

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

Complaint no.: 2296 of 2023  
Date of filing: 09.06.2023  
Order pronounced on: 29.07.2025

**1. Partho Banerjee****2. Shukla Banerjee****R/o: - Hno. 35, Sector-9, Gurugram****Complainants****Versus****M/s Vatika Limited****Regd. Office at: - INXT City Centre, GF, Sector 83,  
Block A, Gurugram-122012****Respondent****CORAM:****Shri Arun Kumar****Shri Ashok Sangwan****Chairperson  
Member****APPEARANCE:****Ms. Surbhi Grag (Advocate)****Mr. Venket Rao (Advocate)****Complainant  
Respondent****ORDER**

1. This complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision 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:

S.No.	Particulars	Details
1.	Name of the project	"Vatika India Next", Sector 85, Gurugram
2.	Type of project	Independent floors
3.	Plot no.	09, 2nd street, 2nd floor, block B admeasuring 1032 sq. ft. (as per BBA page 58 of complaint)
	Re allotted new plot vide addendum dated 24.07.2012	25, 2nd floor, St.82 E-9 admeasuring 1133.52 sq. ft. (page 107 of complaint)
4.	Re allotted new plot vide addendum dated 22.12.2015	2nd floor, 2, I-4 admeasuring 1135 sq. ft. (page 145 of complaint)
5.	Date of execution of buyer's agreement	06.04.2010 (page 55 of complaint)
6.	Possession clause	<b>10.1 Schedule for possession of the said independent dwelling unit.</b> "That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement. However, it is agreed that in the event of any time overrunning completion of construction of



		<i>the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same."</i>
7.	Due date of possession	06.04.2013 (calculated from the date of execution of buyer's agreement)
8.	Total sale consideration	Rs.30,81,283/- (as per BBA page 58 of complaint)
9.	Paid up amount	Rs.38,97,689/- (as alleged by the complainant page 26 of complaint)
10.	Occupation certificate/ completion certificate	Not obtained
11.	Offer of possession	03.10.2017 (page 34 of reply)
12.	Possession letter of the unit allotted vide letter dated 22.12.2015	13.12.2017 (page 151 of complaint)
13.	Inspection letter	13.12.2017 (page 152 of complaint)

**B. Facts of the complaint.**

3. The complainant has made the following submissions in the complaint:
  - a. That somewhere around 2009, the Respondent approached the Complainants through its representatives and offered to buy an independent residential floor in their newly launched project namely, 'Iris/Emilia/Primrose Floors' (hereinafter called as 'project in question') located in the township and residential plotted colony of the Respondent namely 'Vatika India Next' at Sector 82, 82A, 83, 84, 85 Gurugram. The representatives of the Respondent Company told the Complainants about the moonshine reputation of the Company thereby assuring that the project in question was being developed only after taking all due approvals and government permissions and that the project aims at providing exclusive

independent premium residential floors featuring highest design standards. It was further assured that said floors would be ideal homes for families who prefer to pursue an independent approach to life. They have been meticulously planned, with special emphasis on efficient space utilization where ground floors have front sit-outs and exclusive rear lawns, while the first and second floor provides spacious balconies and a terrace. Along with the uncluttered skylines of low-rise developments, the residents get a high degree of privacy and independence.

- b. That being caught in false assurances and promises of the Respondent and relying on the goodwill of the Respondent company, the Complainants booked an independent residential unit/floor in the said project by filling the application form dated 22.11.2009 and by paying an amount of Rs. 3,00,000/- vide instrument bearing no. 353615 dated 22.11.2009, towards the booking of said unit. It is imperative to mention here that the floor chosen by the Complainants was park facing corner location that according to the Respondent was preferentially located and accordingly, the Complainants were also made to pay advance towards Preferential Location charges (PLC).
- c. That thereafter, vide Allotment letter dated 11.12.2009, the respondent gave a priority no. IRIS/SF/164 to the complainants and allotted an independent residential floor of unit type 'Iris', bearing plot no. 09 (hereinafter referred as the 'first unit') on 2nd Floor, in Block-B, on 2nd Street/Avenue, admeasuring super area of 1032 sq. ft., for Total sale price of ₹30,81,283/- and PLC Charges of ₹2,40,000/- for park facing corner. This was followed by issuance of



welcome letter dated 18.02.2010 and execution of unit buyer's agreement dated 06.04.2010.

