

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

Complaint no.: 4107 of 2021  
Complaint filed on: 29.10.2021  
Order reserved on: 23.11.2021  
Date of decision: 23.07.2025

**Devindu Buildcon Private Limited**  
through its authorised signatory Vivek  
Chandra

R/o: 137 GF, Suryaniketan, New Delhi-92

**Regd. Office:** Unit No. A-002, INXT City  
Centre, Ground Floor, Block A, Sector 83,  
Vatika India Next, Gurugram- 122012

**Complainant**

**Versus**

**M/s Vatika Limited**

**Regd. Office:** Flat no. 621-A, 6<sup>th</sup> Floor, Devika  
Towers, 6, Nehru Place, New Delhi 110019

**Corporate Office:** Vatika triangle, 7<sup>th</sup> floor,  
Sushant Lok Phase-1, Block-A, Mehrauli-  
Gurugram Road, Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Ms. Shriya Takkar (Advocate)

Mr. Venket Rao (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

#### A. Project and unit related details

2. The particulars of the project, the details of 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	"Vatika India Next", Sector-83, Gurugram
2.	Type of colony	Residential Plotted Colony
3.	Registered/ not registered	Registered 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
4.	Plot no.	D/240/172 (Page 33 of complaint) (Letter sent by respondent dated 09.05.2013 wherein the plot was renumbered and identified as 11/J-5.1/83J/240sq.yds./Sector83) (Page 58 of complaint)
5.	Date of execution of buyer's agreement	01.12.2010 (As per page 31 of complaint)
6.	Possession clause	<b>Clause 10. Handing over possession of the said plot to the allottee</b> <i>"That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of <b>three years from the date of execution of this agreement unless there is a delay</b> or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said plot along with all other charges and</i>



		<p>dues in accordance with the schedule of payments given in annexure ii or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement. The promoter, upon completion of development work in the said township and carving out, demarcation and measurement of plots shall offer in writing to the allottee to take over physical possession of the said plot in terms of this agreement within thirty days from the date of issue of such notice and the promoter shall hand over vacant possession of the said plot to the allottee subject to the allottee having complied with all the terms and conditions of this agreement and is not in default under any of the provisions of this agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the promoter in this regard."</p> <p><b>(Emphasis supplied)</b></p>
7.	Due date of possession	01.12.2013 (Calculated as three years from date of execution of buyer's agreement)
8.	Original Allottees	Mr. Praveen Bahl, Mr. Vipin Bahl and Mr. Arun Bahl – Later endorsed in the name of Mr. Praveen Bahl only. (Page 43 of complaint)
9.	Subsequent allottee	Mr. Babu Lal- 04.10.2012 (Page 43 of complaint)
10.	E-mail dated 22.08.2019 sent by respondent to complainant	<p>"We appreciate your concern and patience. As a customer centric developer, we are working towards delivering the property to our customers within timelines, however there are times when during the development of 700 acres big township, things are beyond the control of developer. However, below mentioned options are available:</p> <p>A) Group housing unit,(3BHK) ready for handover.(Lifestyle Homes, City Homes, Gurgaon 21)</p> <p>B) Or any of the commercial project.</p>



		C) Refund as per builder buyer agreement." (Page 60 and 61 of complaint)
11.	Reply by complainant to said e-mail dated 22.08.2019 in rejoinder dated 24.05.2023	"8. ....Complainant had no issues in getting allotted an alternative plot or even some property available and some of them are detailed herein below- a) Plot in Sector 81, Gurugram b)Unit no. 507 or 509 in Vatika Triangle, MG Road, Gurugram c)Penthouse in Vatika Seven Lamps, Sector 82, Gurugram" (Page 3 of rejoinder)
12.	Basic sales price	Rs. 43,41,382/- (As per SOA dated 15.07.2017 on page 64 of complaint)
13.	Total sale consideration	Rs. 44,11,981/- (As per SOA dated 15.07.2017 on page 64 of complaint)
14.	Paid up amount	Rs. 31,12,449/- (As per SOA dated 15.07.2017 on page 64 of complaint)
15.	Offer of possession	Not offered
16.	Occupation Certificate	Not obtained

**B. Facts of the complaint**

3. The complainant made the following submissions in the complaint:

- a) That in the present case the last date for offering possession of the plot expired on 01.12.2013 and the possession of the plot has not been handed over even today.
- b) That the respondent, in the year 2009 launched a residential township by the name of "Vatika India Next", Sector 83, Gurugram. The said project was launched with much fervour and fanfare and was marketed with boastful claims and propaganda of having world-class amenities and space, which are unheard of in India. The respondent proposed to carve out residential plots of different sizes and dimensions on the part of the land that may be embarked in the said township.

