road, Gurugram- 122002.

**Respondent no.2**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Utkarsh Thapar (Advocate)  
Shri Anurag Mishra and Shri Mohit Due (Advocates)

**Complainant  
Respondents**

**ORDER**

1. This complaint has been filed by the complainant/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 provision 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Sovereign Park", Sector-99, Gurugram.
2.	Project area	10.43 Acres
3.	Nature of Project	Residential Group Housing Colony
4.	DTCP license no. and validity status	119 of 2012 dated 06.12.2012 Valid upto 05.12.2025 65 of 2013 dated 20.07.2013 Valid upto 19.07.2024
5.	Name of Licensee	M/s Vatika Sovereign Park Pvt. Ltd.
6.	Rera registered/ not registered and validity status	<b>Registered</b> [Phase-I] (for 37994.878 sq. mtrs.) 285 of 2017 dated 10.10.2017 Valid upto 09.10.2022 [Phase-II] (for 4.8338 Acres) 102 of 2023 dated 06.11.2023 Valid upto 10.07.2027
7.	RERA Extension	RC/REP/HARERA/GGM/ 285 of 2017/7(3)/38/2023/15 dated 18.09.2023 Valid upto 31.05.2025
8.	Unit no.	1702, 17th Floor, Block-A (as mentioned in BBA at page 27 of complaint)
9.	Unit Admeasuring	2610 sq. ft. (super area) (as mentioned in BBA at page 27 of complaint)
10.	Allotment letter	25.07.2013 (page 70 of complaint)
11.	Buyer's Agreement	09.09.2014 (page 25 of complaint)





12. Possession clause as per buyer's agreement	<b>13. Schedule for possession of the said apartment</b> <i>The developer based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said building/ said apartment within a period of 48 months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 14 to 17 &amp; 37 or due to failure of allottee(s)...</i> <b>[Emphasis supplied]</b> (page 31 of complaint)
13. Due date of possession	<b>09.09.2018</b> [Note: the due date of possession is calculated 48 months from the date execution of buyer's agreement.]
14. Total sale consideration	Rs.2,21,96,575/- (as mentioned in BBA at page 27 of complaint)
15. Amount paid	Rs.1,89,81,667/- (as mentioned in SOA dated 14.12.2023 at page 55 of complaint)
16. Tripartite Agreement (between Vatika limited, HDFC and allottee) for Rs.1,50,00,000/-	07.11.2014 (page 59 of complaint)
17. Occupancy Certificate	Not obtained (as confirmed by the counsel for the respondent during the proceedings)
18. Offer of possession	Not offered
19. Demand letter [on start of painting work inside the unit + on start of flooring work inside the units - Rs.22,54,365/-]	07.12.2023 (page 73 & 74 of complaint)
20. Request for site visit via email	09.01.2024 (page 76 of complaint)
21. Reply to email by respondent (unable to process request for site visit)	09.01.2024 (page 76 of complaint)



**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That in the year 2013, the complainant came across the respondent's project, which was advertised in a very impressive and stellar way. Subsequently, the complainant expressed his interest in the project and inquired about the project.
- II. That believing the representations, promises and personal guarantees put forth by the respondent to be genuine and by extending trust in the Management of the respondent's, the complainant decided to purchase a residential apartment in the project known as "Sovereign Park" in Sector 99, Gurugram, Haryana - 122505.
- III. That the complainant on 28.01.2013, booked an apartment bearing no. HSG-022/1702 in the project and made a payment by way of cheque of Rs.10,00,000/- to the respondent company.
- IV. Subsequently, the respondent issued an allotment letter in the name of the complainant on 25.06.2013. That the complainant had also made a payment of Rs.10,44,000/- towards preferential location charges and then further made a payment of Rs.37,04,640/-. Thereafter, the builder buyer agreement dated 09.09.2014 was executed between the complainant and the respondent for the residential apartment having an approximate super area measuring 2610 sq. ft., in Tower-A of the said project. The total consideration of the apartment in terms of the said BBA was Rs.2,21,96,575/-.
- V. That the respondent represented to the complainant that the construction of the project had already commenced and further, according to clause 13 of the builder buyer agreement, the respondent promised to complete the project no later than 48 months from the date

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of execution of the BBA or the start of construction, whichever came later, which was by or before September, 2018.

