

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

Complaint no.: 2300 of 2024
Date of decision: 01.08.2025

1. Mrs Neetika Sood
 2. Mr. Vikas Sood
- Both R/o:** - B-1/431, Janakpuri, New Delhi

Complainants

Versus

M/s Vatika Ltd.

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

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Mr. Kedar Nath Tripathy (Advocate)
Mr. Venket Rao (Advocate)

Complainants
Respondent

ORDER

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

A. Project and unit related details.

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

Sr. No.	Particulars	Details
1.	Name and location of the project	"Aspiration" by Vatika India Next 2 at Sector-88B, Gurugram.
2.	Project area	19.70 Acres
3.	Nature of Project	Affordable residential plotted colony under DDJAY
4.	DTCP license no. and validity status	1. 13 of 2022 dated 24.02.2022 valid upto 23.02.2027 2. 152 of 2022 dated 29.09.2022 valid upto 28.09.2027
5.	Name of Licensee	M/s Vatika Ltd., Aplin Developers Pvt. Ltd., Haldis Developers Pvt. Ltd. & 3 Others.
6.	Rera registered/ not registered and validity status	Registered (for Affordable residential plotted colony under DDJAY) Vide registration no. 130 of 2022 dated 23.12.2022 valid upto 30.06.2024
7.	Unit No.	Plot no. 33, Street A-4 (Allotment letter at page 22 of complaint)
8.	Unit area admeasuring	178 sq. yds. (Allotment letter at page 22 of complaint)
9.	Expression of Interest	12.01.2023 (page 18 of complaint)
10.	Allotment letter	17.02.2023 (page 22 of complaint)
11.	Date of buyer agreement	11.05.2023 (as per page 7 of BBA submitted by respondent on 03.01.2025)
12.	Possession clause	7.1 Schedule for possession of the said Plot for Residential/Commercial usage- "..... <i>The Promoter assures to handover possession of the Plot by 31.03.2024 as per RERA Registration certificate or any</i>

		<i>extension thereof unless there is a delay due to "force majeure" events, Court/Tribunal/NGT orders, government policy/guidelines, decisions affecting the regular development of the real estate project...."</i> (Emphasis supplied) (BBA at page 16)
13.	Due date of possession	31.03.2024 (As per clause 7.1 of the BBA executed between the parties on 11.05.2023)
14.	Total Sale Consideration	Rs.1,38,91,526/- (As per page 33 of BBA submitted by respondent on 03.01.2025)
15.	Amount paid by complainant	Rs.61,70,852/- (as per payment receipts annexed by complainant)
16.	Occupation certificate	Not obtained
17.	Reminder for Intimation of possession	01.04.2023- Mentioned reference letter dated 28.03.2023 (Intimation of possession letter)
18.	Final Reminder for Intimation of possession	03.05.2023 (page 20 of complaint)
19.	Notice for Termination (Non-payment of outstanding dues)	01.06.2023 (page 56 of complaint)
20.	E-mail by complainants to respondent- Raising concern over cancellation	15.06.2023 (page 47 of complaint)
21.	Cancellation of BBA cum refund letter	21.11.2023 (page 58 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
 - i. The complainants started looking for a property on Dwarka Expressway in the month of November 2022 having seen the rapid development in the area around Dwarka Expressway in Gurugram. That the complainants came across the project "Vatika-Aspirations" and based on

the prevalent rates and location and that relevant time and on believing the representations of the respondent to be true and believable finalized the same and they showed their interest and were issued a booking letter dated 12.01.23 by the respondent. It is submitted that as per the expression of interest letter signed between both the parties the payment plan is that "At the time of booking- 44.42 % of total sale consideration and on offer of possession 55.58 % of total sale consideration".

