

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

Date of decision: 08.08.2025

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA TOWN SQUARE 2	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4337/2024	Kapil Nayyar and Satvik Bakshi V/s Vatika Limited.	Sh. Gaurav Bhardwaj Ms. Dhruv Dutt
2.	CR/4338/2024	Kapil Nayyar V/s Vatika Limited.	Sh. Gaurav Bhardwaj Ms. Dhruv Dutt

CORAM:	
Shri. Arun Kumar	Chairperson

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects,

namely, 'VATIKA TOWN SQUARE 2' being developed by the same respondent promoters i.e., M/s Vatika Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location		"Vatika Town Square 2", Sector 82, Gurugram, Haryana.	
Possession clause: <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.</i>			
OC: Not obtained Offer of possession: Not Offered			
Comp no.	CR/4337/2024		CR/4338/2024
Allotment letter	18.03.2015 [pg. 21 of complaint]		18.03.2015 [pg. 16 of complaint]
Unit no. and area	B-176, Ground floor, block-B admeasuring 1355 sq. ft.		B-175, Ground floor, block-B admeasuring 1400 sq. ft.
Builder agreement original allottee and respondent	15.01.2016 (page 23 of complaint)		28.01.2016 (page 18 of complaint)
Assignment letter	07.01.2020 [pg.67 of complaint]		10.01.2020 [pg. 56 of complaint]
Total consideration sale	₹1,57,49,842/- [pg. 58 of complaint]		₹2,19,36,600/- [pg. 48 of complaint]
Amount paid	₹1,72,25,269/- [pg. 18 of reply]		₹2,36,43,090/- [pg. 16 of reply]

- a. Obtain OC AND offer possession
- b. DPC
- c. Not to levy holding charges
- d. Not to levy maintenance charges

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/7066/2022 titled as Madhu Bala Jain & Krishan Kumar Jain V/s Vatika Limited & ors.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/4337/2024 titled as Kapil Nayar & Satwik Bakshi V/s Vatika Limited.

S. N.	Particulars	Details
1.	Name and location of the project	"Town Square 2", Sector 82, Vatika India Next, Gurugram.
2.	Project area	1.60 Acres

3.	Nature of Project	Commercial Unit
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 01.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2027 66 of 2014 dated 15.07.2014 valid upto 14.07.2024
5.	Rera registered/ not registered and validity status	Registered 40 of 2021 dated 10.08.2021 valid upto 31.03.2022
6.	Allotment letter dated	18.03.2015 [Page 21 of complaint]
7.	Unit no.	B-176, Ground floor, Block -B
8.	Unit Admeasuring	1440 sq. ft. changed to 1355 sq. ft.
9.	Buyer's Agreement b/w the original allottee and the respondent	15.01.2016 (page 23 of complaint)
10.	Possession Clause	17 <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or</i>

		<i>due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.</i>
11.	Due date of possession	15.01.2020 (as per possession clause in BBA)
12.	Agreement to Sell b/w original allottee and the complainants	10.12.2019 (page 62 of the complaint)
13.	Assignment letter	07.01.2020 (page 67 of complaint)
14.	Endorsement	24.12.2019 (page 12 of reply)
15.	Indemnity Bond Cum Undertaking	16.12.2019 (page 13 of reply)
16.	Total Sale Consideration	Rs.1,57,49,842/- (As per SOA on page 58 of the complaint)
17.	Total amount paid	Rs.1,72,25,269/- (As per SOA on page 18 of the reply)
18.	Occupancy Certificate	Not known
19.	Reminder for intimation of possession	06.12.2018, 17.06.2019

B. Facts of the complaint

7. The complainant has submitted as under:

- a. That the complainants, Sh. Kapil Nayyar and Sh. Satwik Bakshi are respectable and law-abiding citizens and co-allottees. Sh. Kapil Nayyar is currently residing at House no. B-9, Ground Floor, Green Park, New Delhi-110016 and Sh. Satwik Bakshi is currently residing at House no.7, opposite MDI, Sector 17-A, Gurugram-122001, Haryana.

- b. That somewhere around 2013-14, the respondent advertised about the launch of its new commercial project namely "Vatika Town Square 2" located in Sector-82, Vatika India Next, Gurugram, Haryana. The said respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project would be an up-market retail cum commercial complex located just 1 km away from NH 48. It was represented that the project would be a mix of low-rise retail outlets and high-rise commercial blocks interconnected by wide corridors and would be ideal for banking services, clinics, boutiques, gymnasiums, beauty salons, real estate services and other similar services that are regularly needed by the residents of a lively township.
- c. That relying on the abovesaid representations of the respondent company, the erstwhile owner/first buyer namely Sh. Gaurav Sehgal booked a commercial unit in the said project by submitting an application form dated 03.11.2014 and paying an amount of Rs. 6,97,797/- towards the said unit vide cheque bearing no. 009018 dated 10.10.2014, drawn on ICICI Bank, followed by further payments totaling to Rs. 79,54,883.70/- by march'2015. Accordingly, an allotment letter dated 18.03.2015 was issued by the respondent in favour of the erstwhile owner.
- d. That subsequently, the erstwhile owner made further payments followed by the execution of a builder buyer agreement dated 15.01.2016 between the said erstwhile owner and the respondent

for commercial unit bearing no. B-176, located on ground floor, admeasuring a super area of 1440 sq. ft.