- VI. That based on the promise of timely possession and best in class amenities the complainant agreed to purchase the said unit that met all his requirements and even applied for a loan and was thereafter granted a home loan by the HDFC Bank for Rs.1,50,00,000/- on 24.01.2014. Subsequently, a tripartite agreement was executed on 07.11.2014 between the complainant, the respondent and HDFC Bank Ltd.
- VII. That the complainant had nominated and authorized Sh. Abhimanyu Bhargava, R/o New Town Heights, Flat 211, Block- B, Sector-86, Gurugram as his lawful special power of attorney on 14.11.2014 with a purpose to act upon on the behalf of the complainant qua the said apartment and execute all relevant documents in his stead.
- VIII. That the complainant continued to make the due payments on time as required by the demand letters being issued by the respondent. The complainant was always particular about paying all of the installments in a timely manner and were extremely excited to get the possession of the apartment in due course of time and realize their dream of owning a house.
- IX. That the completion of the project was due by or before September, 2018. However, to the misery of the complainant, the respondent miserably failed to complete the project and to deliver the possession within the stipulated time period of 48 months as mentioned in clause 13 of the BBA.
- X. That despite numerous follow-ups and visits to the respondent's office and after numerous communications with the officials of the respondent with respect to the possession of the apartment, the complainant never



received a specific response from the respondent regarding the date of possession. This failure on part of the respondent to deliver the possession of the apartment in the stipulated time had caused the complainant great mental anguish, harassment, and financial hardship.

- XI. That the complainant has been regularly chasing the respondent for the update on the construction of the project via emails and calls, but the respondent at all times have neglected the aforesaid emails and have never responded to the complainant.
- XII. That the parents of the complainant is senior citizens and due to the illicit acts of the respondent, they are compelled to knock the doors of the respondent and even after that no reliable information regarding the status of the apartment was ever provided to them which has stained the parents of the complainant to reside in a different accommodation, even when the complainant had paid a hefty amount for the possession of the apartment.
- XIII. That even though the respondent clearly failed to offer the possession of the apartment to the complainant in a time bound manner, the respondent neither made any efforts to make amendments nor provided any remedies for the unacceptable/inordinate delay in delivering the possession of the apartment.
- XIV. That considering the significant delay in the project's completion, and taking into account the loss suffered by the complainant and also the mental anguish caused by the respondent's failure to deliver the possession of the apartment on time, the respondents are liable to pay delayed possession charges, to the complainant at the rate of interest as prescribed under RERA.





- XV. That when the complainant approached the respondent with regard to delayed possession charges for the inordinate delay in delivering the possession of the apartment, the respondent in order to avoid its obligation to pay the DPC, blatantly refused in lieu of the liability.
- XVI. That the complainant till date had paid an amount of Rs.1,89,81,667/- as per the demand letters raised by the respondents. That even after the complainant had paid such a hefty amount to the respondent for the apartment booked, the respondents have not offered the possession till date despite a delay of 5 years and 5 months. That the respondents have not honored their promises and the terms of the BBA which have caused the complainant grave mental agony, financial suffering and harassment.
- XVII. That to the utter dismay of the complainant rather than completing the project on time the respondent resorted to illegal tactics of extracting as much money as it could from the complainant and raised a demand of Rs.11,38,221/- through Invoice No. I/911/224/0042 and Rs.11,38,221/- through Invoice No. I/911/2324/0044 vide email dated 07.12.2023. Subsequently, the respondent by way of reminder again raised a demand of rs.23,10,086.80/- vide email dated 21.02.2024, that in terms of the payment schedule was supposed to be raised upon the completion of the aforesaid project. That the bank officials on the behest of the complainant, visited the project and to utter shock, the bank rejected the request for disbursal of the payment on the ground that the project is far from completion and is not up to the mark.
- XVIII. That the sole intention of the respondent, from the very beginning was to induce the complainant and to extract wrongful gains out of the hard-earned money of the complainant. That these acts of the respondent have





caused grave mental agony, stress, harassment and had placed the complainant with illimitable financial burden.