- c) That the original allottees Mr. Praveen Bahl, Mr. Vipin Bahl and Mr. Arun Bahl based on the assurances that the possession of the plot would be handed over within 3 years from the date of booking applied for booking of a plot in the said township and paid an amount of Rs.4,34,138.20/- as booking amount. In due consideration the respondent allotted Plot no. D/240/172 admeasuring 240 sq. yard to the original allottees. It is relevant to mention here that the original allottees opted for the development linked payment plan.
- d) The buyer's agreement was executed between the original allottee and the respondent on 01.12.2010. The terms of the agreement were purely one sided in nature. The total cost of the plot for an area admeasuring 240 sq. yards was Rs.43,77,360/-. As per clause 10 of the buyer's agreement the possession was to be handed over within a period of three years from the date of execution of the agreement.
- e) That the original allottees vide cheques dated 20.01.2011 made the payment of Rs.4,34,136/- and Rs.4,02,408/- towards the demands due within 90 days of booking and commencement of levelling work at site respectively. Thereafter, the respondent raised the demand due on commencement of demarcation work of plot clusters. The said demand was duly paid by the original allottees vide cheques dated 25.01.2011. The original allottees made the payment of Rs.9,00,000/- vide cheque dated 18.03.2011.
- f) That the said plot was endorsed/transferred in the name of Mr. Babul Lal. Thus, Mr. Babu Lal stepped into the shoes of the original allottees.
- g) That the complainant entered into an agreement for sale with Mr. Babu Lal on 04.10.2012. Thus, the plot in question was transferred in the name of the complainant and accordingly, the buyer's agreement and





other documents were endorsed in the name of the complainant. Thus, the complainant had stepped into the shoes of the previous allottee. The complainant paid an amount of Rs.80,898/- vide cheque drawn on Kotak Mahindra Bank towards transfer charges.

- h) That the respondent vide letters dated 26.12.2012 and 29.07.2013 raised the demand due on commencement of sewage and drainage work and commencement of electrification work of the block. The respondent sent a letter dated 09.05.2013 informing the complainant about revision in numbering system.
- i) That the complainant made all the payments as per the terms of the allotment and the buyer's agreement hoping that the respondent will hand over the physical possession of the residential plot in terms of the buyer's agreement, i.e. within three (3) years from the date of execution of the agreement. It is submitted that the buyer's agreement was executed between the parties on 01.12.2010. Thus, the due date of handing over possession of the plot is 01.12.2013.
- j) That the complainant from time to time made various inquiries regarding possession status of the plot. However, the respondent always assured that the construction is being expedited and possession would be handed over soon.
- k) That after a period of 6 years from the due date of possession and after sending numerous reminders regarding possession of the plot, the complainant received an email from the respondent dated 22.08.2019. It is submitted that the complainant being asked to choose any other option is probably because either the respondent had sold the said plot to a third party or the said plot does not actually exist and is merely a ghost allotment.

- l) That thereafter complainant contacted the respondent, to understand the reason of providing the alternate options. However, the concerned representative of the respondent without explaining the reasons, instructed the complainant to opt for one of the alternative options. The complainant refused the offer for alternative units/refund and insisted that the plot booked by him be handed over. The representative of the respondent assured that he will revert back once he consults the management.
- m) That the complainant did not receive any revert from the respondent for about six months. Thereafter the complainant wrote an email to the respondent inquiring about the same and also visited their office. During the visit, the complainants were assured that they are looking into the matter and will get a revert over the email.
- n) After various reminders and follow ups, the complainants received an email dated 14.04.2021 stating that the details of the plot of the complainant has been forwarded to the concerned team and that the information about the same is awaited.
- o) That the complainants have paid a total sum of Rs. 31,12,449/- till date to the respondent.
- p) That when the complainant rigorously followed and confronted the respondent over repeated calls with him about the possession of the said plot and resultant financial losses and damages caused to the complainant owing to the acts of omission and commission of respondent including uncertainty about the possession of the said plot, the respondent in most fraudulent manner in order to further deceive and cheat the complainant, orchestrated a further dishonest tactic and offered the complainant with alternative option against the said plot.