- d. That thereafter, vide demand letter dated 30.12.2010, the respondent sought payment demand of an amount of ₹4,74,093/- due towards 'commencement of earth work at site' that was duly paid by the Complainants and acknowledged by the Respondent along with confirmation of unit allotted being part of 'Phase I' of the project, vide Receipt dated 19.01.2011.
- e. That as per clause 10.1 r/w clause 10.2 of the said apartment buyer's agreement dated 06.04.2010, the respondent proposed to complete construction, apply and obtain occupation certificate from the competent authority and handover the possession of the unit in question within a period of 3 years from the date of execution of said agreement, i.e., by 06.04.2013. However, the Respondent miserably failed in handing over possession in accordance with the said agreement.
- f. That while more than 2.5 years had already lapsed and the Complainants were expecting a unit handover intimation from the Respondent, to their utter shock, vide Re-allotment letter dated 10.07.2012, the Respondent intimated the former regarding a re-allotment process based on priority number and invited for same and accordingly, vide Allotment letter dated 18.07.2012, allotted unit bearing no. 25/SF/ St. 82E-9(hereinafter referred as the 'second unit'), located on 2nd floor, in street no. St. 82 E-9, admeasuring 1133.52 sq. ft., located in Sector-82E and carrying PLC of Rs. 2,40,000/- being corner and park facing like first unit.
- g. That though the booking was made in 2009 and possession was supposed to be handed over in 2013 as per agreement, till the due

date as per agreement, 2014, no intimation of possession was received by the Complainants. Accordingly, the Complainants paid a visit to the unit site and were taken aback to see the site being inhabited by private persons. To this, vide e-mail dated 16.10.2014, the Complainants objected to the fact that even the unit land was not acquired by the Respondent company till 2014 despite coercively changing the unit, and also questioned the demand and receipt of a considerable amount on account of 'commencement of earth work at site'. It was pointed out that while the site itself was not in possession of the Respondent until 2014, the monetary demand in 2010 was completely unfound and illegal. To this, vide e-mail dated 16.10.2014, the Respondent flicked off from its responsibilities by saying that demand was not unit specific but was site specific. This was followed by further mails by the Complainant objecting to the vague reply of the Respondent and illegal demand along with zero construction status at the unit site, including a mail to Mr. Gautam Bhalla, CEO of the Respondent company, but to no avail.

- h. That later, much to the dismay of the Complainants and proving right the allegations made by them, instead of offering possession of the unit, the Respondent vide e-mail dated 21.07.2015, request for re-allotment of unit for the second time. Having no other option, the Complainants again went for choosing unit but there were no suitable park facing options and the Respondent was forcing the Complainants to sign an affidavit stating that the re-allocation request was made by the Complainants, which was refused by them. Ultimately, another unit was chosen that was not park facing, though a corner unit. Accordingly, vide e-mail dated 27.11.2015, the Complainants objected to PLC charges sought to be levied on that



unit as it was neither park facing not adjacent to it, however, the Respondent vide e-mail dated 27.11.2015, falsely claimed that PLC charges would be applicable on corner facing unit and not park facing. It is pertinent to mention here that the agreement clearly specifies PLC unit to mean park facing as well as corner unit.

- i. That thereafter, for the third time, vide Addendum to Builder buyer agreement dated 22.12.2015, the Respondent allotted unit bearing no. Second floor, 2, I-4, Vatika India Next, Gurgaon-122004 (hereinafter called as the 'unit' in question) to the Complainants. Subsequently, the Complainants kept writing mails to the Respondent raising dispute over levy of PLC charges and clearly specifying that said PLC charges and milestone payment of Rs.5,23,518/- was paid under protest, but all in vain. The Complainants specifically sought removal of PLC charges as they were violative of the PLC specification given in the agreement itself, but the Respondent unjustifiably refused to accede to their persistent requests. The Complainants also sought clarity as to whether all the corner units in the project in question were subjected to PLC charges or not but no clarification was given. Meanwhile, the Complainants made further milestone payments, but under protest and under duress.
- j. That thereafter, vide Intimation of possession letter dated 05.09.2017, the Respondent informed that they were in the process of offering possession for the independent floor units and raised final payment demand of Rs. 6,17,771.44/- while also citing that the possession would have to be taken within 15 days of the offer of possession failing which holding charges would be imposed. Having no other option after paying a considerable amount of their hard-

earned money, the Complainants paid the said final instalment amount under protest on 15.09.2017, while also seeking delayed possession penalty on account of delay in offering possession, vide e-mail dated 15.09.2017.

