

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

Complaint no.: 2067 of 2024
Date of filing: 15.05.2024
Date of first hearing: 29.05.2024
Date of decision: 21.05.2025

1. Manish Kumar Sharma
2. Priyam Sharma
through Special Power of Attorney Sh.
Ghanshyam Sharma
Both R/o: - Flat no. 1101, toer B, Bestech PARK
View Ananda, Sector 81, Gurugram, Haryana-
122004

Complainants

Versus

M/s Vatika Ltd.
Office address: Unit no.-A-002, INXT City
Centre, Ground Floor, Block-A, Sector-83, Vatika
India Next, Gurugram, Haryana - 122012

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Ashish Budhiraja (Advocate)
Mr. Venket Rao (Advocate)

Complainants
Respondent

ORDER

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

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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 and location of the project	"Aspiration" by Vatika India Next 2 at Sector-88B, Gurugram.
2.	Project area	19.70 Acres
3.	Nature of Project	Affordable residential plotted colony under DDJAY
4.	DTCP license no. and validity status	1. 13 of 2022 dated 24.02.2022 valid upto 23.02.2027 2. 152 of 2022 dated 29.09.2022 valid upto 28.09.2027
5.	Name of Licensee	M/s Vatika Ltd., Aplin Developers Pvt. Ltd., Haldis Developers Pvt. Ltd. & 3 Others.
6.	Rera registered/ not registered and validity status	Registered (for Affordable residential plotted colony under DDJAY) Vide registration no. 130 of 2022 dated 23.12.2022 valid upto 30.06.2024
7.	Unit No.	Plot no. 22, Street A-4 PLC-Rear Hugging Park (Allotment letter at page 33 of complaint)
8.	Unit area admeasuring	131 sq. yds. (Allotment letter at page 33 of complaint)
9.	Expression of Interest	13.03.2022 (page 21 of reply)
10.	Allotment letter	08.02.2023 (page 33 of complaint)
11.	Date of buyer agreement	07.08.2023 (page 36 of complaint)
12.	Possession clause	7.1 Schedule for possession of the said Plot for Residential/Commercial usage- <i>The Promoter assures to handover possession of the Plot by 31.03.2024 as per RERA Registration certificate or any extension thereof unless there is a delay due to "force majeure" events, Court/Tribunal/NGT orders,</i>

		government policy/guidelines, decisions affecting the regular development of the real estate project....." (Emphasis supplied) (BBA at page 50 of complaint)
13.	Due date of possession	31.03.2024 (As per clause 7.1 of the BBA executed between the parties on 07.08.2023)
14.	Total Sale Consideration	Rs.98,57,750/- (As per clause 1.2 of BBA at page 45 of complaint and SOA dated 20.05.2024 at page 25 of reply)
15.	Amount paid by complainant	Rs.83,86,762/- (As per SOA dated 20.05.2024 at page 25 of reply)
16.	Occupation certificate	Not obtained
17.	Reminder for Intimation of possession	31.03.2023- Mentioned reference letter dated 07.12.2022 (Intimation of possession letter) Final opportunity letter dated 22.01.2024 to pay outstanding dues of Rs.39,38,250/- (Copy not annexed)
18.	Final Reminder for Intimation of possession	22.01.2024 (page 87 of complaint)
19.	Notice for Termination (Non-payment of outstanding dues)	15.04.2024 (page 90 of complaint)
20.	E-mail by complainants to respondent- Raising concern over cancellation	17.04.2024 (page 96 of complaint)
21.	E-mail by respondent to complainants to pay Rs.10,00,000/- and then pay balance amount by 20.05.2024 otherwise cancellation	22.04.2024 (page 96 of complaint)
22.	E-mail by respondent to complainants to pay Rs.23,08,207/- or unit will be cancelled.	06.05.2024 (page 95 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- i. That being lured the representations and assurances made by the respondent, the complainants decided to put their life savings and hard earnings in the said project. The complainants booked the plot and paid an amount of Rs. 9,10,000/- as booking amount in the month of April 2022 for the plot no. 22, street A4 admeasuring 131 sq yds and the same was acknowledged by the respondent. The plot was booked for the total sale consideration of Rs. 98,57,750/-.
- ii. That the respondent insisted the complainants to make the payment for the further instalments to give the discount in future demands. The total amount paid by the complainants was Rs. 33,73,212/-. Thus, the complainants paid 35% amount of the total unit at the time of booking.
- iii. That respondent issued the allotment letter to the complainants dated 08.02.2023. By this time complainants have paid the sum of Rs. 59,43,100/- out of the total consideration of Rs. 98,57,750/-.
- iv. That the complainant approached the respondent several times for the execution of the builder buyer agreement. The complainants have been visiting the respondents' office as well as construction site and pursuing progress of the projects from month on month, however, there has been no progress. The complainants have also been calling on the landline of the Gurugram office, where several persons kept on answering and when asked about the status of allotment, the representatives of the respondent continued to mislead and misguide the complainants and kept on assuring that the BBA for the plot will be done immediately when the approval of the project and RERA Registration Certificate comes through.
- v. That the respondent sent a letter dated 31.03.2023 to the complainant with the subject "Reminder for intimation of possession for the plot" and mentioned a reference of letter dated 07.12.2022 which was never received by the complainants. That after the efforts were made by the complainants, respondent executed the builder buyer agreement for the plot no. 22, Street