- ii. It is pertinent to state that the complainants gave a cheque amounting to Rs 5,00,000/- vide Cheque No 536571 dated 25.11.22 drawn upon ICICI Bank Janakpuri Branch, New Delhi issued in favour of the respondent to their representative on a visit to their corporate office at Sector 83 Gurugram on 25.11.2022.
- iii. That the complainants were issued an allotment letter on 17.02.2023 bearing Ref No. 23-01-0306249 in their favour and they were allotted Unit No. 33, admeasuring area 178.8 Sq yard in the residential project 'ASPIRATION" situated at street no. A4, Sector 88B, Gurgaon, Haryana, 122505 agreed upon a rate of Rs 77693.10/- Square Yards and total amounting to Rs 1,38,91,526.
- iv. That the respondent is a promoter/developer of the project and has registered the project under the provisions of the Real Estate (Regulation and Development) Act, 2016 with the Haryana Real Estate Regulatory Authority vide Registration No. 130/2022.
- v. That the complainants had already paid to the respondent an amount of Rs. 61,70,852 as 44.42% of the cost of the plot which came around @ Rs. 77693.1 per sq. yard at the time of booking, amount being paid, vide cheques on various dates. The details of the cheque payments are given bellow, which are as follows:

(1) Rs. 5,00,000 on 25/11/22 via ICICI cheque no - 536571

(2) Rs. 29,60,000 on 12/01/23 via ICICI cheque no - 526594

- (3) Rs. 4,50,052 on 12/01/23 via ICICI cheque no - 526593
- (4) Rs. 13,00,800 on 12/01/23 via ICICI cheque no - 595177
- (5) Rs. 9,60,000 on 12/01/23 via ICICI cheque no - 536572
- vi. That it is stated that the remaining payment of Rs. 77,20,674 was to be payable on possession of the plot along with completion certificate duly approved by the authorities.
- vii. That an agreement for sale herein after referred to as builder buyer agreement was signed and executed only on 11.05.2023. That it is pertinent to state that prior to this the complainants have issued multiple emails to the respondent. seeking the date of execution of the agreement vide emails dated 10.02.23, 15.02.23, 30.03.23 & 06.05.23
- viii. That post the signing of the BBA the respondent kept on illegally demanding the complainants the remaining sum and issued a notice for termination dated 01.06.2023 whereas the complainants kept on asking the respondent for a signed copy of the BBA and for seeking a copy of the Occupancy/Completion Certificate of the project and always maintained that they are ready and willing to make the balance payment subject to the respondent providing them necessary documents and never showed their inability to make the payments.
- ix. It is pertinent to state that vide the notice of termination issued to the complainants by the respondent a threat was issued to them threatening to terminate their allotment as the remaining payments on the complainants were claimed to be overdue. The respondent also referred to some letter(s) which they claimed to have sent regarding the same on 1.04.2023 and 01.05.2023 but these letters were never sent and never received by the complainants.
- x. That it is stated that despite sending multiple emails to the respondent their grievances remain unanswered.
- xi. That the complainants state that pursuant to the receipt of the above-

mentioned letter and having called the respondent to understand the reasons around their behavior, complainants finally visited their office on 16th June 2023 to get the signed copy of BBA. It is stated that in continuation of their intimidating behavior Mr. Kunal Manchanda and Mr. Himanshu Arora of the respondent threatened the complainants of termination if they don't pay the remaining amount due on possession immediately. The complainants were being coaxed to pay the remaining payments which are though only due on possession. They were trying to make complainants agree to pay 40% of the remaining dues only payable on possession to start with but, then came down to 20% to be paid at once or agree on a payment plan to start paying remaining dues in instalments.