- k. That upon non-receipt of any further communication from the Respondent post making final payment, the Complainants visited the unit site on 12.10.2017 only to find out that the unit was nowhere nearing completion. Rather, there were no doors, no electrical wiring or fitting, no plumbing or fittings, no painting work, basic masonry work left to be done, thereby feeling cheated and duped. Accordingly, vide e-mail dated 13.10.2017 and 24.10.2017, the Complainants raised serious objection to the deliberate misrepresentation by the Respondent in falsely levying final milestone charges due at the time of possession, without the flat being complete even after one month of intimation of possession. The Complainants also sought Completion certificate for the project as well as HRERA registration number in order to check other compliances. However, the Respondent, vide e-mail dated 16.10.2017 further extended the date of handing over till 03.11.2017.
- l. That the fact of wilful cheating and fraud play upon the Complainants by the Respondent is highlighted from the fact that vide e-mail dated 26.10.2017, the Respondent assured that all the requisite approvals for handover had been obtained in accordance with the provisions of law. Upon this, a copy of the completion certificate was sought by the Complainants vide e-mail dated 03.11.2017 but vide e-mail dated 07.11.2017, the Respondent refused to share the same while re-iterating that they have all the approvals.



- m. That the Respondent forced the Complainants to sign the No dues form despite the fact that the latter was claiming PLC charges that had been wrongly taken from them. Further, the Respondent refused to share the Occupation Certificate. Vide e-mail dated 24.11.2017, the Complainants highlighted that the copy of approved building plan and Occupation certificate are needed for transfer and sought them but the Respondent blatantly refused to share the same and said that they would further impose holding charges. Vide e-mail dated 06.12.2017, the Complainants highlighted the mental harassment and financial loss caused to them by the Respondent and specifically highlighted that they would be forced to take possession under protest.
- n. That accordingly, on 13.12.2017, possession was taken by the Complainants under protest. The Complainants sought delayed possession penalty but the Respondent kept on lingering the matter and later refused to pay the same. It is imperative to mention here that at the time of taking possession, the Complainants were unjustifiably made to sign a one-sided Indemnity cum Undertaking without which they were not allowed to take possession. Seeing no other alternative, they had to sign such unfair undertaking as the Respondent was in a dominant position at that time. Later, the Complainants were coercively made to enter into a maintenance agreement with the Respondent and were made to pay the same.
- o. That having already made all the due payments in order to purchase the unit in question, the Complainants had no other option but to believe the representations of the Respondent regarding the veracity of Offer of possession and take possession. That thereafter, when the Respondent kept delaying the registration of Conveyance

deed, somewhere around beginning of 2020, the Complainants came to know from some other buyers that the project does not have the necessary approvals and even the Occupation Certificate and Completion Certificate had not been obtained by the Respondent. This left the Complainants devastated and they immediately rushed to the Respondent's office seeking an explanation over said fraudulent conduct of the Respondent company but the representatives of the Respondent refused to give any concrete response. To this, the Complainants raised an objection highlighting the fact that as per the Builder buyer agreement, no maintenance or IFMS charges would be payable without Occupation Certificate and could not be levied from them, but all in vain. The Respondent also misused the spread of COVID-19 by keeping on delaying the matter of Occupation Certificate and Maintenance until 2022 when they said that they would be getting the Occupation Certificate soon only to derail the Complainants from taking legal action against them.

- p. That till date, the Respondent has failed to obtain Occupation Certificate for the unit in question and continues to defraud the Complainants by falsely claiming that they are in the process of obtaining the same and it is expected anytime soon and upon seeking the refund of maintenance charges, the Respondent has refused to claim the same. It is imperative to mention here that since 2021, the unit in question is lying vacant as the Complainants came to know that the unit is not legal to occupy, thereby adding to the misery of the Complainants.
- q. That the possession of any residential unit cannot be offered without obtaining the Occupation Certificate (OC) from concerned authorities as the said OC is a legal mandate of the fact that the



premises is safe in all regards and is fit to occupy and reside and is in accordance with the requirements laid down and as per the sanctions approved by the said authorities. Accordingly, the aforementioned Intimation of possession dated 05.09.2017 is out rightly illegal and elucidates the fraudulent conduct of the Respondent. That till date, the Complainants have paid a total sum of Rs. 38,97,689.35/-towards the aforesaid residential flat in the project till date as and when demanded by the Respondent, as against a total sale consideration of Rs. 37,06,074.27/- and service tax of Rs 1,91,615.08/-.