- e. That subsequently, an intimation of possession letter dated 06.12.2018 was received by the erstwhile owner whereby the respondent demanded final payment on the pretext of handing over possession. Accordingly, the erstwhile owner made by the final payment immediately only in the hope of getting handover of their unit. However, to the utter shock of the erstwhile owner, despite making complete payment towards the unit in question, the respondent failed to obtain the occupation certificate and other necessary government approvals and to offer possession of the unit in question.
- f. That the erstwhile owner kept making payments in accordance with the demands raised by the respondent. Till 2019, the erstwhile owner had paid a total sum of Rs. 1,70,60,809.70/- in accordance with the demands of the respondent, as against the total sale consideration of Rs. 1,57,49,842.50/-, i.e. more than 100% payment. It is imperative to mention here that later, the unit area was changed from 1440 sq. ft. to 1355 sq. ft.
- g. That upon not receiving an offer of possession or intimation for key handover of the unit in question, despite making 100% payment, the erstwhile owner asked the respondent for a concrete date of handover to which vide e-mail dated 04.10.2019, the respondent falsely assured that handover would be made in 45 to 60 days, but to no avail.

- h. That subsequently, believing the false assurances and misleading representations of the respondent in their advertisements and brochure and relying upon the goodwill of the respondent company while being on the lookout for a commercial unit for themselves, the complainants herein purchased the aforesaid commercial unit from the said first buyer namely Sh. Gaurav Sehgal vide agreement to sell dated 10.12.2019, by paying a considerable amount towards purchase of the unit in question.
- i. That thereafter, upon receipt of the administrative/transfer charges amounting to Rs. 1,39,371/-, on 24.12.2019, the respondent made an endorsement in the allotment letter, payment receipts as well as builder buyer agreement dated 15.01.2016 in favour of the complainants herein, followed by an assignment letter dated 07.01.2020 whereby all the rights pertaining to the unit in question were transferred from the name of erstwhile owner Sh. Gaurav Sehgal in the name of the complainants herein. Accordingly, the complainants herein are the subsequent allottees of commercial unit bearing no. B-176, located on ground floor, admeasuring a super area of 1355 sq. ft., as earlier it was in the name of first buyer. The complainants after making substantial payment to the original allottee stepped into the shoes of original allottee.
- j. That as per clause 17 of the builder buyer agreement dated 15.01.2016, the respondent undertook to handover possession within 48 months from the date of execution of agreement, i.e. by

15.01.2020. However, the respondent miserably failed in handing over possession on or before said due date.

- k. That at the time of purchase of the unit in question, the respondent had assured to the complainants that the project will be complete soon and all the necessary government approvals would be obtained soon post which final handover would be done in coming few weeks. Accordingly, having paid a substantial amount towards purchase of the unit in question, the latter had no option but to believe the representations made by the former.
- l. That thereafter, somewhere around 2022, the complainants again visited the project site only to find out that despite lapse of 8 years from the date of booking and despite depositing a huge amount, the unit in question did not seem to be ready for handover and even the necessary government approvals were not in place. To this, the complainants took a serious note and pointed out to the respondent that while complete payment was demanded and taken by the respondent much before the due date, on the contrary, considering the tardy status of completion and handover of the unit in question, it could not be expected that the unit could be occupied and be operational anytime soon. However, the respondent assured that project would be ready for handover very soon. Believing the assurances of the respondent, the complainants agreed to continue with the booking.
- m. That the complainants had asked the respondent to clarify about the one-sided and unfair clauses in the agreement, namely the

meagre delayed possession charges for which the complainants were entitled on account of delay in handing over possession in violation of the builder buyer agreement, to which the latter verbally replied that the delay in handing over possession of the flat was beyond the control of respondent.

- n. That it is pertinent to mention here that the complainants showed utmost faith in the respondent company despite lapse on latter's part in adhering to their obligations as per said agreement. However, the respondent miserably failed in completing the project as per schedule, as evident from the pictures of the project site elucidating the pitiable pace of construction and the fact that till date, the project is far from handover.
- o. 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 till date. Even after a lapse of more than 10 years from the date of booking, 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 them great mental trauma.
- p. That the present complaint has been filed in order to seek delayed possession charges on the principal amount paid by the complainant along with interest at the rate prescribed as per

RERA, 2016 and HRERA Rules, 2017 from the due date of possession, along with other reliefs mentioned hereinbelow.