- XIX. That even after paying more than half of the money towards the total sale consideration of Rs.2,21,96,575/- neither the complainant has received the possession of his apartment nor is he compensated in any manner whatsoever. That the apartment was booked by the complainant in February 2014 and the possession was supposed to be handed over to the complainant in February, 2018, however even after a delay of 5 years and 5 months the project is nowhere near completion.
- XX. That the complainant had already suffered irreparable loss due to the acts and deeds of the respondent and seeks liberty of this Authority for the relief qua the present complaint.

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

4. The complainant has sought following relief(s):
- Direct the respondent to handover the possession of the apartment in a time bound manner;
  - Direct the respondent to pay the delay possession charges of Rs.1,24,46,194/- to the complainant for delay of handing over the possession of the unit to the complainant till realization (calculated as per RERA rate of 10.80%); and
  - Direct the respondent to provide the complainant with a copy of the completion certificate of project and occupation certificate; and
  - Pass an order restraining the respondent from making/raising any illegal demands for money
  - Pass an order restraining the respondent from cancelling the booking of the complainant's unit;
  - Pass an order for stay on the demand raised by the respondent from the complainant vide email dated 07.12.2023 of Rs.22,76,442/-.
  - Any other relief this Authority deems fit for deciding the present complaint.

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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) of the Act to plead guilty or not to plead guilty.

**D. Reply by respondents:**

6. The respondents have contested the complaint on the following grounds:
- I. That the complaint is liable to be dismissed as the complainant has come before this Authority, with unclean hands and tried to mislead this Authority by false and frivolous averments.
  - II. That in the year 2012, the complainant, learned about the project launched by the respondent titled as "Sovereign Park" and approached the respondent and inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
  - III. That after having keen interest and pure satisfaction in the project constructed by the respondent the complainant wilfully booked a unit HSG-022/1702/Tower A/Sovereign Park, Tower-A, admeasuring 2610 sq. ft. for total consideration of Rs.2,21,96,575/- upon his own judgement and investigation. That "Sovereign Park" is a residential group housing project being developed by the respondent on the licensed land admeasuring 10.43125 acres vide license no. 119 of 2012 dated 06.12.2012 and licensed land admeasuring 10.0325 acres vide license no.65 of 2013 dated 20.07.2013 situated at Sector 99, Gurugram, from the concerned authority and approval of building plan and other approvals granted for the said project has been obtained by respondent. Therefore, the entire group housing had been developed and constructed as per the approved plan.

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- IV. That as per clause 13 of the buyer agreement executed with the complainant, the construction of the project was contemplated to be completed in 48 months from the date of said BBA subject to force majeure circumstances mentioned in clauses 14 to 17 & 37 thereof which provided for extension of time. The slowdown in construction and delay, if any, is primarily because of default in making timely payment of instalments by the buyers including the complainant.
- V. That the complainant has only made around half of the payment of the total sale consideration only. Thus, the complainant has defaulted in making the payment as per the terms of the said agreement and therefore such frivolous complaint must be dismissed on the said ground itself.
- VI. That the pace of construction and timely delivery of Apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of Apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted, that most of the flat buyers including the Complainant, in the "Sovereign Park" have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.
- VII. That the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated 08.11.2016 has also affected the pace of the development of the project. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in



huge labour crisis which was widely reported in various newspapers/ various media.