- r. That the fact that the possession was being offered without obtaining Occupation Certificate was concealed from the Complainants at the time of said offer. Rather, when the Complainants orally enquired about receipt of all the necessary sanctions for the unit in question, the Respondent very clearly submitted that all the approvals are in place. It was only upon conducting an inquiry for the reasons behind non execution of conveyance deed that the Complainants came to know about this misconduct on the part of Respondent company. That upon gaining knowledge about the non-receipt of OC, the Complainants kept pursuing the Respondent in order to seek an explanation over non-receipt of OC and to protest against concealment of said fact at the time of offer of possession and to be acquainted with a tentative date for receipt of OC, but to no avail.
- s. That by concealing the fact of non-receipt of OC from the Complainants, the Respondent has inflicted great injustice upon the Complainants and defrauded them by duping them of their hard-earned money. Further, the clauses of the Unit buyer agreement

dated 06.04.2010 are such that even if the fact of non-receipt of OC was in the knowledge of the Complainants at the time of offer of possession, they would have been left with no option but to abide by the assertions of Respondent. This can be highlighted from Clause 10.3 of the Agreement which clearly states that on failure of buyer to take possession, unit could be cancelled by the Respondent and holding charges can also be levied.

- t. That the main rationale behind issuance of an Occupation Certificate is that such certificate is an assurance of the fact that the building has been constructed according to permissible laws and all the local laws have been complied with and accordingly, the said building is fit to occupy. Further, it is only upon receipt of Occupation Certificate that the building becomes safe in all respects to reside and becomes a marketable property as well. Accordingly, by offering possession of a unit which is not fit to occupy, the Respondent has not only duped the Complainants of their hard-earned money and defrauded them, but has risked the lives of the residents of such unit and eventually, the entire building, which amounts to a serious misconduct on part of Respondent company which made tall claims and representations not only while booking, but even at the time of offer and handing over of possession.
- u. That by offering possession without obtaining Occupation Certificate, the Respondent has violated the provisions of their own Agreement. It has been specifically laid down in the Unit Buyer Agreement dated 06.04.2010 that the offer of possession can be made only after obtaining Occupation Certificate. However, the Respondent failed in adhering to the same.



- v. That the fact of concealing the non-receipt of OC and offering possession without OC is not only a violation of the Unit Buyer's Agreement dated 06.04.2010 but is also a violation of Section 11(4)(b) of The Real Estate (Regulation and Development) Act, 2016. Accordingly, the Respondent company must be penalized under Section 61 to the extent of 5% of the project cost on account of violation of Section 11(4)(b) of the said Act.
- w. That the Complainants booked the flat with high hopes and dreams. However, the Respondent simply refrained from adhering to his commitments, though the Respondent never failed in raising payment demands irrespective of the pace of construction, but when it came to completing construction and handing over possession after receipt of Occupation Certificate, they failed miserably. That the Respondent had made representations and tall claims that the project will be completed on time and will be handed over after all the necessary permissions and approvals are in place. On the contrary, the Respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the Complainants for so many years thereby causing wrongful loss to the Complainants and wrongful gain to the Respondent.
- x. That the main rationale of the Respondent behind offering possession hurriedly without obtaining the Occupation Certificate was to shorten the period of delay and eventually to minimize the delayed possession charges that the said Respondent may be made liable for on account of delay in offering and handing over possession. The Respondent company is an experienced company in the business of making residential apartments, this deliberate act of

cheating its customers and at the same time, committing a gross misconduct of non-compliance of rules is nothing short of criminal.

- y. That the Complainants were further agonized when they came to know that they cannot get their apartment insured against natural calamities or other disasters because the insurance companies do not offer insurance coverage to such buildings which are inhabited without having obtained the OC. Non-availability of any safety of insurance cover has robbed the Complainants of their peace of mind and the unit in question is lying vacant since 2021. The aforesaid arbitrary and unlawful acts on the part of Respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the Complainants.
- z. That the Complainants have been severely exploited at the hands of the Builder/Respondent. The aforesaid series of events clearly portray the amount of harassment and mental agony the Complainants have gone through right from the date of booking till date. Even after a lapse of more than 5 years, the Complainants have been left empty handed, under financial distress as the Respondent has failed in offering and handing over possession of the unit booked by the Complainants, thereby duping the Complainants of their hard-earned money and causing her and her family great mental trauma.