- xii. That the complainants only request during all these conversations was that they were/are willing to pay the remaining payable amount on possession if respondent can give them a letter of assurance that the "Aspiration project" will be ready for possession with completion certificate in next 15 /30 days. The respondent promised to provide complainants that letter of confirmation, but the same never came good as there was lot of work still pending onsite. The respondent also threatened complainants that they will not even give them the signed BBA before they agree to pay the remaining amount. But after multiple heated discussions, with complainants reminding respondent of their legal obligation towards handing over the BBA to the buyer, they finally relented after 3 hours and handed over the signed BBA on 16.06.2023.
- xiii. That the complainants have been in touch with the respondent on emails after their visit to respondent office on 16.06.23. The complainants have sent 17 reminders via email to the respondent starting from 19.06.23 till 27.02.24 asking for a response from respondent on their request of getting the possession letter along with completion certificate. It is

pertinent to state that despite so many communications they have not been provided the completion certificate along with the possession letter till date.

- xiv. That on 21.07.2023 the respondent again sent a mail to complainants along with an attachment again threatening to terminate their allotment in complete disregard or response of complainants' requests to get the completion certificate regarding the completion of the work at the site of vatika Aspirations so that complainants can make the remaining payments and take possession.
- xv. That the complainants state that in complete disregard to complainants' replies/communications over emails, respondent again sent a letter dated 21.11.2023 received on 02.12.2023 threatening to have terminated complainants' plot. That the complainants failed to understand the logic behind such tactics of threatening/harassing their customers who have remained in constant contact with them and fully compliant with, agreed contract terms as per the signed BBA as agreed at the time of purchase. That the complainants continued to send them mails /letter around requests to get Completion Certificate after receiving this 3rd notice around termination. But there has been no response.
- xvi. That the complainants as a reply to the letter of cancellation issued by the respondent again sent a letter dated 18.12.2023 to the respondent asking for offer of possession along with Occupancy/ Completion Certificate of "The Project". The complainants along with that have attached images of the plot where it can be seen that on the ground lot of work were still remaining including overhead electricity cables removal, laying down of roads, parapet colony walls and other development works.
- xvii. That since the delivery of the project was expected to be on March 2024, complainants visited the respondent's office again on 08.03.2024 to get

some feedback on expected completion timelines. There they were told that the plot has been cancelled by respondent due to non-payment of dues. That the complainants once again asked them to reconsider and share the completion certificate so that they can plan to make the remaining payments, but they were not entertained at all and asked to try their luck legally.

- xviii. That the complainants state that they visited the site of the project on 08.03.2024 to review the status of the work, and it was still far from being ready. The overhead high voltage power lines were still hanging there, yet to be relocated, work on the roads / pavements was far from over, no parapet wall or security gate was found in place. No common facilities development was found to be done by the builder and the work was still far from over.
- xix. the complainants had already paid to the respondent an amount of Rs. 61,70,852 as 44.42% of the cost of the plot as on 11.05.2023 in terms of the BBA between both the parties was executed and registered before the Sub-registrar office on a later date 11.05.2023 which is in contravention of the provision of the Section 13 of the RERA Act 2016.
- xx. It is mentioned in clause 5 of the builder buyer agreement BBA that the time period for completing the project was 31.03.2024 as disclosed at the time of registration of the project with the authority and towards handing over the plot to the allottee(s) and the common areas to the association of the allottees of the competent authority as the case may be but till date it has not been completed and not been given in possession but in contrast to that they have cancelled the allotment on the ground of delay of payment.
- xxi. That the complainants are always being ready to pay, when formal demand for remaining payments due from them, in compliance of their BBA contract terms, where the remaining payments only become due on

possession. complainants have not received any intimation of the possession being offered in compliance with work completion along with a completion certificate issued by a competent authority highlighting the work being completed on the project.

- xxii. The respondent is trying to deliberately snatch complainants rightfully purchased plot, as the market rates around that area have appreciated and they can sell the same plot at 1.5 /2 times the price or more. Complainants are under great amount of stress and at risk of losing out their hard-earned money.