Hence, this complaint.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - a. Direct the respondent to obtain occupation certificate and subsequently offer possession of the unit in question;
 - b. Direct the respondent to handover a complete unit to the complainants in accordance with the specifications laid down in the builder buyer agreement;
 - c. Direct the respondent to pay delayed possession charges to the complainants on the principal amount paid, from the due date of possession till the date of actual handing over after receipt of valid occupation certificate;
 - d. Direct the respondent to not levy any holding charges from the complainants;
 - e. Direct the respondent to not levy any maintenance charges from the complainants till date of actual handover;
9. On the date of hearing, the authority explained to the respondent /promoters 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.

10. The respondent has contested the complaint on the following grounds:
 - a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law, and is filed without a cause of action, hence is liable to be rejected on this ground alone. That the complainant has approached the Hon'ble Authority with unclean

- hands. That the claims of the complainant are not genuine, and have been outreached and concocted, thus, by reason of approaching the Hon'ble Authority with unclean hands and suppressing material facts. That the Complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- b. That the Complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the Complainant is raising false, frivolous, misleading and baseless allegations against the Respondent with intent to make unlawful gains.
- c. The adjudication of the complaint for possession and delay possession charges, as provided under Sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainants.
- d. That apparently, the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainants.
- e. That it has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., and subject to force majeure events, the company contemplates to complete construction

of the said building/ said commercial unit within a period of 48 months from the date of execution of the agreement unless there shall be delay or there shall be failure of buyer(s) to pay in time the price of the said Unit.

- f. That initially the unit was booked by one Mr. Gaurav Sehgal (Original Allottee) and the builder buyer agreement was signed between the original allottee and respondent on 15.01.2016. Thereafter the original allottee transferred the unit to the complainants and accordingly the endorsement was made on the builder buyer agreement in favour of the complainants on 24.12.2019. It is submitted that since the complainants are subsequent allottees, the period for calculating the date of completion has to be done from the date of endorsement.
- g. It is pertinent to mention here that the complainants have already condoned the alleged delay and relinquished the claim of delay possession charges to which the original allottees might have been entitled and are now estopped from claiming the delay possession charges. It is submitted that the complainants have also given an indemnity-cum-undertaking whereby they agreed and consented that they shall not be entitled to claim any compensation for delay in handing over possession.
- h. That the sale consideration of the unit purchased by the complainants was Rs. 1,57,49,842.50/- including PLC, EDC/IDC and IFMS. However, it is submitted that the sale consideration amount was exclusive of the STP, Gas Pipeline, Stamp Duty Charges, GST and other charges which are to be paid by the complainants at the applicable stage. It is

submitted that the original allottee has paid an amount of Rs. 1,59,88,985.70/- towards the sale consideration till date. It is further submitted that after the assignment of rights in the favor of the complainants, the complainants did not make payment of even single rupee to the respondent towards the sale consideration of the unit. Thus, no delay possession charges can be awarded to the complainants.

- i. That as per the understanding between the parties, the respondent has paid assured return to the original allottee and also adjusted an amount of Rs. 10,71,824/- towards commitment charges from October, 2018 to May, 2019 in the balance sale consideration. It is further submitted that there is an outstanding amount of Rs. 1,33,816.86/- towards installation of two AC's to be paid by the complainants
 - j. That the respondent has already offered possession of the unit to the original allottee vide letter of intimation of possession dated 06.12.2018
11. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

Section 11(4) (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) *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.*

15. 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. Relief sought by the respondent.

- F.I. Direct the respondent to pay delayed possession charges to the complainants on the principal amount paid, from the due date of**

possession till the date of actual handing over after receipt of valid occupation certificate;

F.II. Direct the respondent to not levy any holding charges from the complainants;

F.III. Direct the respondent to not levy any maintenance charges from the complainants till date of actual handover;

16. On consideration of the documents available on records and submissions made by both the parties. The Authority observes that on 18.03.2015, the original allottee (i.e., Mr. Gaurav Sehgal) was allotted a unit bearing no.176, ground floor in block-B in project "Vatika Town Square-2" being developed by respondent, for a total sale consecration of Rs.1,57,49,842/- (inclusive of BSP, PLC, EDC & IDC) against which the complainants have paid an amount of Rs.1,72,25,269/- till date. Thereafter on 15.01.2016, a buyer's agreement was executed between complainant no.1 and respondent. Further, Agreement to sell was executed between the original allottee and the complainants on 10.12.2019 and assigned the allotted unit in their name on 07.01.2020.
17. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

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

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

18. Clause 17 of the buyer's agreement dated 15.01.2016 provides for time period for handing over of possession and is reproduced below:

"17 Handing over possession of the commercial unit.