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

- 4. The complainant has sought following relief(s):
  - a. Direct the respondent to obtain occupation certificate for the unit/project in question and issue fresh offer of possession letter to the complainants.
  - b. Direct the respondent to pay delayed possession charges to the complainants on the principal amount paid by the complainants at



the prescribed rate of interest, from the due date of possession till the date of actual handing over after receipt of valid occupation certificate.

- c. Direct the respondent to register the conveyance deed and transfer title in favour of the complainants upon receipt of occupation certificate, in accordance with Section 17 of RERA, 2016.
  - d. Direct the respondent to refund an amount of Rs.2,40,000/- charged by the respondent from the complainants on account PLC charges.
  - e. Impose a penalty upon the respondent to the extent of up to 5% of the total cost of the project for violation of Section 11(4)(b) of RERA, 2016.
  - f. Direct the respondent to get the portion of the project for which OC has not been obtained to be registered with the Hon'ble Authority.
  - g. Direct the respondent to refund the amount of Rs. 56,676/- collected from the complainants on account of IFMS Charges.
  - h. Direct the respondent to waive all due monthly maintenance charges charged to the complainant, which is only applicable after handing over the occupation certificate to the complainant.
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 has contested the complaint on the following grounds:
- a. That it is submitted that the Complainants voluntarily with free will and consent has taken over the possession of the unit on 13.12.2017 after satisfying with all the measurements, specification and fittings/fixtures of the subject unit. It is pertinent to note that the

Complainants are already in possession of the subject unit from 13.12.2017. Also, after handing over of possession, it is upon the Complainants on the usage of the subject unit.

- b. The Respondent humbly submits that the Complainants executed the Possession Letter dated 13.12.2017 whereby the Complainants took over peaceful and vacant physical possession of the unit in question after fully satisfying themselves with regard to its measurements, specifications, fittings and fixtures etc. It was further explicitly stated by the Complainants in the aforesaid letter agreed that upon acceptance of possession they would not be entitled to raise any claim of any nature whatsoever regarding any variation in the size, dimension, area, location or legal status, delay in possession of the unit in question.
- c. It is pertinent to mention here that the Complainants took the possession voluntarily with free will and post giving aforesaid representation, hence, the present complaint is not maintainable as the Complainants are enjoying the peaceful possession of the subject unit since 2017. The Complainants have waived off his rights to claim the delay interest charges way back in 2017 and therefore, the present complaint is nothing but just an afterthought of the Complainants to harass the Respondent.
- d. It is not out of the place to mention here that as per Doctrine of Waiver *"a party for whom certain statutory rights are granted, such party can waive those rights if no public interest is involved."* In the present complaint also, the Complainants have waived off his rights to claim interest for delay in handing over of possession. Hence, the present complaint is infructuous as the Complainants have already



waived off their rights and concealed the same in the present complaint.

- e. That in November 2009, the Complainants, learned about the residential colony project launched by the Respondent, wherein the Respondent was planning to create independent dwelling units on each floor titled as 'Independent Floors' in the 'Vatika India Next', situated at Sector 82, Gurgaon and approached the Respondent repeatedly to further know about the details of the said project. The Complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- f. That after having keen interest in the project constructed by the Respondent the Complainants, decided to book the Independent Floor titled as 'Iris Floors' (hereinafter referred to as 'Project'), vide Application Form dated 22.11.2009, upon his own judgement and investigation under the construction linked payment plan. The Complainants were well aware of terms and conditions of the application form and had agreed to sign without any protest and demur.
- g. That the Respondent vide Allotment Letter dated 17.12.2009, allotted the unit no. 09, Iris, 2nd St, Sector 82B to the Complainants. That on 18.02.2010, the Respondent vide Welcome Letter, intimated the Complainants that the Project acknowledged the application for booking made by the Complainants and the receipt of the booking amount of Rs. 6,64,257/-, paid against the unit in question.
- h. Subsequently, on 06.04.2010, a Floors Buyer Agreement (hereinafter referred to 'Agreement') was executed between the Complainants and the Respondent for the unit no. 09, Iris, 2nd St,

Sector 82B, admeasuring 1032 sq. ft. (hereinafter referred to as 'Allotted Unit'), for total sale consideration of Rs. 37,06,074/-.

