

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

Complaint no.: 4747 of 2022
Date of filing: 06.07.2022
Order pronounced on: 05.08.2025

Satish Kumar Sharma

R/o: - VPO Sudhial The Nadaun District Hamirpur,
Himachal Pradesh-177042

Complainant

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:

Mr. K.K.Kohli (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.N.	Particulars	Details
1.	Name of the project	"Signature Plus", Sector 82, Gurugram.
2.	Rera registered/ not registered and validity status	Registered (Vatika India Next Phase-II) Vide no. 36 of 2022 dated 06.05.2022 Valid up to 31.03.2029
3.	Plot no.	68/240/Simplex/BR admeasuring 1527 sq. ft. (Page 88 of complaint)
	Changed unit vide addendum dated 26.03.2012	18/240/Simplex/ST. 82 D1-4 admeasuring 1527 sq. ft. (page 130 of complaint)
4.	Date of execution of plot buyer's agreement	27.11.2009 [Page 85 of complaint]
5.	Complainant is a subsequent allottee and was endorsed on	05.09.2011 (page 128 of complaint)
6.	Possession clause	<p>11.1 Schedule for possession of the said unit</p> <p>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this agreement. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clauses (12.1),(12.2),(12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said Unit along with all other charges and dues in</p>

		<i>accordance with the schedule of payments given herein in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this Agreement. (Emphasis supplied)</i>
7.	Due date of possession	27.11.2012
8.	Total sale consideration	Rs. 88,46,000/- as per statement of account dated 15.07.2022 (Page 25 annexure R-2 of reply)
9.	Paid up amount	Rs. 26,65,355/- as per statement of account dated 15.07.2022 (Page 25 annexure R-2 of reply)
10.	Occupation certificate	Not obtained
11.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - a. In 2008, the Respondent Company issued an advertisement announcing a Group Housing Colony Project called 'Signature Plus' in a land parcel admeasuring a total area of approximately 546 acres, situated at Sector 82, Gurugram, Haryana and thereby, invited applications from prospective buyers for the purchase of units in the said Project. The Respondent confirmed that the project had got Building Plan Approval from the Authority.
 - b. The complainant while searching for a unit/accommodation was lured by such advertisements and calls from the brokers of the Respondent for buying a house in their project namely SIGNATURE PLUS. The Respondent Company told the complainant about the moonshine reputation of the company and the representative of the Respondent Company made huge presentations about the project mentioned above and also assured that they have delivered

- several such projects in the National Capital Region. The Respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.
- c. Relying on various representations and assurances given by the Respondent company and on belief of such assurances, Mr. Sudhi Budhiraja and Mrs. Arti Budhiraja (original allottees), booked a unit in the project by paying an amount of Rs. 17,54,800.00 mentioned in the BBA towards the booking of the said unit bearing no. Unit 68/240/simplex/BR, in Sector 82, having super area measuring 1527 sq. ft. to the respondent and the same was acknowledged by the respondent.
- d. That the respondent confirmed the allotment of the unit to the original allottees dated 07.06.2008 as clause J of BBA dated 27.11.2009, providing the details of the project, confirming the booking of the unit, allotting a unit no. 68/240/simplex/BR (hereinafter referred to as 'unit') measuring 1527 Sq. Ft (super built-up area) in the aforesaid project of the developer for a total sales consideration of the unit i.e., Rs. 88,46,000.00, which includes basic price, Plus EDC and IDC, Car parking charges and other Specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- e. That a Buyer's Agreement was executed between the original allottees and respondent on 27.11.2009. It is pertinent to mention here that the said buyer's agreement was endorsed in favour of the complainant vide endorsement letter dated 05.09.2011 as Annexure- VIII of the BBA.

- f. As per clause 11.1 of the buyer's agreement, the Respondent had to deliver the possession of the unit within a period of 3 years from the date of execution of the agreement. Therefore, the due date of possession comes out to be 27.11.2012.
- g. The original allottees executed an "Endorsement letter" in favour of the Complainant (of this present complaint) for the outstanding consideration amount payable by the endorsed allottee. The balance amount for obtaining the property which was still under construction was to be paid by the Complainant according to the demands raised by the respondent. "Accordingly, now the captioned property stands in the name of the complainant."
- h. Further, the Complainant having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before 27.11.2012. The Complainant was also handed over one detailed payment plan which was Construction Linked Plan. It is unfortunate that the dream of owning a unit of the Complainant was shattered due to dishonest, unethical attitude of the Respondents.
- i. As per the demands raised by the respondent, based on the payment plan, the original allottees towards the captioned unit already paid a total sum of ₹26,60,355/- against a total sale consideration of ₹88,46,000/-. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The Complainant approached the Respondent and asked about the status of construction and also raised objections towards non-completion of the project via emails. It is pertinent to state herein that such arbitrary and illegal

practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.

