# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

**Complaint no. : 269 of 2025**
**Order pronounced on : 11.07.2025**

Vikas Dahiya
R/o: 665, Pana Milhan, Nahri (232), Sonipat

**Complainant**

**Versus**

M/s Vikas Park Private Limited
**Regd. office:** E1, Qutub Hotel Complex, Saheed Jeet Singh Marg, New Delhi-110016

**Respondent**

**CORAM:**
Shri Arun Kumar

**Chairman**

**APPEARANCE:**
Shri Gaurav Bhardwaj (Advocate)
Shri Jayesh Yadav (Advocate)

**Complainant**
**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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 provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

## A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount

paid by the complainant, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

| S. N. | Particulars | Details |
|---|---|---|
| 1. | Name and location of the project | "Hero Homes" at Sector 104, Dwarka Expressway, Gurgaon, Haryana |
| 2. | Nature of the project | Group Housing Colony |
| 3. | License no | 37 of 2012 dated 22.04.2012 valid upto 21.04.2025 |
| 4. | RERA registration | 294 of 2019 dated 13.11.2018 valid upto 28.02.2027 |
| 5. | Unit no. | 2301, 23rd floor, T-02 |
| 6. | Unit area admeasuring | 683.83 sq. ft. (carpet area)<br>1099 sq. ft. (super area) |
| 7. | Allotment letter dated | 30.04.2019<br>(Page 67 of complaint) |
| 8. | Date of agreement for sale between original allottees and the respondents | 30.04.2019<br>(page 52 of complaint) |
| 9. | Possession clause | **7.1**<br>.....<br>*The promoter assures to hand over possession of the apartment for residential usage along with car parking (if applicable), on or before **31.08.2023,** unless there is delay due to force majeure, court orders, govt policy/ guidelines, decisions affecting the regular development of real estate project.*<br>.... |
| 10. | Due date of possession | 29.02.2024 |

| | | |
|---|---|---|
| | | (As mentioned in possession clause of agreement)<br>**Note:** A grace period 6 months is allowed being unconditional. |
| 11. | Transfer agreement (original allottee transferred the unit to complainant) | 08.12.2023<br><br>(page 92 of complaint) |
| 12. | Total Sale consideration | Rs.70,45,689/-<br><br>(page 56 of complaint) |
| 13. | Amount paid by the complainants | Rs.65,09,761 /-<br><br>(as per customer ledger at page 93-106 of complaint) |
| 14. | Occupation certificate | 20.01.2025<br><br>(Page no. 36 of reply) |
| 15. | Offer of possession | 25.02.2025<br><br>(Page no. 43 reply) |

**B. Facts of the complaint:**

i. That the complainant, Mr. Vikas Dahiya is respectable and law-abiding citizen and currently residing at R/o 665, Tower-B, Mahindra Aura, New Palam Vihar, Sector-110A, Choma, Gurugram, Haryana-122017.

ii. That the respondent advertised about the launch of its new group housing project namely "Hero Homes" located in Sector-104, Dwarka Expressway, Gurugram, Haryana. The said respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project nurture wellness and enhance lifestyle with a host of unique and modern facilities providing seamless connectivity to Delhi through a network of flyovers.

iii. 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 residential unit for themselves, the complainant herein purchased the aforesaid residential unit from the said first buyers namely Ms. Bharti Vohra vide agreement for sale dated 30.04.2019, by paying a considerable amount towards purchase of the unit in question.

iv. That relying on the abovesaid representations of the respondent company, the erstwhile owner/first buyers namely Ms. Bharti Vohra booked a residential unit in the said project by paying an amount of Rs. 4,00,000/- vide instrument bearing no. 392057 dated 05.01.2019, syndicate bank, Gurugram. That on 05.02.2019, an allotment letter dated was issued by the respondent in favour of the erstwhile owner unit bearing no. 2301 on 23rd floor located in Tower-T-02, ad measuring carpet area 683.83 sq. ft. and super area 1099 sq. ft. along with basement parking no. B2-482 ad measuring 134.55 sq. ft. in basement no. 02 in the group housing society known as Hero Homes, Sector-104, Dwarka Expressway, Gurugram, Haryana.