C. Relief sought by the complainant: -

4. The complainants have sought following relief(s)

- i. Direct the Respondent to revoke the letter dated 21.11.2023 pertaining to illegal cancellation of plot Unit No. 33, admeasuring area 178.8 Sq. yard in the residential project 'ASPIRATION" allotted to the Complainants and restore the plot to Complainants. As non-compliance and default is on the part of the Respondent herein with regard to the offer of Possession along without the Completion Certificate and completion of the Project. Remaining payments would be payable only once the possession is offered along with completion certificate certified by the relevant approving authority.
- ii. Direct the Respondent to allot an alternative plot in admeasuring area 178.8 Sq. yard in the residential project 'ASPIRATION" and accept the differential amount as pending as on date of letter of cancellation dated 21.11.2023 being Rs 77,20, 674/- Payable only once the possession is offered along with completion certificate certified by the relevant approving authority.
- iii. Direct the Respondent to Grant such a penalty, as may deem fit and proper by this Hon'ble Authority, towards the delay in offering of possession of the plot which was promised in March, 2024 along with

interest @ 18% until the day of possession.

- iv. Direct the Respondent to pay a sum of Rs.10,00,000/- to the Complainant towards the cost of litigation and towards exemplary damages due to mental agony and harassment of the Complainants.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent: -

6. The respondent contested the complaint on the following grounds: -
 - i. That the present complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed.
 - ii. That the complainants had filed the present complaint with oblique motive of harassing the respondent company and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
 - iii. That the Ld. Authority that the Ld. Authority had initiated Suo Moto proceedings bearing no 572 of 2023 titled as 'HARERA Gurugram Through Prachi Singh Vs Vatika Limited', in the project 'Aspiration'. In the said Suo Moto proceedings, the Ld. Authority vide order dated 09.10.2023 has imposed penalty for contravention of Section 3, 4 and 7 of the Real Estate (Regulation and Development) Act, 2016, which was duly complied by the respondent.
 - iv. That the Ld. Authority has already adjudicated all the issues pertaining to the project 'Aspiration.' Therefore, the respondent herein can only refund the amount paid by the complainants.
 - v. That in July, 2022, the complainants learned about the residential plotted colony under DDJAY, to be launched by the respondent, titled as "ASPIRATION", situated at Sector 88B, Gurugram-122505, and visited the

office of the respondent to know the details of the said project. The complainants have further inquired about the specifications and veracity of the project and were satisfied with every proposal deemed necessary for the development.

- vi. That the complainants, being satisfied with the specifications of the project, were enthusiastic and eager to book the plot. The respondent clarified that the project is in its launching phase and respondent will accept any payments after obtaining the license as per the DDJAY scheme. The respondent also stated that the layout is subject to change as per the requirements of the competent Authority/Developer.
- vii. That on 12.01.2023, the complainants expressed their interest for project, and applied for the residential plot in the project vide Expression of Interest, for total sales consideration of Rs.1,38,91,526/-. The complainants on their own accord paid Rs. 5,00,000/- vide cheque no. 536571 dated drawn on ICICI Bank towards in favour of the respondent for registration of the plot.
- viii. It is also pertinent to note that as per clause (b) and (d) of the EOI, the complainants agreed to pay further amount as and when demanded by the respondent, in accordance with the payment plan. The EOI clearly stated that the timely payment has to be made for the plot as per the payment plan.
- ix. It is an established fact that the Expression of Interest is a Letter of Intent, indicating the intent of both parties to enter into an agreement of sale. It gives an equal opportunity to both the parties, to assess the credibility of the other. Expression of Interest does not bind the parties to enter into an agreement of sale. Before entering into a binding contract with the complainants, the respondent was entitled to look at the totality of circumstances in deciding the further course of action.