- j. The Complainant contacted the respondent on several occasions and were regularly in touch with the Respondent via emails. The Respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession.
- k. That in terms of clause 11.1 of the said buyer's agreement (as already referred above), respondent was under dutiful obligation to complete the construction and to offer the possession on or before 27.11.2012. That Complainant approached in person to know the fate of the construction and offer of possession in terms of the said Buyer's Agreement, respondent misrepresented to Complainants that the construction will get completed soon. The Respondent despite having made various representations to the Complainant, the Respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated Allottees.
- l. The Respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the Respondent is

also illegal and against the provisions of RERA Act, 2016 and HRERA Rules, 2017.

- m. An addendum letter dated 05.09.2011 was signed for the reallocation of the new unit no. Plot 18\240\Simplex\St. 82 D 1-4 renamed to Plot 18\240\Simplex\St. 82 D S-5.1 to the complainant. In 2017 the complainant again received an email for the reallocation of the said unit for the second time for a new unit no 21, S-5.5, Signature Villa 2, admeasuring 1965 sq. ft. and was asked to pay ₹37,55,400/- almost 50% of the original contract price, to which the complainant refused.
- n. In January 2018, after so many attempts, complainant again contacted the respondent via mail asking for a conversation with the Vatika Management for the delivery of the unit. In February 2019, the complainant received a new villa site plan and the additional charges applicable for the revised area from 1527 sq. ft.- 1965 sq. ft. and was informed that the enhanced charges cannot be waived off.
- o. The Respondent has altered the layout of the said unit without taking the prior consent of the complainant and has deceived the Complainant by increasing the super area to 1925 sq. ft. as claimed instead of 1527 sq. ft. as per the HRERA policy. These changes of the Unit have been held to be arbitrary and capricious by the Hon'ble HARERA in a myriad of cases and also against Section 14 of the Real Estate (Regulation and Development) Act, 2016. Changing the super area isn't permissible within the ambit of the Haryana Real Estate Regulation and Development Act, 2016.

- p. It is abundantly clear that the Respondents have played a fraud upon the Complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The Respondent had further malafidely failed to implement the BBA executed with the Complainants. Hence, the Complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the Respondent is filing the present complaint.
- q. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for residential purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. That the same plot on which villa was to be constructed is being sold as a duplex villa by the builder without even informing the complainant which is illegal and unjustified. The booking agreement between the complainant and the respondent was executed for the simplex villa which the builder refused to handover.
- r. That the Respondent, reallocated the unit no. Plot 18\240\Simplex\St. 82 D1-4 renamed to Plot 18\240\Simplex\St. 82 D S-5.1 to New Unit no. 21, S-5.5, Signature Villa 2, Vatika India Next admeasuring 1965 sq. ft. and making requests for the payment of an amount of ₹37,55,400/- from the complainants for the increased super area and change in the size of the allocated unit which is absolutely illegal and against the laws of the land.

- s. That the Respondent asking for extra money for the reallocation and revised villa charges amounting to ₹37,55,400/-, hence asking for such a huge amount, when the same is not a part of the Builder Buyer Agreement is unjustified and illegal in the eyes of law and therefore needs to be withdrawn immediately. The fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the opposite party not to create any third-party interest in the property.
 - Direct the opposite party not to cancel the allotment of the complaint until the final decision of this complaint.
 - Direct the opposite party to pay the interest at the prescribed rate for every month of delay from the due date of possession that is 27.11.2012 till the offer of possession.
 - Direct the opposite party to pay the interest so accrued from the date of delivery of the possession till the date of order.
 - Direct the opposite party to adjust the payment of delayed possession charges towards dues from the complainant if any.
 - Director responded not to charge an amount of ₹40,00,000/- for re allotment of the new unit.
 - Direct the respondent to provide possession of the unit with all amenities as assured in the brochure and as promised at the time of booking of the unit as soon as possible.

