

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

Complaint no.	252 of 2024
Date of filing complaint	09.02.2024
First date of hearing	27.03.2024
Order pronounced on	14.05.2025

1. Mrs. Ankita Shrivastav w/o Mr. Varun Arora
2. Mr. Varun Arora s/o Late Lachhman Arora
Both Resident of: B-52, Farihills Apartments,
GH 16, Near GBN School, Sector- 21D,
Faridabad, Haryana- 121001

Complainant

Versus

M/s Vatika Limited

Regd. office: Flat no. 621A, 6th Floor, Devika
Towers, 6, Nehru Place, New Delhi - 110019

Corporate office: 7th Floor, Vatika Triangle,
Block A, Sushant Lok, Gurgaon-1220022

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Nishant Jain (Advocate)

Complainant

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

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details:

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Xpressions by Vatika", Sector- 88A and 88B, Village Harsaru, Gurugram
2.	Nature of Project	Independent Residential Floor
3.	RERA Registered or not registered	271 of 2017 dated 09.10.2017 valid upto 08.10.2022
4.	DTCP License and validity status	94 of 2013 dated 31.10.2013 valid upto 30.10.2019 11 of 2015 dated 01.10.2015 valid upto 30.09.2020
5.	Date of allotment	20.04.2016 (Page 37 of complaint)
6.	Date of execution of builder buyer agreement	05.08.2016 (Page 41 of complaint)
7.	Unit no.	HSG-028-Sector-88B, Plot No-35, ST. H-30, Level-2 (Page 43 of complaint)
8.	Unit area	1700 sq. ft. Super area (Page 43 of complaint)
9.	Possession Clause	Clause 13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR "The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said residential floor within a period of 48 (Forty Eight) months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein or due to failure of the Allottee(s) to pay in time price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure-1 or as per demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement." (Page 52 of complaint)
10.	Due date of possession	05.02.2021 (Calculated to be 48 months from the date of



		execution of builder buyer agreement dated 05.08.2016 + Grace period of 6 months in as per HARERA notification no. 9/3-2020 dated 26.05.2020, for the projects having completion/due date on or after 25.03.2020)
11.	Basic Sales Price	Rs. 1,01,39,097/- (As per Account statement dated 20.02.2024 at page 85 of reply)
12.	Total sale consideration	Rs. 1,23,01,253.50/- (As per Account statement dated 20.02.2024 at page 85 of reply)
13.	Amount paid by the complainant	Rs. 21,15,283.25/- (As per Account statement dated 20.02.2024 at page 85 of reply)
14.	Refund request by complainants	15.11.2021 (Page 83 of complaint)
15.	E-mail dated 21.09.2022 sent by complainants to respondent	<p><i>".....I have requested the same 4 times before in my correspondences in person as well as over email, telephone and courier and I am requesting it for the 5th time. By denying the same, you are in complete violation of RERA ACT rules 2017/2019. I would like to request you for the 5th time that I'm looking for my rightful refund (1& 2 mentioned above) and by NOT agreeing for the same, you are denying my right and delaying my refund amount.</i></p> <p><i>Requesting your confirmation on the same with.</i></p> <ol style="list-style-type: none"><i>1. Total refund amount payable from your side (principal +interest) &</i><i>2. date confirmation by when I can collect the cheque for the same....."</i><p>(Page 96 of complaint)</p>
16.	E-mail dated 10.10.2022 sent by respondent to complainants	<p><i>"With reference to your letter, we would like to inform you that we have already offered you other units in the same project but the same were denied by you and we can offer you refund without interest and without deductions. Further, we are again offering below mentioned units request you to confirm asap:-</i></p> <ol style="list-style-type: none"><i>1- Xpressions By Vatika Sector-88B</i><i>a- Plot No-26, ST. H-23, Level-1, 2BR+ 1350 Sq. Ft</i><i>b- b- Plot No-26, ST. H-23, Level-2, 2BR+ 1350 Sq. Ft</i> <p><i>For complete details of project kindly visit the below mentioned link:-</i></p> <p><i>https://www.vatikacollections.com/homes-</i></p>

		<p><i>living-ready/gurgaon/xpressions/ 2- Gurgaon 21, Sector-83 a- D-003, Gurgaon 21, 3BHK, 1735 Sq. Ft b- E2-1801, Gurgaon 21, 2BHK + 1435 Sq. Ft For complete details of project kindly visit the below mentioned link:- https://www.vatikacollections.com/homes-living-ready/gurgaon/gurgaon-21/ 3- Project: Seven Elements Sector 89A a- Tower A4, 1903, 3BHK +, Area: 2130 Sq. Ft b- Tower A4, 1501, 3BHK +, Area: 2085 Sq. Ft.” (Page 97 of complaint)</i></p>
17.	E-mail dated 16.01.2023 sent by complainants to respondent	<p><i>“.....I have requested the same 4 times before in my correspondences in person as well as over email, telephone and courier and I am requesting it for the 5th time. By denying the same, you are in complete violation of RERA ACT rules 2017/2019. I would like to request you for the 5th time that I'm looking for my rightful refund (1& 2 mentioned above) and by NOT agreeing for the same, you are denying my right and delaying my refund amount. Requesting your confirmation on the same with. 1. Total refund amount payable from your side (principal +interest) & 2. date confirmation by when I can collect the cheque for the same.....” (Page 98 of complaint)</i></p>