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Commercial Unit within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of Buyer(s) to pay in time the price of the said Commercial Unit along with all other charges and dues in accordance with the Schedule of Payments.

(Emphasis Supplied)

19. **Due date of handing over possession:** The promoter has proposed to handover the possession of the said unit within 48 months from the date of execution of the buyer agreement. In the present complaint, the buyer agreement was executed on 15.01.2016. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 15.01.2020. Further, as per HARERA notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 15.01.2020 i.e., before 25.03.2020. As far as grace period of 6 months as is concerned, the same is not allowed. Therefore, the due date of possession comes out to be 15.01.2020.
20. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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"

21. 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.
22. 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., 08.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be Explanation.-For the purpose of this clause 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;"

24. Therefore, interest on the delay payments from the complainants shall be A charged at the prescribed rate i.e., 10.90% by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.
25. On consideration of the documents available on record and submissions made by both the parties 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. The authority has observed that the buyer's agreement was executed on 15.01.2016 and the possession of the subject unit was to be offered with in a period of 48 months from the date of execution of the buyer's agreement. Therefore, the due date of handing over possession is 15.01.2020. The respondent has sent intimation of possession of the plot to the complainants on 06.12.2018 and reminder to intimation of possession on 17.06.2019.
26. The authority would like to clarify regarding the concept of "valid offer of possession". It is necessary to explain this concept because after valid and lawful offer of possession, the liability of promoter for 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 the 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:
- a. Possession must be offered after obtaining completion certificate.

- ii. The subject unit must be in habitable condition.
 - iii. Possession should not be accompanied by unreasonable additional demands.
27. However, in the present case, there is no record available on the paper book to show why the occupancy certificate has not been granted by the competent authority. Neither the respondent has given any valid or specific reason to justify this delay. Accordingly, the authority keeping in view the above-mentioned facts considers that the Complaint No. 4337 of 2024 respondent must not have applied a complete application for grant of occupancy certificate and has not rectified the defects, if any pointed out by the concerned authority. So, without getting occupancy certificate, the builder/respondent is not competent to issue any offer of possession to the complainants. Hence, the intimation regarding the offer of possession offered by respondent/promoter on 06.12.2018 and reminder for intimation of possession on 17.06.2019 to the complainants are not a valid or lawful offer of possession.
28. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to make a valid offer of possession after receipt of occupancy certificate of the allotted unit to the complainants as per the terms and conditions of the builder buyer agreement dated 15.01.2016 executed between the parties. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupancy certificate or what is the status of the project. Hence, this

- project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
29. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.90% p.a. w.e.f. 15.01.2020 till valid offer of possession plus two months after obtaining of occupancy certificate from the competent authority 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.
- F.IV. Direct the respondent to obtain occupation certificate and subsequently offer possession of the unit in question;**
- F.V. Direct the respondent to handover a complete unit to the complainants in accordance with the specifications laid down in the builder buyer agreement;**
30. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
31. As per Section 11(4)(b) of the Act, 2016, the respondent is under obligation to get the occupancy certificate and make it available to the allottees individually or to the associations of allottees, as the case may be, the relevant section is reproduced below:

"11(4): The promoter shall- (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

32. As per Section 19 (3) of the Act, 2016, the complainants-allottees are well within right to claim possession and it is also agreed in clause 17 of buyer's agreement dated 15.01.2016 executed inter-se parties, that the developer on completion of construction shall offer in writing to such buyer to take physical possession of his commercial unit for his occupation. The relevant clause is reproduced below:

*"17 Handing over possession of the commercial unit.
...and dues in accordance with the Schedule of Payments.
The developer on completion of construction shall offer in
writing to such buyer to take physical possession of his
commercial unit for his occupation..."*

(Emphasis Supplied)

33. Therefore, the respondent is directed to get the occupancy certificate/ part occupancy certificate of the project after completion of construction and handover the physical possession of the allotted unit to the complainants allottees after receipt of occupation certificate/ part occupancy certificate of the project, as per agreed terms of buyer's agreement dated 15.01.2016.

G. Directions of the authority:

34. 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 complainants against the paid-up amount at the prescribed rate i.e., 10.90 % p.a. from the due date of possession i.e., 15.01.2020 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.

- b. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The respondent shall handover the physical possession of the allotted unit after receipt of occupation certificate.
 - c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
 - d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - e. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, offer of possession, total sale consideration, amount paid by the complainants and execution of conveyance deed is mentioned in each of the complaints.
35. Complaint stands disposed of.
36. Files be consigned to registry.

Dated: 08.08.2025



(Arun Kumar)
Chairperson
Haryana Real Estate
Regulatory authority,
Gurugram