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 in around January 2008, Mr. Sudhi Budhiraj and Mrs. Arti Budhiraj (herein referred to as 'Original Allottee') learned about the Residential Project titled as 'Vatika India Next' (herein referred to as 'Project') being launched by the Respondent at Sector-82, Gurugram, Haryana and repeatedly approached the Respondent to know the details of the said project.
 - b. The Original Allottee further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project. That after having keen interest in the Project the Original Allottee booked a Villa in the said Project. Further, the Respondent vide Allotment Letter dated 07.06.2008, allotted a Villa bearing no. 68/240/simplex/BR for a total sale consideration of ₹88,46,000/- in the aforesaid Project.
 - c. Thereafter, on 27.11.2009, a Builder Buyer Agreement was executed between the Original Allottee and the Respondent for the Plot bearing no. 69/240/Simplex/BR in the aforesaid Project. Further, the Original Allottee due to the reasons best known decided to sell the said Villa in favor of Mr. Satish Kumar Gupta i.e., the Complainant and endorsed the same in favor of the Complainant vide endorsement dated 05.09.2011. It is pertinent to

note, that the Complainant herein was well aware of the exact status of the Project and agreed to purchase the said Villa without any protest or demur.

- d. Thereafter, the Respondent vide Addendum dated 26.03.2012, re-allotted the Villa being endorsed to the Complainant to Villa bearing no. 18/240/Simplex/ST-82D1-4 admeasuring to 1577 Sq. Ft. in the Project. Despite, being aware of the Payment Schedule the Complainant herein had failed to make the payment as and when demanded by the Respondent. It is to note, that Complainant herein had merely paid an amount of Rs. 26,65,355/-, against the total sale consideration.
- e. That in around the year 2017, the Respondent vide Addendum dated 08.05.2017, re-allotted the aforesaid Villa being allotted to the Complainants from Villa bearing no. 18/240/Simplex/ST-82D1-4 to another Villa no. 21 S-5.5, admeasuring 1965 sq. ft. in Project titled as 'Signature Plus' (herein after referred to as 'Project') for a total sale consideration of Rs. 88,46,000/-.
- f. It is pertinent to note, that the Complainant herein was well aware of the exact status of the Project and the reason for the re-allotment of the villa situated in the aforesaid Project. It is further submitted that the Complainant herein post being satisfied with the reasons for the re-allotment had agreed to sign upon the addendum upon their own judgement and investigation and without any protest.
- g. It is submitted that the present complaint is filed by Complainants on baseless and absurd grounds. It is pertinent to note, that in the Agreement, the Respondent had inter alia represented that the performance by the Company 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 Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.

- h. Subsequent to the booking and the signing of the Agreement, the Company was facing umpteen roadblocks in construction and development works in projects in its licensed lands 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 various projects, including 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.
- i. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Company, Company was unable to execute and carry out all the necessary work for the completion of the said Project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's projects. To further add to the woes of the Company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular

obstructions and impediments beyond the control of the Company have resulted in the Company being unable to deliver.

- j. That the Respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the BBA. It is pertinent to apprise to the Hon'ble Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The Respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
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 opposite party not to create any third-party interest in the property.

F.II. Direct the opposite party not to cancel the allotment of the complaint until the final decision of this complaint.

F.III. Direct the opposite party to pay the interest at the prescribed rate for every month of delay from the due date of possession that is 27.11.2012 till the offer of possession.

F.IV. Direct the opposite party to pay the interest so accrued from the date of delivery of the possession till the date of order.

F.V. Direct the opposite party to adjust the payment of delayed possession charges towards dues from the complainant if any.

F.VI. Direct the respondent to provide possession of the unit with all amenities as assured in the brochure and as promised at the time of booking of the unit as soon as possible.

12. In the present matter, the original allottee, was originally allotted a unit bearing no. 68/240/Simplex/BR, having a super area of 1527 sq. ft., situated at Sector 82-85, Gurugram, pursuant to the Builder Buyer Agreement (BBA) dated 27.11.2009, for a total sale consideration of ₹88,46,000/-. Subsequently, the unit was endorsed in favour of complainant on 05.09.2011. The said allotment was revised, and a new unit, being Villa No. 18/240/Simplex/ST/82 D1-4, in the Signature 2 Villas segment, was allotted in its place. In furtherance thereof, an Addendum Agreement was executed between the parties on 26.03.2012, wherein it was specifically stipulated that *"all other terms and conditions of the Builder Buyer Agreement dated 27.11.2009 shall remain unaltered and effective."*
13. The complainant has instituted the present complaint seeking possession of the newly allotted villa, along with delay compensation in accordance with the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act. On 07.02.2023, learned counsel for the respondent submitted that the subject unit is no longer deliverable due to modifications in the layout plan necessitated by the inclusion of public utilities and other factors. The complainant, however, contested this assertion, stating that the said unit remains available. In view of the conflicting claims, the Authority, vide order dated 20.07.2023, appointed a Local Commissioner (LC) to inspect the site and verify the availability of the plot.
14. The LC submitted its report on 25.10.2023. The conclusive para of the LC report is produced herein below for the ready reference:

"5. CONCLUSION:

The site of the project namely Signature plus (Part of Vatika India Next) being developed by M/s. Vatika Limited has been inspected on 18.10.2023. After the site inspection, it is submitted that;

I. Originally a BBA dated 27.11.2009 for plot no. 68/240/Simplex/BR area admeasuring 1527 sq. ft., Sector-82, Gurugram was executed by the promoter which was endorsed in favour of the complainant on 05.09.2011 and after that an addendum was made on 26.03.2012 wherein the plot was re-allotted vide plot no. 18/240/Simplex/ST. 82 D1-4.