A4, Aspiration, Vatika INXT 2, Sector-88B, Gurugram, Haryana. It is pertinent to mention here that when the BBA was executed 07.08.2023 complainant had paid 60% of the amount to the respondent. That as per the clause 7.1 of the BBA due date of possession to handover the plot is 31.03.2024.

- vi. That as per Section 13 (1) of the RERA, 2016, "*A promotor shall not accept a sum more than ten per cent of the cost of the property/apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force*". The respondent is in complete violation of the provision mentioned above. An amount of Rs. 59,43,100/- was paid by the complainant out of the total amount of Rs. 98,57,750/- which is the cost of the plot.
- vii. That the registration of the said project by RERA has also been granted to the respondent on 23.12.2022, by HRERA Gurugram, however, as per the letter dated 31.03.2023, the possession was offered prior to the RERA registration and prior to execution of the BBA which is bad in the eyes of law and against the provisions of the RERA Act and Rules. The respondent in no way could demand the payment from the complainants more than 10% before the signing of the BBA. This is the case where the respondent has executed the BBA after getting the 65% of the payment and offered the possession without being obtaining the RERA registration of the project.
- viii. That the complainants applied for the loan with IDBI bank for the further payment towards the said property. That the said loan was sanctioned by the bank of the complainants. That complainants wrote an email to the respondent dated 01.07.2023 for enquiring the further process and handover the document for the disbursement of the loan.



- ix. That the respondent sent a final opportunity letter dated 22.01.2024 for the payment of Rs. 39,38,250/- as the final instalment due towards the said plot. That by this time the project was not completed. The due date of possession as per BBA did not come i.e. 31.03.2024. The occupation certificate for the project has not been received by the respondent.
- x. That the complainants requested the representatives of the respondent to handover the OC and other documents as they have invested their hard earned money. The complainants further paid Rs. 5,00,000/- on 24.03.2024 and Rs. 10,00,000/- in the month of April, 2024 to the respondent. That a handsome amount of Rs. 74,53,100/- for the plot has been paid by the complainants to the respondent. That respondent also issued a letter dated 15.04.2024 for cancellation of builder buyer agreement cum refund letter.
- xi. That the cancellation is been done after receiving 85% of the total amount of the said plot. Only an amount of Rs. 24 lakhs is left to be paid by the complainant and which the complainants are ready to pay once occupation certificate received from the department is submitted in the court.
- xii. That subsequent to the receiving of the email for the cancellation on 17.04.2024, complainants replied to email raising the concern over the illegal and arbitrary action being taken after receipt of 75% payment of the plot. After the negotiations being done with the representatives of the respondent, respondent sent an email dated 22.04.2024 to hold the cancellation of the unit subject to the payment of Rs. 10 lakhs and balance payment by 20.05.2024. That complainants made the payment of Rs 10 lakhs in fear of getting their plot cancelled again and money will be forfeited. It is pertinent to mention here that respondent without providing the completion has collected 85% of the payment from the complainants. The respondent again on 06.05.2024 sent an email regarding the payment of Rs. 23,08,207/- or the plot will be cancelled again. It is pertinent to mention