- q) That the above acts/omissions and neglects only show that respondents are good at making false promises and pressurizing its allottees so that all money they receive can be diverted to other projects or misappropriated. Such malpractices, failure to perform the obligations, besides being criminally intended are purposively misconducts of the respondents. That at the time of sale of the plot, respondents had given a rosy picture and had made false promises to the complainant and cheated complainant by not giving possession as agreed. The respondent has miserably failed to comply with its obligations of handing over possession as per the time frame and even after several years.
- r) That the complainant invested its hard-earned money solely for getting possession of the residential plot, possession of which has not been given by the respondent till date.
- s) That the complainants have suffered both pecuniary and non-pecuniary losses and continue to suffer as on date. The respondent was liable to hand over the possession of the plot within 3 years from the date of the execution of the buyer's agreement i.e., by 01.12.2013. Since the respondent failed to hand over the possession within the agreed timeline, the respondent is liable to pay the penalty for the entire delayed period till the actual hand handover of the possession.
- t) That the present complaint is being filed under Section 18 read with Section 31 of the Real Estate (Regulation and Development) Act 2016 seeking possession of the plot along with delayed compensation.
- u) That the cause of action to file the present case is still continuing as the Respondent continue to fail to hand over the possession of the plot as per the terms and conditions of the buyer's agreement. Further the



cause of action also arose when despite repeated follow ups by the complainant and the complainant having performed their contractual obligations, the respondent withheld their contractual obligations. The complainant reserves its right to claim compensation by filing a complaint before the Adjudicating Authority.

**C. Relief sought by the complainants**

4. The complainant herein is seeking the following relief(s):

- I. Direct the respondent to pay delayed possession charges on total amount deposited by the complainant with effect from 01.12.2013 till the date of actual handover of possession.
  - II. Pass an order directing the respondent to allot and handover possession of a similarly situated alternate plot having the same market value equal to that which plot 11/J-5.1/83J/240 sq. yds./Sector83 would have had on the date when the present prayer is allowed.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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:

- a) That at the outset, Praveen Bahl, Vipin Bahl and Arun Bahl learned about the project "Vatika India Next" launched by the respondent. The erstwhile allottees further enquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
- b) That the erstwhile allottees decided to book one unit on 26.08.2009 for a total sale consideration of Rs.44,11,981.98/- and paid an amount of

Rs.4,34,138.20/- as a booking amount. On 01.12.2019, a plot buyer agreement was executed between the erstwhile allottees and the respondent for the said plot bearing no. D/240/172 in the aforesaid project.

- c) It is a matter of fact that time was essence in respect to the allottees obligation for making respective payment and as per the agreement so signed and acknowledged the allottee was bound to make the payment of instalment as and when demanded by the respondent.
- d) Thereafter, the second buyer herein again transferred the unit in the name of the complainant. On 04.10.2012, an agreement to sale was executed between the second buyer and the complainant and the rights over the unit in question were further transferred in the name of the complainant.
- e) That upon receiving the request of the second buyer the rights over the unit were transferred in the name of the complainant and a welcome letter dated 05.12.2012 was issued in favour of the complainant.
- f) That the respondent herein had been running after the erstwhile allottees and then the complainant for the payment of instalment due towards the respective plot in question. In spite being aware of the payment schedule the complainant herein has failed to pay the instalment on time due to which the respondent herein was bound to issue payment reminder dated 14.12.2012, on completion of the drainage and sewage work in the respective block of the complainant.
- g) That the complainant herein is a habitual defaulter and has failed to pay the instalment for the respective plot on time. In spite after reminding the complainant for the payment of the instalment the respondent was again bound to issue payment reminders on 07.08.2013 and