- x. That on 17.02.2023, the respondent issued an allotment letter dated 17.02.2023, with respect to Plot No. 33, A4, Aspiration, Gurgaon - 122505, admeasuring 178.80 sq. yds.
- xi. The respondent after making the adjustments in the instalments paid initially for booking of the unit in question, requested the complainants to pay for the further instalments, which was to the utter shock of the respondent was flatly refused by the complainants. It is pertinent to note that the complainants were not willing to fulfil their obligations as per the EOI.
- xii. That the respondent issued a reminder for intimation of possession dated 01.04.2023 in regard to letter of intimation and corresponding payment request of Rs. 77,20,674.28 and requested the complainants to kindly remit the said amount.
- xiii. That on 03.05.2023, the respondent issued opportunity for intimation of possession and gave the complainants an opportunity to clear all outstanding dues, that is Rs.79,42,262 against final Instalment, the complainants did not pay any heed and did not pay the dues.
- xiv. The respondent being a customer centric company, gave several chances to the complainants to complete their dues, but the complainants were unwilling to cooperate with the respondent.
- xv. It is pertinent to note that the EOI, clearly laid out that timely payments will be the essence. But the complainants failed to abide by the terms of EOI, which led to the cancellation of the plot of the complainants. It is further stated that the EOI can be automatically terminated/cancelled upon non-fulfilment of the terms on which the performance is contingent. The allotment of plot was only valid, if the timely payments were made by the complainants, which the complainants clearly failed to do so.
- xvi. The respondent having frustrated all means of communication and requests, with respect to the payment of instalments, issued a termination

notice dated 01.06.2023, against complainants. The respondent again gave the complainants an opportunity to pay their dues within a week from the letter date.

- xvii. That the respondent had again sent a reminder mail dated 21.07.2023 wherein it was specifically mentioned that various reminders were sent with respect to pending dues that booking would be cancelled within a period of 7 days if the complainant fails to clear the dues. Despite the said fact, the complainant did not come forward with respect to the same.
- xviii. That on 21.11.2023, the respondent sent a letter for cancellation of builder buyer agreement cum refund letter, which states that due to failure to clear the outstanding dues, the respondent is constrained to and left with no alternative but to cancel the builder buyer agreement of the unit as per the clauses of builder buyer agreement and to refund the detailed amount as per the company policy.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainants.

- F.I. Direct the Respondent to revoke the letter dated 21.11.2023 pertaining to illegal cancellation of plot Unit No. 33, admeasuring area 178.8 Sq yard in the residential project 'ASPIRATION' allotted to the Complainants and restore the plot to Complainants. As non-compliance and default is on the part of the Respondent herein with regard to the offer of Possession along without the Completion Certificate and completion of the Project. Remaining payments would be payable only once the possession is offered along with completion certificate certified by the relevant approving authority.**
- F.II. Direct the Respondent to allot an alternative plot in admeasuring area 178.8 Sq. yard in the residential project 'ASPIRATION' and accept the differential amount as pending as on date of letter of cancellation dated 21.11.2023 being Rs 77,20,674/- Payable only once the possession is offered along with completion certificate certified by the relevant approving authority.**
- F.III. Direct the Respondent to Grant such a penalty, as may deem fit and proper by this Hon'ble Authority, towards the delay in offering of possession of the plot which was promised in March, 2024 along with interest @ 18%**

until the day of possession.

11. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
12. In the present complaint, the complainants were allotted a plot bearing no.33, Street A4, Aspiration, admeasuring 178.80 sq. yds. vide allotment letter dated 17.02.2023, under construction linked payment plan, for the sale consideration of Rs.1,38,91,526/-. Thereafter, a builder buyer agreement was executed between the complainant-allottees and the respondent-promoter on 11.05.2023. Further, perusal of case file reveals that the possession of the plot was to be offered by 31.03.2024. Therefore, the due date of handing over possession comes out to be 31.03.2024.
13. The complainants-allottees have paid a total amount of Rs.61,70,852/- against the sale consideration of Rs.1,38,91,526/-, which is 44.4% of the entire sale consideration. The plea of the respondent is that the plot of the complainants was cancelled by the respondent vide termination letter dated 01.06.2023 on account failure of the complainants to make payment of the outstanding dues.
14. Herein, the complainants intend to continue with the project and are seeking quashing of notice for termination dated 01.06.2023. Now, the question before the authority is whether the notice for termination letter dated 01.06.2023 issued by the respondent to the complainants is valid or not, in the eyes of law?
15. It has been observed by the Authority that the complainants were allotted a plot vide allotment letter dated 17.02.2023, i.e., after enactment of the Act, 2016 and Rules, 2017. A buyer's agreement has been executed between the parties on 11.05.2023. The Authority has gone through the payment plan which was duly agreed between the parties and the same is reproduced below for ready reference:

Schedule D: Payment Plan

Instalment	Percentage of total sale consideration
At the time of booking	44.4% BSP
On offer of possession or within 60 days whichever is later	55.6% BSP + 100.0% of sewer connection charges + 100.0% of STP + 100.0% of electric connection charges + 0% of water connection charges + stamp duty & registration charges + escalation in construction cost (if any)

16. It is matter of record that the complainants booked the aforesaid plot under the above-mentioned payment plan and paid an amount of Rs.61,70,852/- towards total consideration of Rs.1,38,91,526/-. However, 55.58% payment was payable at the time of offer of possession. The respondent has not obtained the completion certificate (CC)/ part CC in respect of the allotted plot of the complainants till date. However, offer of possession was made by the respondent to the complainants on 03.05.2023.
17. It is necessary to clarify whether intimation of possession dated 03.05.2023 made to complainant-allottees tantamount to a valid offer of possession or not? The authority is of considered view that a valid offer of possession must have following components:
- a. Possession must be offered after obtaining occupation certificate.***
 - b. The subject unit should be in a habitable condition.*
 - c. The possession should not be accompanied by unreasonable additional demands.*
18. In the present matter, the respondent has issued intimation of possession with respect to the allotted plot on 03.05.2023 i.e., before obtaining completion certificate (CC)/ part CC from the concerned department. Therefore, no doubt that the offer of possession has been sent to the complainants but the same is for fit outs. Thus, the offer of possession dated 03.05.2023 is an invalid offer of possession as it triggers component (a) of the above-mentioned definition.
19. In view of the reasons quoted above and documents available on record, the Authority is of the view that the notice for termination letter dated 01.06.2023 is not valid in the eyes of law, as the demands raised by the respondent are in violation of payment plan agreed to between the parties

and hence, the notice for termination letter dated 01.06.2023 is hereby set aside and the respondent is obligated to restore the allotted plot of the complainant-allottees within 30 days from the date of this order.

20. Further, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, — in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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

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

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

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

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

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

23. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
25. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. Therefore, interest on the delay payments from the complainants shall be 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.

27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 31.03.2024. Completion certificate (CC)/ part CC has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject plot and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 31.03.2024 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

F.IV. Direct the Respondent to pay a sum of Rs.10,00,000/- to the Complainant towards the cost of litigation and towards exemplary damages due to mental agony and harassment of the Complainants.

28. The complainants are seeking the above-mentioned relief with respect to compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

G. Directions of the authority

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

- I. Cancellation of the plot allotted to the complainants is set aside. The respondent is directed to reinstate the allotment of the complainants within 30 days from the date of this order. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative plot of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of builder buyer agreement between the parties. Further, the possession of the plot shall be handed over to the complainants after obtaining of completion certificate (CC)/ part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- II. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate i.e., 10.90% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 31.03.2024 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the Rules, *ibid*.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the allottee

by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

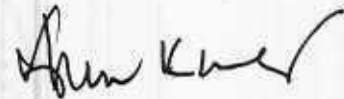
IV. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

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

30. Complaint stands disposed of.

31. File be consigned to registry.

Date: 01.08.2025



Arun Kumar
(Chairman)

Haryana Real Estate
Regulatory Authority,
Gurugram