VIII. That the delay, if any, is on account of reasons beyond the control of the respondent therefore, there is no breach whatsoever on the part of respondent. In any event, it is stated that the time stipulated for completion under the allotment/ agreement is not the essence and Respondent is entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to respondent. On the perusal of below submissions, it would be clear that the complaint of the complainant with regard to delay in completion of construction of the possession is misconceived particularly for the following reasons:

IX. The factors which materially and adversely affected the project are being set out herein under:

- Ban on construction by The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2016 to December 2019.
- Delay in payments by majority of the buyers of the said group housing project:
- Demonetization of currency notes having effect on pace of construction.
- Lockdown on account of Covid-19 pandemic.
- Delay in supply of cement and steel due to various agitations and Covid-pandemic-2019.



- Declaration of Gurugram as notified area for the purpose of ground water & restrictions imposed by the State government on its extraction for construction purposes.
- X. Delay in the project is only due to above mentioned reasons which were beyond the control of the respondent and time spent in all the factors should be excluded in computation of the timeline of the project. For the reasons narrated above, that the present complaint may kindly be dismissed against OP for want of any cause of action whatsoever against respondent.
- XI. That the project consists of 12 towers, all approximately 90% complete, and the respondent has duly informed the complainant via email dated 07.12.2023, regarding the commencement of painting and flooring works within the units of Tower A, Sovereign Park. Furthermore, the ongoing construction is in the final stages, with the anticipated handover scheduled to begin in the second quarter of the calendar year 2024. In light of these circumstances, the respondent respectfully requests this Hon'ble Tribunal to grant an extension of time for the completion and delivery of the project, as the Respondent is committed to fulfilling its obligations.
- XII. That the respondent craves leave of this Authority to file additional documents, if so required, for proper adjudication of the issues involved in the present complaint.
- XIII. That earliest timelines of construction of the apartment in terms of the builder buyer agreement got exhausted however, the short delay has been occurred due to the default in making the timely payment of instalment by the complainant and majority of the buyers in addition to other reason which is beyond the control of the OP. If period of 48 months is to be calculated as per buyer agreement, then the time period



came to an end of 2018, however the project was delayed due to reasons already mentioned in the para's above and the same is not repeated for the sake of brevity.

7. All other averments made in complaint are 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 based on these undisputed documents and submission made by the parties.

**E. Jurisdiction of the Authority:**

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the 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.

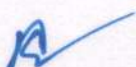
**E.II Subject-matter Jurisdiction:**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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 complainant at a later stage.

**F. Findings on the objections raised by the respondents:**

**F.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 complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. Firstly, the orders passed by NGT in NCR on account of the environmental conditions, ban on construction activity and other force majeure circumstances do not have any impact on the project being developed by the respondent. As the events mentioned above are for a short period which does not make such a huge impact on project which can cause and justify inordinate delay of 7 years. Further, these events are of routine in nature happening annually and the promoter is required to take the same into consideration while fixing the due date of possession. Secondly, the event of demonetization is in accordance with government policies and guidelines. Therefore, the Authority of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of contract. 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.

**F.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 respondents were liable to complete the construction of the project and handover the possession of the said unit by 09.09.2018. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that 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 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 the delay possession charges of Rs.1,24,46,194/- to the complainant for delay of handing over the possession of the unit to the complainant till realization (calculated as per RERA rate of 10.80%);
- G.II Pass an order restraining the respondent from cancelling the booking of the complainant's unit;
- G.III Pass an order for stay on the demand raised by the respondent from the complainant vide email dated 07.12.2023 of Rs.22,76,442/-.

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16. 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.