- i. It is submitted that as per the provision of Clause 9.2 of the Agreement, the Respondent was under obligation to duly intimate the Complainants for any substantial change in the unit allotted to the Complainants and in case the Complainants was having any objection the Complainants was also obligated to raise objections/dispute if any pertaining to the said change within 30 days from the date of written intimation indicating his rejection.
- j. That the Respondent vide Letter dated 10.07.2012, informed the Complainants that there has been a revision in the master layout due to architectural and other related consideration, beyond the Respondent company control and the Complainants were invited for the re-allotment of the unit on 18.07.2012. The Respondent then vide Allotment Letter dated 18.07.2012, allotted the unit no. 25/SF/St.82E-9, and area had been also revised to 1133.52 sq. ft. and duly an Addendum dated 24.07.2012 was executed between the parties. It is pertinent to mention that the Respondent also stated that the unit number allotted is tentative and may undergo change due to change in scheme of numbering floors. Further, the Respondent vide Letter dated 11.07.2013, intimated the Complainants that as per the terms and conditions of the Agreement, the Complainant had to remit an amount of Rs. 3,03,112.25/- for the revised area.
- k. It is evident that the Respondent herein at times has duly intimated the Complainants regarding the change in the unit number and the Complainants had accepted the revised area and number of the floor with increased charges without any protest and demur, as there



were no objections sent from the Complainant's behalf to the Respondent. That due to change in circumstances which was explained and understood by the Complainants, on 22.12.2015, an Addendum was executed between the parties, and a unit bearing no. Second Floor, 2, I-4, Vatika India Next admeasuring 1135 sq. ft (hereinafter referred to as 'Unit') was allotted to the Complainants.

- l. It is submitted that the present complaint is filed by Complainants on baseless and absurd grounds. It is clearly mentioned under **Clause 11.1** of the Agreement, that in case of any unforeseen circumstances faced by the Respondent in mid-way of development of the subject project, then extension time would be granted for the completion of the project. It is pertinent to mention that the Complainants in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the Government or Public or Competent Authority.
- m. It is submitted that as per the Agreement executed for the said unit, the Complainants was well aware that the Respondent shall not be liable for not fulfilling the obligation under the Agreement if such obligations are delayed due to any reasons mentioned under the category of Force Majeure. It is to note, that since starting the Respondent was committed to complete the project and has invested each and every amount so received from the Complainants towards the agreed total sale consideration. It is submitted that the project was hindered due to the reasons beyond the control of the Respondent.

- n. It is submitted 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.
- o. 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.
- p. That the Respondent had planned the whole township prior to GAIL Notification which came during the year 2009 and after this notification, Respondent submitted a detailed representation to the Gail authorities and HUDA administration for re-routing of the GAIL pipe line since the Respondent had received the licenses in the township and had sold the villas to third parties based on approved layout plan. That based on our representation, a letter no (GAIL/ND/Projects/CJPL) dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which



a request for issuance of NOC for re-routing of Chalna-Gurugram-Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram. A meeting was held between Gail and the administrator Huda on 07.07.2009 to discuss feasibility which was approved. GAIL requested the Administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana. That on 05.08.2009, by District Town Planner to Gail India, proposed.

- q. Further a Civil Writ Petition No 16532 of 2009 (O&M) date of decision 21.12.2009 - Petitioner Shivam Infratech Pvt. Ltd Versus Union of India & Ors., was also filed by Respondent No. 1. GAIL has denied for the re-routing alternative proposal. Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approx. 90-100 plots and Villa's effect due to this layout of GAIL Pipeline. Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, Respondent applied for license pertaining to the said Project. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs to 20 mtrs., vide its letter dated 04.03.2011 that passes through the Project Land.
- r. Although GAIL had reduced the ROW by 10 mtrs, but since they had denied the re-routing of the GAIL corridor, Respondent not only lost number of plots, units and Villas but had to re-design the Project Land that consumed money and time and hence the construction of Project gets delayed. The government of Haryana had notified Gurgaon Manesar Urban Complex 2021, vide their notification dated

05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. of Haryana accordingly.

- s. However, the acquisition of sector dividing road 84/85 was de-notified by the government in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr. roads has resulted in massive delay in laying of services, thus impacting development. After de-notification of Sector Road as mentioned in sub para (a) of (iii) above, the government had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The Department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure "Integrated Infrastructure Development, Including Roads, Water Supply, Drainage, Electricity, Telecom etc. By virtue of said policy, the farmers have to surrender their land (falling under acquisition) to the Govt. and have to obtain TDR certificate there from in lieu of his/her land. Thereafter, the Farmers have to sale the TDR certificate to the Developers.
- t. Director Town & Country Planning, Haryana, in a joint meeting held at Gurgaon, had directed to developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers, Munadi and Public notice were published in leading newspapers on 29.11.2013 but it was very difficult to buy the land falling exactly within the proposed road section.