II. The respondent promoter have submitted the layout plan, revised layout plans of the plotted colony and one zoning plan of Sector-82, Gurugram of the project in accordance with the revised layout plan of the colony having area measuring 477.206 acres wherein the plot no. allotted to the complainant is not mentioned on any plan. The respondent promoter were asked to submit the zoning plan approved at the time of BBA/addendum to the plot and to mark the plot number allotted to complainant on plans submitted by them so as to find out the location of allotted plot but they failed to submit the both/same.

III. In the absence of submission of approved zoning plan (marked with the plot numbers) at the time of BBA/addendum to BBA, the location of plot number allotted to the complainant cannot be identified and, in that situation, the current status of the plot allotted to the complainant cannot be submitted.

IV. The promoter may be directed to submit the approved zoning plan (marked with the plot numbers) at the time of BBA/addendum to BBA to identify the location of complainant plot and accordingly the current status of that location will be submitted.

V. The promoter did not submit the list of plots sold and unsold in the project.

VI. The site photographs captured at the time of site inspection and approved layout plans submitted by the respondent are attached herewith"

15. On 06.08.2024 the complainant very categorically requested the authority to direct the LC to visit the site again since the plot is still available with the broker and respondent is intentionally hiding the true facts. In view of the same authority again directed the LC to visit the site again and directed the respondent to provide the documents mentioned at serial no. 2 to 6 of the above LC report. On 25.10.2024 the LC again visited the site and as per the report dated 25.10.2024 it is recorded that after a long wait Mr. Nitin Bansal (Assistant Manager-Legal) appeared on behalf of respondent. Also, the respondent representative failed to produce any such document as directed by the authority vide order dated 06.08.2024 therefore no report can be submitted.

16. The respondent on 11.02.2025 stated at bar that the said unit is not available whereas they can offer an alternative unit to the complainant. Further the complainant in the present matter is seeking delay possession charges along with interest and possession of the unit. As per clause 11.1 of the said agreement the respondent was obligated to deliver the possession of the unit within a period of three (3) years from the date of execution of this agreement. Accordingly, the due date of possession comes out to be 27.11.2012. The complainant has filed the present complaint seeking delay possession charges as per proviso to section 18 (1) of the Act, 2016.

"Section 18: - Return of amount and compensation

"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".*

17. The apartment buyer's agreement was executed between the parties. As per clause 11.1 of the agreement, the possession was to be handed over within a period of 3 years from the date of execution of agreement. The clause 11.1 of the buyer's agreement is reproduced below:

"Schedule for Possession of the Said Unit

The company based on its present plans and estimated and subject to all just exceptions contemplated to complete construction of the said unit/ said unit within a period of three (3) years from the date of execution of this agreement. However, in case the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-II or as

per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement."

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.
19. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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. 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]

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

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

20. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 05.08.2025 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 has been inadvertently mentioned as 11.10% in POD dated 05.08.2025)
21. 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—

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 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;"

22. On consideration of the documents available on record and submissions made regarding contravention of 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 11.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 3 years from the date of execution of agreement i.e., by 27.11.2012.
23. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The Authority observes that the complainant is willing to continue in the said project and therefore, the respondent is directed to hand over the possession of the subject unit and if the same cannot be delivered then allot an alternate unit similarly situated, of similar size and at similar price within 60 days from the date of this order. The respondent is further directed to pay delayed possession charges on the amount paid by the complainant, from the due date of possession i.e., 27.11.2012 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 10.90% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.VII. Director responded not to charge an amount of ₹40,00,000/- for re allotment of the new unit.

24. The Authority observes that there exists no agreement wherein the complainant is obligated to pay such amount for re-allotment of unit. Therefore, the respondent is directed not to charge anything apart from BBA.

G. Directions of the authority

25. 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 hand over the possession of the subject unit and if the same cannot be delivered then allot an alternate unit similarly situated, of similar size and at similar price within 60 days from the date of this order.
- b. 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., 27.11.2013 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- c. 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.

- d. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
 - e. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
26. Complaint stands disposed of.
27. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.08.2025