17. In the present complaint, 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. Sec 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

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

*.....*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

18. Clause 13 of buyer's agreement provides for handing over of possession and is reproduced below:

*"The Developer based on its present plans and estimates and subject to all just exceptions contemplates **to complete construction of the said Building/ said Apartment within a period of 48 months from the date of execution of this Agreement** unless there shall be delay or the shall be failure due to reasons mentioned in Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure-I or as per the 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"*

***(Emphasis Supplied)***

19. The authority has gone through the possession clause of the agreement. 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 complainant 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



allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

20. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, 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/allottee in case of delay in possession of the unit.
21. **Due date of possession:** The promoter has proposed to hand over the possession of the said unit within a period of 48 months from the date of execution of buyer's agreement. Therefore, the due date of possession comes out to be 09.09.2018.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are 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 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, *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."*

23. 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.
24. 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., 22.05.2025 is @ 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***

*Explanation. —For the purpose of this clause—*

- (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;"*

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26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondents/promoter which is the same as is being granted to the complainant 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 Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13 of the buyer's agreement executed between the parties on 09.09.2014, the possession of the said unit was to be delivered within a period 48 months from the date of execution of buyer's agreement. Therefore, the due date of handing over of possession comes out to be 09.09.2018 (calculated from the date of execution of buyer's agreement i.e., 09.09.2014). However, the respondents have failed to handover possession of the subject apartment to the complainant till the date of this order.
28. Therefore, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondents to offer the possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 09.09.2014 executed between the parties. Further, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Also, during the proceedings dated 22.05.2025, the counsel for the respondent states that the occupation certificate of the project is not yet received. Hence, the project is



to be treated as on-going project and the provisions of the Act shall be applicable equally to the promoter as well as allottees.

29. 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 respondents is established. As such the complainant-allottee shall be paid, by the respondents, interest for every month of delay from due date of possession i.e., 09.09.2018 till the date of valid offer of possession of said unit after obtaining of occupation certificate from the competent authority plus two months or till the date of actual handing over of possession, whichever is earlier, at prescribed rate of interest @ 11.10% per annum, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

**G.IV Direct the respondents to provide the complainant with a copy of the completion certificate of project and occupation certificate.**

**G.V Direct the respondents to handover the possession of the apartment in a time bound manner;**

30. As per Section 11(4)(b) of the Act of 2016, the promoter is under obligation to get the occupancy certificate from the competent authority and make it available to the allottees or association of the allottees and the same is reproduced below:

**11. Functions and duties of promoter: -**

(4) The promoter shall -

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

31. Further as per Section 19(1) of the Act of 2016, it is the right of each and every allottee to obtain any information relating to the sanctioned plans, layout plans or any such other information as provided under the Act of 2016 and the same is reproduced below:

**19. Rights and Duties of allottees.**

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by



*the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.*

32. Therefore, the respondents are directed to get the occupancy certificate from the competent authority and make it available to the allottee. Further, the respondents are directed to handover the physical possession of the allotted unit to the complainant-allottee after receipt of occupancy certificate from the competent authority.

**G.VI Pass an order restraining the respondent from making/raising any illegal demands for money.**

**G.VII Any other relief this Authority deems fit for deciding the present complaint.**

33. The respondents are directed not to charge anything from the complainant which is not the part of agreed payment plan or the builder buyer agreement dated 09.09.2014.

#### **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 respondents are directed to pay delay interest to the complainant against the paid-up amount of Rs.1,89,81,667/- at the prescribed rate i.e., @ 11.10% p.a. for every month of delay from the due date of possession i.e., 09.09.2018 till valid offer of possession of the said unit after obtaining of the occupation certificate from competent authority plus two months or actual handing over of possession, whichever is earlier, as per provisions of Section 18(1) of the Act 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*.

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- ii. 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 respondents/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(z a) of the Act.
  - iii. The respondents are directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days thereafter.
  - iv. The respondents are further directed to get the occupancy certificate from the competent authority and make it available to the allottee and thereafter, handover the physical possession of the allotted unit to the complainant-allottee after receipt of occupancy certificate from the competent authority.
  - v. The respondents shall not charge anything from the complainant-allottee which is not the part of agreed payment plan or the builder buyer agreement dated 09.09.2014.
35. Complaint stands disposed of.
36. File be consigned to registry.

**Dated: 22.05.2025**

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