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That the respondent advertised about a real estate project by the name of “Xpressions” for housing and proposed to construct several flats through advertisements, brochures and leading newspapers.
- b) That after a period of more than 4 months, the respondent issued an allotment letter dated 20.04.2016 in favour of the complainants mentioning the details of the unit as unit no. 35, Street no. H-30, Floor Level 2, Sector 88 B, super area 1700 sq. ft., with preferential location of corner and green facing for a total sale price of Rs. 1,14,59,097/-.
- c) That on 01.05.2016, the Real Estate (Regulation and Development) Act, 2016 came into force and defined the functions of all the promoters. However, the



respondent paid scant regard to the law laid down in the Act and demanded another instalment from the complainants without first entering into a written agreement. In total as on 14.06.2016 an amount of Rs. 21,02,923.42 (more than 10% of the total sale consideration) was taken by the respondent from the complainants as the consideration for the said unit. Despite the timely payments, the respondent turned a deaf year to the complainants' requests to enter into a written agreement.

- d) That after several requests of the complainants, a builder buyer agreement dated 05.08.2016 was executed between the parties at the rate of Rs. 5964.18 per sq. ft., parking charges and two preferential location charges. Further, as per clause 13 of the agreement dated 05.08.2016, the respondent was under contractual obligation to hand over the possession of the residential floor to the complainants within a period of 48 months from the date of execution of the agreement. Accordingly, the due date of possession of the said unit was 05.08.2020.
- e) That the complainants had opted for a construction linked payment plan and had paid the dues as and when demanded by the respondent. The next demand was supposed to be demanded by the respondent on "completion of the super structure". However, the respondent after the initial tranches of payments stopped providing any update of the project to the complainants. Consequently, the complainants sent an email dated 31.08.2017 to the respondent inquiring about the status of the next demand and the construction status of the complainants' unit in particular.
- f) That the respondent in response to the complainants email responded on 31.08.2017 stating as under:

"The construction at site is ongoing and is being done in a phased manner, the next demand shall be tentatively due by the 3rd quarter of 2018, and we shall intimate you in advance. The amount due shall be Rs.2,027,819.50 plus taxes."

- g) That the complainants enquired the respondent as to the status of the project and its allotted unit in particular on 02.07.2018. Further, the complainants on 15.11.2021 wrote to the Managing Director of the respondent, requesting to refund their hard-earned money along with the interest @ 18% p.a. being charged by the respondent in the agreement and marked the copy of the said letter to the Authority but the respondent paid scant regard to the same. However, the respondent did not reply to the enquiries of the complainants.
- h) The respondent is under contractual obligation to complete the construction of the said unit and handover possession of the said unit to the complainants. The complainants even visited the office of the respondent on 19.01.2022 to know about the status of their unit or that of their money but the respondent casually told the complainants that the respondent is not able to deliver unit on time due to "unforeseen circumstances" and trying its best to keep up the pace to resume normalcy. Further, the respondent in its email dated 20.01.2022 offered the complainant alternate options of unit, however, these options were much smaller in size and non-PLC. However, the unit allotted to the complainants was a double PLC unit i.e. corner unit and garden facing. The respondent gave arbitrary option to choose from acting contrary to the fact that the complainants had purchased the unit with the particular specifications and paid a premium of Rs. 10,00,000/- for the said unit, which is also mentioned in the allotment letter dated 20.04.2016.
- i) That the respondent instead of responding to the queries of the complainants in email dated 24.01.2022 sent an email dated 04.02.2022 stating that the project was delayed rather than giving the reasons for the said delay.
- j) That the complainants visited the site of the project and found that the construction (even foundation) has not started for site of the said unit till

date. The complainants visited the official website of the respondent and to their utter surprise, the plans of the project "Xpressions" had changed and the new project plan did not even include the H30 street (Unit: Street H30, plot no. 35), i.e. the location of the said unit. The change in the project plans was never intimated nor informed to the complainants despite repeated enquiry of complainants through emails and correspondences in person as well.