- here that the respondent is building pressure upon the complainants to make the payment and collecting the whole payment against the plot.
- xiii. That the respondent has utilized the deposited amount of complainants for sufficient time and now the respondent is liable to pay delayed possession charges @ 18% per annum. The complainants have also suffered mental tension and harassment due to callous attitude of respondent for which the complainants reserves his right to claim Rs. 10,00,000/- from the respondent before the appropriate Forum.
- xiv. That the cause of action for filing of the present complaint arose when the respondent issued the receipt for plot admeasuring 131sq. yds . The cause of action subsequently arose on multiple occasions when the complainants and respondent executed builder buyer agreement dated 07.08.2023 and complete the construction on time. The cause of action arose when the respondent failed to deliver possession of the plot and failed to pay delayed possession charges to the complainants. The cause of action is continuous one and still subsisting, hence the present complaint.

C. Relief sought by the complainant: -

4. The complainants have sought following relief(s)
- I. Direct the respondent to restore the allotment of unit no. 22, street A4, in Aspiration, Vatika India Next 2, Sector 88B, Gurugram, Haryana vide agreement to sell dated 07.08.2023 to the complainants.
 - II. Direct the respondent to withdraw cancellation letter/ e-mail dated 15.04.2024 for unit no. 22, street A4, in Aspiration, Vatika India Next 2, Sector 88B, Gurugram, Haryana.
 - III. Direct the respondent to accept the payment for the said unit from the complainant.
 - IV. Direct the respondent to revive builder buyer agreement dated 07.08.2023 and accept the amount of balance consideration pending till date.
 - V. Direct the respondent to pay delayed possession charges @ 18% per annum (compoundable) from the date of payment made by the complainant.
 - VI. Direct the respondent to complete the construction as per the approved layout plan and provide all the amenities as promised in its brochure and to the complainants.

VII. Direct the respondent to handover the possession of the unit and register the conveyance deed.

VIII. Direct the respondent to pay Rs.1,00,000/- as litigation costs.

5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent: -

6. The respondent contested the complaint on the following grounds: -

- i. That the Authority had initiated suo motu proceedings bearing no. 572 of 2023 titled as 'Harera Gurugram Through Prachi Singh Vs. Vatika Limited', in the project 'Aspiration'. In the said suo motu proceedings, the Authority vide order dated 09.10.2023 has imposed penalty for contravention of Section 3, 4 and 7 of the Real Estate (Regulation and Development) Act, 2016, which was duly complied by the respondent. Further, all the issues pertaining to the project "Aspiration" had already been adjudicated by the Authority. Therefore, the respondent herein can only refund the amount paid by the complainants as the booking of the complainants was before such proceedings and was invalid.
- ii. That in July, 2021, the complainants learned about the residential colony under DDJAY, to be launched by the respondent, titled as "ASPIRATION" situated at Sector 88B, Gurugram-122505, and visited the office of the respondent to know the details of the said project. The complainants have further inquired about the specifications and veracity of the project and were satisfied with every proposal deemed necessary for the development.
- iii. That the complainants, being satisfied with the specifications of the project, were enthusiastic and eager to book the unit. The respondent clarified that the project is in its launching phase and respondent will accept any payments after obtaining the license as per the DDJAY scheme. The respondent also stated that the layout is subject to change as per the requirements of the competent authority/developer.

- iv. Further, the respondent offered the complainants with alternative residential projects, wherein the respondent were offering similar kinds of amenities and facilities. Despite that the complainants still insisted on booking a unit at this project and gave a cheque amounting to Rs. 9,10,000/- in the month of April, 2022 for unit no. 22, street A4 admeasuring 131 sq. yards, for further registration.
- v. That on 08.02.2023, the respondent issued an allotment letter to the complainants within stipulated time with respect to the said unit, with a further noting that time is the essence with respect to the payment of sums due and any default shall entail penal interest and may further result in cancellation of the booking and forfeiture of the earnest money.
- vi. That on 13.03.2022, the complainants expressed their interest in project, and applied for the residential plot in the project vide Expression of Interest (hereinafter referred to as 'EOI'), for total sales consideration of Rs. 98,57,750/-. The respondent had duly sent intimation for possession for the above said unit and reminder to clear the outstanding dues. However, the complainants never turned up towards paying the outstanding amount.
- vii. That on 13.03.2022, the complainants further proceeded with the unit in question in the project vide agreement dated 07.08.2023 for total sales consideration of Rs. 98,57,750/-. The complainants on their own accord paid Rs. 74,11,762/- that too was paid after several reminders and were not in accordance with the framework of the payment schedule of the said agreement, towards further registration of the unit.
- viii. That as per clause 5 of the said agreement, the complainants agreed to pay further amount as and when demanded by the respondent or within the terms mentioned under schedule D of the agreement specifying the payment plan in accordance in which the complainants were required to pay. The allotment letter as well as the agreement indicated that the timely

payment is the essence of the agreement and will be the essence of the agreement.