Respondent had faced issues in purchasing land under TDR policy due to the reasons such as; (i) Farmers, whosoever is interested in selling his land would like to sell his/her entire land/ownership irrespective of the thing that Developer want the entire land parcel or a piece of the same, (ii) There is no recourse or timeline for farmers who do not agree to sell their lands falling within roads result delay in acquisition by Developer, (iii) Farmers do not wish to follow the lengthy acquisition process as same involves surrender of land to govt., obtaining of TDR certificate, negotiation with Developers, Selling of land in full or part to Developers etc., and (iv) Farmer is not satisfied with the amount of sale consideration offered by the Developers and demanding huge amount which is much higher than the market rate.

- u. Since the 24m road/sectoral plan roads function as sub-arterial roads of the Development and also serve as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e., water supply, Sewerage, Drainage, Electricity, Telecom etc., it is important for us to have the same in our township/project land. Two sector roads (24 mtr.) are falling in the Project land and due to non-acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc. to the Project Land has become big challenge for us. Some of the local land owners including a collaborator such as Janakraj, Dhani Mamchand etc. had entered into litigation in respect of their respective land parcel against Respondent/Govt. and obtained stay orders. The said litigations have resulted in delay in construction of sector road and further delay in the construction activity in the project. The inability of HSVP

to resolve this issue of 100 square yards is affecting the entire development of the 84 mtr. sector road which is the main access point into this GH society. Please mark the access on a map along with photos of the current status of the road.

- v. That the Respondent due to the above-mentioned reasons was unable to provide the possession of the unit on time and as per the schedule. The Respondent after completion of the construction, vide Intimation of possession letter dated 05.09.2017, intimated the Complainants that the Respondent is commencing the handover of possession and the Respondent shall pay the pending dues, so that the Respondent can offer possession to the Complainants.
- w. That after the payment made by the Complainants, the Respondent vide Offer of Possession Letter dated 03.10.2017, offered possession to the Complainants, and intimated to the Complainants that the Complainants have to confirm the appointment date i.e., 16.10.2017 and carry the original documents for taking the possession of the unit.
- x. That due to some unforeseen circumstances, the Respondent shifted date of appointment from 16.10.2017 to 03.11.2017, and it was duly informed to the Complainants vide Email dated 16.10.2017. It is pertinent to note that the Respondent was ready to handover the unit but was delayed due to force majeure circumstances. That the Respondent was ready to handover the possession, but the Complainants were not ready to take the possession. After several discussions and deliberations and after being fully satisfied with the unit, the Complainants were handed over the possession of the unit vide Possession Letter dated 13.12.2017. It is pertinent to note that the Complainants took over the peaceful and vacant possession of



the allotted unit after being fully satisfied with the size, dimensions, structure and delay in possession. It is to note, that, the Complainants took the possession at their own will after being fully satisfied with the specification and measurements of the unit. Also, the Complainants were fully aware of the status of the Occupation Certificate while taking the possession of the unit.

y. Further, as stated above, the Complainants waived of the right to claim delay interest, in the Possession Letter dated 13.12.2017. Therefore, the present complaint of the Complainants is not maintainable and shall be dismissed.

7. Copies of all the relevant documents have been filed and placed on the 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 complete territorial and 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, 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:

*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.*

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 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 complainant.**

**F.I. Direct the respondent to obtain occupation certificate for the unit/project in question and issue fresh offer of possession letter to the complainants.**

**F.II. Direct the respondent to pay delayed possession charges to the complainants on the principal amount paid by the complainants at the prescribed rate of interest, from the due date of possession till the date of actual handing over after receipt of valid occupation certificate.**

12. In the present complaint, the complainants were allotted a plot bearing no. 09, 2nd street, 2nd floor, block B admeasuring 1032 sq. ft vide BBA dated 06.04.2010. As per clause 10.1 of the said agreement the possession of the said plot was to be delivered within 3 years from the date of BBA i.e., by 06.04.2013. Thereafter, the respondent re allotted a new unit vide letter dated 24.07.2012. Again, the unit was re-allotted



bearing no. 2, I-4, 2<sup>nd</sup> floor admeasuring 1135 sq. ft. by the respondent vide addendum agreement dated 22.12.2015 wherein it was specifically mentioned that the terms and conditions of BBA dated 06.04.2010 shall remain unaltered and effective. Therefore, the due date of possession shall remain same. The complainants intend 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."***

13. Clause 10.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

***"That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution of this Agreement....."***

14. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of agreement i.e., 06.04.2010. The period of 3 years expires on 06.04.2013.
15. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.

16. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules 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. 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., 29.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (\*the rate of interest is inadvertently mentioned as 11.10% in POD dated 29.07.2025.)
17. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
18. 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 agreement. By virtue of clause 10.1 of the buyer's agreement executed between the parties, the possession of the said unit was to be delivered within a period of 3 years from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 06.04.2013. In the present case, the complainant was offered possession by the respondent on 03.10.2017 without obtaining



completion certificate from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.

19. Further, the counsels of the complainant states that letter of offer of possession given by the respondent is not a valid offer of possession. Therefore, at this stage, the authority clarifies the concept of 'valid offer of possession'. It is necessary to clarify this because after valid and lawful offer of possession, liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:
- i. Possession must be offered after obtaining occupation certificate.
  - ii. The subject unit should be in habitable condition.
  - iii. Possession should not be accompanied by unreasonable additional demands.
20. The authority observes that the primary condition of valid offer of possession has not been fulfilled by the respondent as it failed to offer possession of the subject unit to the complainant after the receipt of completion certificate by the competent authority. Accordingly, the offer of possession vide letter dated 03.10.2017 cannot be termed as valid offer of possession in absence of completion certificate for the aforesaid reason. It is a very interesting situation where an allottee on one side is demanding completion of all requisite infrastructure and amenities and

then offer physical possession in name of legal valid physical possession whereas he has already taken over the physical possession on 13<sup>th</sup> of December 2017. The allottee is certainly entitled for delayed possession charges under proviso to section 18(1) of the Act but only up to the date on which he has taken the physical possession and a lot is enjoying the fruit of the property for which he has invested with the promoter. Although the promoter has given physical possession and allottee has accepted physical possession on the basis of offer which may not be the legally valid offer of possession without obtaining occupation certificate. Both the promoter and the allottee have not acted as per the spirit of law but as per their own convenience. The promoter is liable for action for offering physical possession without obtaining completion certificate and allotting cannot be allowed to take benefit of delay possession charges beyond the time he has taken the physical possession.

21. 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 @ 10.90% p.a. w.e.f. 06.04.2013 till the date the physical possession of the plot is handed over to the allottee i.e., 13.12.2017 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**F.III. Direct the respondent to register the conveyance deed and transfer title in favour of the complainants upon receipt of occupation certificate, in accordance with Section 17 of RERA, 2016.**

22. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

*"17. Transfer of title.-*

*(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"*

23. The authority observes that CC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent is directed to execute the conveyance deed of the allotted unit within 3 months from the date of receipt of the CC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government.

**F.IV. Direct the respondent to refund an amount of Rs.2,40,000/- charged by the respondent from the complainants on account PLC charges.**

24. The complainant has already taken the possession of the said plot and any relief w.r.t. PLC should have been resolved before taking the possession accordingly, the said relief cannot be granted at this belated stage.

**F.V. Impose a penalty upon the respondent to the extent of up to 5% of the total cost of the project for violation of Section 11(4)(b) of RERA, 2016.**

**F.VI. Direct the respondent to get the portion of the project for which OC has not been obtained to be registered with the Hon'ble Authority.**

25. The planning branch of the Authority may take necessary action if any needed.

**F.VII. Direct the respondent to refund the amount of Rs. 56,676/- collected from the complainants on account of IFMS Charges.**

**F.VIII. Direct the respondent to waive all due monthly maintenance charges charged to the complainant, which is only applicable after handing over the occupation certificate to the complainant.**

26. Since the complainants have already taken the possession of the said plot therefore, they are liable to pay the maintenance charges.

**G. Directions of the authority**

27. 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):

- a. The respondent is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.90 % p.a. w.e.f. due date of possession i.e., 06.04.2013 till the date the physical possession of the plot is handed over to the allottee i.e., 13.12.2017, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- b. 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 10th of the subsequent month as per rule 16(2) of the rules.
- c. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.



- d. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
28. Complaint stands disposed of.
29. File be consigned to registry.

(Ashok Sangwan)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.07.2025