- k) That the complainants again wrote an email dated 28.02.2022 to the respondent stating about their visit to the site. The respondent has not explained its unilateral decision of deviation in the project plans. The respondent unilaterally, illegally and arbitrarily changed the project plans and removed the street H30 (location of said unit) from the revised project plan. The respondent under the garb of Covid-19 has committed such illegal, arbitrary, unethical and fraudulent actions which is clearly an excuse to shy away from its promises to the innocent home buyers such as the complainants.
- l) That in order to create false evidence, the respondent offered to return the amount without any interest and without any deductions but has not returned the hard-earned money of the complainants till date. The complainants during this period sent correspondences to escalate the issue to the senior management of respondent detailed above in list of dates. However, they received no response.
- m) That the complainants vide email dated 21.09.2022 tried to amicably settle the issue. The complainants specifically requested the respondent to confirm the total amount of refund and the date on which the refund amount cheque can be collected but the respondent have failed to do the same till date. The act of the respondent clearly shows that the respondent was never interested in refunding the money of the complainants.

n) That the respondent vide its email dated 10.10.2022 once again denied the refund to the complainants along with interest and instead gave 3 non-viable alternate options which was an immoral tactic to forcefully sell its unsold inventory:

- a. Respondent's Project - a 2BR and even smaller unit than offered earlier by the Respondent.
- b. Gurgaon 21, Sector - 83 - A location for which the Complainants never signed up for.
- c. Seven Elements Sector 89A - A location for which the Complainants never signed up for.

The respondent intentionally gave such options to the complainants which were an extreme compromise from the unit purchased by the complainants.

o) That the complainants wrote another email dated 16.01.2023 and requested the respondent to provide "legal logical rationale to deny the rights of the complainants to get refund along with interest" and inquired about the timeline for the payments. Despite several attempts of the complainants of amicable settlement the dispute, the respondent is least interested in working ethically or as per law. The complainants being left with no other alternative, are forced to file the present complaint for getting possession of their unit along with delayed possession charges.

p) That the cause of action for filing of the present complaint arose when the respondent failed to hand over possession of the said unit within the time prescribed in the buyer's agreement. The cause of action further arose when the respondent assured to complete the construction in a phased manner and hand over the possession but failed to do so. The cause of action further arose when the complainants came to know about the revised project plans. The cause of action is continuous one and still subsisting, hence the present complaint.

D. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay delayed possession charges to the complainants for not delivering the possession in time of the unit bearing

- no. 35, Street no. H-30, Floor Level 2, Sector 88B, super area 1700 sq. ft. with preferential location of corner and green facing.
- II. Direct the respondent to give possession of unit bearing no. 35, Street no. H-30, Floor Level 2, Sector 88B, super area 1700 sq. ft. with preferential location of corner and green facing allotted to the complainants and in case possession of the said unit cannot be given for the reasons to be given in writing by the respondent, an alternate unit in the same project, preferentially located, same area and same rates be allotted to the complainants and possession of the same be delivered to the complainants.
- III. Direct the respondent not to charge additional amounts that were not part of the original builder buyer agreement dated 05.08.2016.
- IV. Direct the respondent to be bound by the terms and conditions of the original builder buyer agreement dated 05.08.2016.
- V. Direct the respondent to pay cost of present litigation amounting to Rs.1,00,000/-.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

E. Reply by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -
- a) That from the conjoint reading of Rule 8 and Rule 15 Form and Annexure 'A' of the Haryana RERA Rules, 2017, it is evident that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure 'A', which is required to be executed inter se the promoter and the allottee.
- b) That it is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainants.
- c) That adjudication of the complaint for interest and delay possession charges, as provided under Sections 12, 14, 18 and 19 of 2016 Act, if any, must be in

reference to the agreement for sale executed in terms of the 2016 Act and the Haryana Rules, 2017 and no other agreement. Thus, no relief as claimed can be granted to the complainants.

- d) That it has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the buyer's agreement and not being in default under the provisions of the said agreement and having complied with all provisions, formalities, documentation, etc. the developer contemplates to complete the construction of the said residential floor unit within a period of 48 months from the date of execution of this agreement, unless there shall be delay due to force majeure events and failure of the allottee(s) to pay in time the price of the said residential floor. In terms of clause 16 of the agreement, if delay is due to reasons beyond control of the respondent, then the developer is entitled to extension of time for delivery of possession.
- e) That in the present case, there has been a delay due to various reasons which were beyond the control of the respondent and same are enumerated below: -
- i. Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Initially HUDA has to develop the major sector roads for connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana Government had transferred the land falling in sector 87, 88 and other sectors to GMDA for constructing new highway 352 W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 metres. The respondent has already laid down its facilities before such upliftment and is constrained to

- uplift the project land and re-align the facilities. Thereafter GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W.
- ii. The GMDA vide its letter dated 08.09.2020 handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
 - iii. Further, initially, when HUDA acquired sector road and started construction, an area by 4 to 5 metres was uplifted. Before the start of the acquisition and construction process, respondent no. 1 already laid down services according to the earlier sector road levels, however due to upliftment caused by HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of the construction of project but also attract costing to the respondent.
 - iv. Re-routing of High-Tension lines passing through lands resulting in inevitable change in the layout plans and cause unnecessary delay in the project.
 - v. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter the deterioration in Air Quality in the Delhi-NCR region, especially during the winter months. Among these measures were the bans imposed on construction activities for a total period of 70 days between November 2016 to December 2019.
 - vi. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
 - vii. Disruptions caused by unusually heavy rains in Gurugram every year.
 - viii. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent

as the respondent was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower.