- ix. That on 31.03.2023, a reminder for intimation of possession for the above said unit were sent to the complainants specifying about the remaining dues which were supposed to be paid to the tune of Rs. 39,38,250/- with immediate effect. However, the complainants did not pay any heed to the continuous requests raised by the respondent in order to proceed as per the agreement between the parties failing which complainants were entitled to bear the consequences as per the terms and conditions of the agreement/letter of intimation of possession.
- x. That the EOI, clearly laid out that timely payments will be the essence. But the complainants failed to abide by the terms of EOI, which led to the cancellation of the unit of the complainants. It is further stated that the EOI can be automatically terminated/cancelled upon non-fulfilment of the terms on which the performance is contingent. The allotment of unit was only valid, if the timely payments were made by the complainants, which the complainants failed to do.
- xi. That the respondent having frustrated all means of communication and requests, with respect to the payment of instalments, issued a cancellation of builder buyer agreement cum refund letter dated 15.04.2024, against the complainants. The respondent again gave the complainants an opportunity to pay their dues within a week from the letter date.

E. Jurisdiction of the authority

- 7. 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

- 8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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.

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

F. Findings on the relief sought by the complainants.

- F.I** Direct the respondent to restore the allotment of unit no. 22, street A4, in Aspiration, Vatika India Next 2, Sector 88B, Gurugram, Haryana vide agreement to sell dated 07.08.2023 to the complainants.
- F.II** Direct the respondent to withdraw cancellation letter/ e-mail dated 15.04.2024 for unit no. 22, street A4, in Aspiration, Vatika India Next 2, Sector 88B, Gurugram, Haryana.
- F.III** Direct the respondent to accept the payment for the said unit from the complainant.
- F.IV** Direct the respondent to revive builder buyer agreement dated 07.08.2023 and accept the amount of balance consideration pending till date.

- F.V Direct the respondent to pay delayed possession charges @ 18% per annum (compoundable) from the date of payment made by the complainant.**
- F.VI Direct the respondent to complete the construction as per the approved layout plan and provide all the amenities as promised in its brochure and to the complainants.**
11. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
 12. In the present complaint, the complainants were allotted a plot bearing no.22, Street A4, Aspiration, admeasuring 131 sq. yds. vide allotment letter dated 08.02.2023, under construction linked payment plan, for the sale consideration of Rs.98,57,750/-. Thereafter, a builder buyer agreement was executed between the complainant-allottees and the respondent-promoter on 07.08.2023. Further, perusal of case file reveals that the possession of the plot was to be offered by 31.03.2024. Therefore, the due date of handing over possession comes out to be 31.03.2024.
 13. The complainants-allottees have paid a total amount of Rs.83,86,762/- against the sale consideration of Rs.98,57,750/-, which is 85% of the entire sale consideration. The plea of the respondent is that the plot of the complainants was cancelled by the respondent vide termination letter dated 15.04.2024 on account failure of the complainants to make payment of the outstanding dues.
 14. Herein, the complainants intend to continue with the project and are seeking quashing of notice for termination dated 15.04.2024. Now, the question before the authority is whether the notice for termination letter dated 15.02.2024 issued by the respondent to the complainants is valid or not, in the eyes of law?
 15. It has been observed by the Authority that the complainants were allotted a plot vide allotment letter dated 08.02.2023, i.e., after enactment of the Act, 2016 and Rules, 2017. A buyer's agreement has been executed between the

parties on 07.08.2023. The Authority has gone through the payment plan which was duly agreed between the parties and the same is reproduced below for ready reference:

Schedule D: Payment Plan
Construction linked payment plan

Instalment	Percentage of total sale consideration
At the time of booking	10% BSP + 10% of PLC
Within 60 days of booking	10% BSP + 10% of PLC
On completion of earthwork of plot	10% BSP + 10% of PLC
On allotment of Plot	20% BSP + 10% of PLC
Demarcation of plots	20% BSP + 10% of PLC
Commencement of installation of Street Lights of the Block	10% BSP + 10% of PLC
On Bitumen work on Plot	10% BSP + 10% of PLC
On offer of possession	10% BSP + 10% of PLC + 100% Sewer Connection Charges + 100% STP + 100% Electric Connection Charges + 100% Water Connection Charges + Stamp Duty and Registration Charges + Escalation in Construction Cost (If Any)

16. It is matter of record that the complainants booked the aforesaid plot under the above-mentioned payment plan and paid an amount of Rs.83,86,762/- towards total consideration of Rs.98,57,750/-. However, 10% payment was payable at the time of offer of possession. The respondent has not obtained the completion certificate(CC)/ part CC in respect of the allotted plot of the complainants till date. However, offer of possession was made by the respondent to the complainants on 31.03.2023.
17. It is necessary to clarify whether intimation of possession dated 31.03.2023 made to complainant-allottees tantamount to a valid offer of possession or not? The authority is of considered view that a valid offer of possession must have following components:
 - a. *Possession must be offered after obtaining occupation certificate.*
 - b. *The subject unit should be in a habitable condition.*
 - c. *The possession should not be accompanied by unreasonable additional demands.*
18. In the present matter, the respondent has issued intimation of possession with respect to the allotted plot on 31.03.2023 i.e., before obtaining completion certificate(CC)/ part CC from the concerned department.

Therefore, no doubt that the offer of possession has been sent to the complainants but the same is for fit outs. Thus, the offer of possession dated 31.03.2023 is an invalid offer of possession as it triggers component (a) of the above-mentioned definition.

19. In view of the reasons quoted above and documents available on record, the Authority is of the view that the notice for termination letter dated 15.04.2024 is not valid in the eyes of law, as the demands raised by the respondent are in violation of payment plan agreed to between the parties and hence, the notice for termination letter dated 15.04.2024 is hereby set aside and the respondent is obligated to restore the allotted plot of the complainant-allottees within 30 days from the date of this order.

20. Herein, the complainants 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, —

in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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."

21. The interest is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of Section 2(za) of the Act. The complainants cannot be made suffer due to fault of the respondent and to pay for the unit as per today's rate.

22. **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.

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., 21.05.2025 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:

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

Explanation. —For the purpose of this clause—

- (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;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 31.03.2024. Completion certificate(CC)/ part CC has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject plot and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 31.03.2024 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- G.VII Direct the respondent to handover the possession of the unit and register the conveyance deed.**
28. The complainants are seeking relief of handing over of possession of plot allotted to them along with execution of conveyance deed. The respondent is obligated to offer the possession of the plot to the complainants in terms of the buyer's agreement dated 07.08.2023, after obtaining completion certificate(CC)/ part CC from the competent authority.
29. Further, the respondent is under an obligation as per Section 17 of Act to handover the possession to the complainants and to get the conveyance ✓

deed executed in favor of the complainants. A reference to the provisions of Section 17 (1) of the Act is also must and it provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

30. The authority observes that completion certificate(CC)/ part CC in respect of the project where the subject plot is situated has not been obtained by the respondent promoter from the competent authority till date. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the completion certificate(CC)/ part CC from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the plot in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of issuance of completion certificate(CC)/ part CC with respect to project in which plot of the complainants is situated, upon payment of outstanding dues and requisite stamp duty by the complainants, as per norms of the State government, as per Section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.

G.VIII Direct the respondent to pay Rs.1,00,000/- as litigation costs.

31. The complainants are seeking the above-mentioned relief with respect to compensation. The Hon'ble Supreme Court of India in **Civil Appeal nos.** ✓

6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors. has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

G. Directions of the authority

32. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. Cancellation of the plot allotted to the complainants is set aside. The respondent is directed to reinstate the allotment of the complainants within 30 days from the date of this order. 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 followed by execution of builder buyer agreement between the parties. Further, the possession of the plot shall be handed over to the complainants after obtaining of 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 complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- II. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the

complainants from due date of possession i.e., 31.03.2024 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the Rules, ibid.

- III. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(z a) of the Act.
- IV. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of issuance of completion certificate(CC)/ part CC with respect to the said project.
- V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.

Date: 21.05.2025

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