- 06.09.2013, calling upon the complainant to pay the amount of Rs. 4,34,182.3/- on account of the complainant.
- h) That the respondent vide letter dated 09.05.2013, intimated the complainant regarding the change in the number of the said plot in question for the sake of convenience and easy identification. And, also intimated that the number of the plot was changed from D/240/172 to 11/J-5.1/83J/240 Sq.Yrds/Sector 83. That vide same letter the respondent also served two copies of the Addendum and also requested the complainant to return one signed copy of the same for future references.
- i) That since starting the respondent was committed to complete the project and has always tried the level best to adhere with the terms as provided in the agreement and complete the project as per the milestone. However, the construction of the said plot was subject to various obstructions in the mid-way of the constructions which were beyond the control of the respondent.
- j) That as per Clause 10 of the said buyer's agreement so signed and acknowledged the respondent estimated to complete the construction of the said plot within an estimated period of 3 years from the date of execution of the agreement unless there shall be delay or there is failure due to reasons beyond the control of the promoter in accordance with the Schedule of Payment given in Annexure-II or as per the demands raised by the promoter from time to time or any failure on the part of the part of the allottee to abide by any of the terms of the agreement.
- k) That in the agreement, the respondent had inter alia represented that the performance by the respondent of its obligations under the agreement was contingent upon approval of the unit plans of the said

complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/ modifications in the unit plans as may be made from time to time by the respondent and approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.

- l) Subsequent to the booking and the signing of the agreement, the respondent was facing umpteen roadblocks in construction and development works in projects in its licensed land comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the plotted /Group Housing/Commercial/Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
- m) That the progress of construction of the project was also affected due to:
- i. Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent.
  - ii. The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45(1) of GMDA Act, 2017 transferred the properties falling within the ambit of NH 352W acquired by HUDA to GMDA for development and construction of NH 352W.
  - iii. The GMDA vide its letter dated 08.09.2020 handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is

showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.

- iv. Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the acquisition and construction process, respondent no. 1 had already laid down the services according to the earlier sector road levels, however due to upliftment caused by HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.
  - v. Re-routing of High-tension lines passing through the lands resulting in inevitable change in the layout plans.
  - n) The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as the respondent was constrained to shut down all construction activities for the sake of workers' safety, most of the labor workforce migrated back to their villages and home states, leaving the respondent in a state to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower.
  - o) That on 22.08.2019, the respondent also requested the complainant to visit the office for further discussions and offered alternative units available with the respondent and also offered to refund the entire amount paid by the complainant but the same was left unanswered.
7. 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 these undisputed documents and submissions made by the parties.



**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

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

**E. II. Subject-matter jurisdiction**

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

**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.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act

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 respondent:**

**F.I Objections regarding force majeure.**

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

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

13. 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."*

14. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 01.12.2013. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 01.12.2013 i.e., much before 25.03.2020. Thus, the due date for handing over of possession comes out to be 01.12.2013.

**G. Findings on the relief sought by the complainants**

- G.I Direct the respondent to pay delayed possession charges on total amount deposited by the complainant with effect from 01.12.2013 till the date of actual handover of possession.
- G.II Pass an order directing the respondent to allot and handover possession of a similarly situated alternate plot having the same market value equal to that which plot 11/J-5.1/83J/240 sq. yds./Sector83 would have had on the date when the present prayer is allowed.
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 complaint, the original allottees i.e., Mr. Praveen Bahl, Mr. Vipin Bahl and Mr. Arun Bahl were allotted a plot no. D/240/172 vide buyer's agreement dated 01.12.2010. Sometime later, the said plot was transferred in the name of Mr. Praveen Bahl only. Thereafter, Mr. Praveen Bahl sold the unit to Mr. Babu Lal (subsequent allottee) on 04.10.2012. The subsequent allottee sold the subject unit to the second subsequent allottee being the complainant and the same was endorsed in favour of the

complainant vide endorsement dated 04.10.2012. Therefore, the complainant stepped into the shoes of original allottee on 04.10.2012. Further, vide letter dated 09.05.2013, the said plot allotted to the complainant was renumbered and identified as 11/J-501/83J/240sq.yds./Sector83.