- f) Further, it had been also agreed and accepted that in case the delay is due to the force majeure then the developer shall not be held responsible for delay in delivery of the possession in terms of the clause 37 of the buyer's agreement. Thus, the respondent can only be held liable to refund the amount.
- g) That respondent offered various alternate unit to the complainants, however, the same were never approved by the complainants. The complainants did not accept the options offered by respondent and sought refund from respondent. Thus, the complainants after having withdrawn from the project now cannot seek possession of the unit and delay possession charges.
7. All other averments made by the complainants were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

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

authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

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

Section 11.

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the objections raised by the respondent:

G.I Objections regarding force majeure.

13. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-acquisition of sector roads by HUDA, handing over of possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W by GMDA, etc. The plea of the respondent regarding various orders of the NGT and other authorities

advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

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

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

15. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 05.08.2020. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 05.08.2020 i.e., before 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 05.02.2021.

H. Findings on the relief sought by the complainants.

- H.I Direct the respondent to pay delayed possession charges to the complainants for not delivering the possession in time of the unit bearing no. 35, Street no. H-30, Floor Level 2, Sector 88B, super area 1700 sq. ft. with preferential location of corner and green facing.
- H.II Direct the respondent to give possession of unit bearing no. 35, Street no. H-30, Floor Level 2, Sector 88B, super area 1700 sq. ft. with preferential location of corner and green facing allotted to the complainants and in case possession of the said unit cannot be given for the reasons to be given in writing by the respondent, an alternate unit in the same project, preferentially located, same area and same rates be allotted to the complainants and possession of the same be delivered to the complainants.
- H.III Direct the respondent not to charge additional amounts that were not part of the original builder buyer agreement dated 05.08.2016.
- H.IV Direct the respondent to be bound by the terms and conditions of the original builder buyer agreement dated 05.08.2016.
16. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.
17. The complainants were allotted a unit no. HSG-028-Sector-88B, Plot No-35, ST. H-30, Level-2 in the respondent's project at total sale consideration of Rs.1,23,01,253.50/-. A buyer's agreement was executed between the parties on 05.08.2016. The possession of the unit was to be offered within a period of 48 months from the date of execution of the agreement i.e., by 05.08.2020. However, as per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. Therefore, the due date for handing over of possession comes out to be 05.02.2021. The complainants paid an amount of Rs.21,15,283.25/- against the total sale consideration of Rs.1,23,01,253.50/- and are ready and willing to retain the allotted unit in question.
18. The complainants herein intend to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

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

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

19. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

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

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

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

20. 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.

21. 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., 14.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

22. 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;"

23. 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.

24. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the buyer's agreement executed between the parties on 23.03.2016, the possession of the said unit was to be delivered within a period 4 years from the date of execution of buyer's agreement, subject to grace period of six months in lieu of Covid-19. Therefore, the due date of handing over of possession comes out to be 05.02.2021.

25. There is failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is

established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 05.02.2021 till the date of offer of possession plus two months or actual handing over of possession, whichever is earlier.

26. It is important to note that the respondent shall not charge anything from the complainants which is not part of buyer's agreement executed between the parties. 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 complainants. Further, the possession of the plot shall be handed over to the complainants after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

H.V Direct the respondent to pay litigation costs.

27. The complainants are also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR(c),357* has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

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):

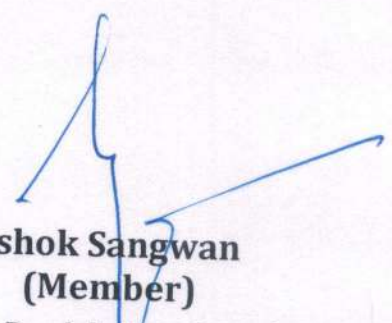
- I. The respondent is directed pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 05.02.2021 till offer of possession plus two months or actual handover of possession, whichever is earlier, as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. In case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants. Further, the possession of the plot shall be handed over to the complainants after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottees by the promoter, in case of default, shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall be charged from complainant-allottees for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

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

29. Complaint stands disposed of.

30. File be consigned to the registry.

Dated: 14.05.2025


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram



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