17. The complainant herein 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 10 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

***Clause 10. Handing over possession of the said plot to the allottee***

*"That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of **three years from the date of execution of this agreement unless there is a delay** or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure ii or as per the demands raised by the promoter from time to time or any failure on the part of the allottee to abide by any of the terms or conditions of this Agreement. The promoter, upon completion of development work in the said township and carving out, demarcation and measurement of plots shall offer in writing to the allottee to take over physical possession of the said plot in terms of this agreement within thirty days from the date of issue of such notice and the promoter shall hand over vacant*



*possession of the said plot to the allottee subject to the allottee having complied with all the terms and conditions of this agreement and is not in default under any of the provisions of this agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the promoter in this regard."*

**(Emphasis supplied)**

19. 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.
20. 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.

21. **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's agreement. In the present complaint, the buyer's agreement was executed on 01.12.2010. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 01.12.2013.
22. Perusal of case file reveals that vide e-mail dated 22.08.2019, the respondent offered certain alternative options as development of the project in question stood incomplete for reasons beyond the control of the developer and even offered for refund of the paid-up amount. E-mail dated 22.08.2019 is reiterated herein for ready reference:

*"We appreciate your concern and patience. As a customer centric developer, we are working towards delivering the property to our customers within timelines, however there are times when during the development of 700 acres big township, things are beyond the control of developer.*

*However, below mentioned options are available:*

- A) Group housing unit,(3BHK) ready for handover.(Lifestyle Homes, City Homes, Gurgaon 21)*
- B) Or any of the commercial project.*
- C) Refund as per builder buyer agreement."*

23. On the other hand, the complainant by way of application dated 24.05.2023 asked the respondent to instead provide for one out of certain alternative options listed by the complainant as under:

*"8. ....Complainant had no issues in getting allotted an alternative plot or even some property available and some of them are detailed herein below-*

- a) Plot in Sector 81, Gurugram*
- b)Unit no. 507 or 509 in Vatika Triangle, MG Road*
- c)Penthouse in Vatika Seven Lamps, Sector 82, Gurugram"*

24. It is noteworthy that the respondent despite expressing readiness to offer an alternative unit to the complainant in its reply, has failed to offer the

same. In light of these observations, the respondent is directed to offer an alternative unit to the complainant 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.

25. 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(z) 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.
26. **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, *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.*

27. The legislature in its wisdom in the subordinate legislation under the 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.

28. 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., 23.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

29. 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;"***

30. 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.

31. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 builder buyer agreement. By virtue of clause 10 of the buyer's agreement executed between the parties on 01.12.2010, the possession of the said unit was to be delivered within a period of 3 years from the date of execution of the said agreement. Therefore, the due date of handing over possession comes out to be 01.12.2013. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

32. The complainants are also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 01.12.2010 executed between the parties.
33. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
34. Thus, the respondent is liable to handover the possession of the alternative unit to the complainant as per specifications of original BBA dated 01.12.2010 at the same rate at which the unit was earlier purchased and on a similar location after obtaining completion 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 that the allottee booked the

unit in the project way back in 2010 and paid the demanded amount in a hope to get the possession of allotted unit.

35. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10 % p.a. w.e.f. due date of possession i.e., 01.12.2013 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.

**H. Directions of the authority.**

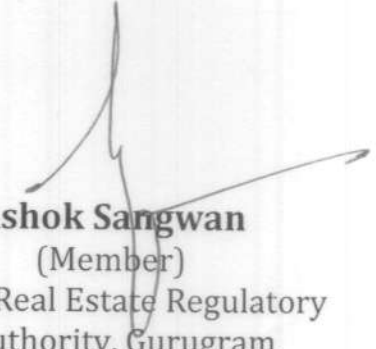
36. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
- I. The respondent is liable to handover the possession of the allotted plot or if the same is not available, an alternative and similar situated plot to the complainant as per specifications of original BBA dated 01.12.2010 at the same rate at which the plot was earlier purchased after obtaining completion 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 the interest at the prescribed rate i.e. 11.10 % p.a. w.e.f. due date of possession i.e., 01.12.2013 till offer of possession 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, *ibid*.

- III. 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 10<sup>th</sup> of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
  - IV. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
  - V. 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 complainant-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 delay possession charges as per Section 2(z) of the Act.
37. Complaint stands disposed of.
  38. File be consigned to registry.

**Dated: 23.07.2025**



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