v. That thereafter, the respondent made an endorsement in the allotment letter, payment receipts as well as agreement to sale dated 10.11.2023 in favour of the complainant herein, followed by transfer letter dated 08.12.2023 whereby all the rights pertaining to the unit in question were transferred from the name of erstwhile owner whereby all the rights pertaining to the unit in question were transferred from the name of erstwhile owners Ms. Bharti Vohra in the name of the complainant herein. Accordingly, the complainant herein are the subsequent allottees of residential unit bearing no. 2301, located on 23th Floor,

admeasuring a carpet area of 683.83 sq. ft. and super area of 1099 sq. ft., as earlier it was in the name of first buyer. The complainant after making substantial payment to the original allottee stepped into the shoes of original allottee.

vi. That as per clause 7.1 of agreement to sale dated 30.04.2019, the respondent undertook to handover possession within 51 months from the date of execution of agreement, i.e. by 31.08.2023. However, the respondent miserably failed in handing over possession on or before said due date.

vii. That the complainant kept making payments in accordance with the demands raised by the respondent. Till 2024, the complainant had paid a total sum of Rs. 65,28,802/- in accordance with the demands of the respondent, as against the total sale consideration of Rs. 70,45,689/-, i.e. more than 90% payment. That at the time of purchase of the unit in question, the respondent assured the complainants that the project will be completed on time and all the necessary government approvals would be obtained on time and subsequently; after obtaining occupation certificate from the concerned department, the respondent shall endeavour to handover the possession of the unit to the complainants.

viii. The complainant was highly distressed because of said lapse on part of the respondent and sought a concrete answer or commitment from them. To the utter surprise of the complainant, respondent have maintained a staunch silence on not obtaining OC and not fulfilling their commitments with respect to possession of the Unit.

ix. That it is imperative to mention here that all through this while, the complainant kept reiterating that the delay in handover of possession has caused extreme mental agony as well as financial hardship to her.

x. That the complainant has 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 complainant have gone through till date. Even after a lapse of more than 5 years from the date of booking, the complainant has been left empty handed, under financial distress as the respondent has failed in offering and handing over possession of the unit booked by the complainant, thereby duping the complainant of their hard-earned money and causing them great mental trauma.

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

3. The complainant has sought the following relief(s):

i. Direct the respondent to complete the project and further to obtain occupation certificate as per builder buyer agreement.

ii. Direct the respondent to handover a complete unit to the complainant in accordance with the specifications laid down in the builder buyer agreement after obtaining occupation certificate.

iii. Direct the respondent to pay delayed possession charges to the complainant on the principal amount paid, from the due date of possession till the date of actual handing over of possession after receipt of valid occupation certificate.

iv. Direct the respondent not to charge any amount beyond the amount as mentioned in builder buyer agreement.

v. Direct the respondent to not levy any holding charges from the complainant.

vi. Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover.

4. 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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

i. That the respondent i.e., Vikas Parks Private Limited, a company duly incorporated under the companies act, 1956 and existing under the companies act, 2013 and a subsidiary company of hero realty private limited, real estate arm of prestigious hero group. Respondent is engaged in the business of construction and development of real estate projects.

ii. At the outset, respondent denies each statement, submission, averment, and contention set forth in the captioned complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply.

iii. It is further stated and submitted that the purported complaint filed by the complainant is not maintainable and Ld. authority ought not to entertain the same for the following amongst other preliminary objections and submissions, which go to the very root of exercise of jurisdiction and are urged in the alternative and without prejudice to one another, before replying on merits to the complaint of the complainant.

iv. The captioned complaint has been preferred by the complainant on purported grounds against the respondent, seeking inter-alia delay interest from the due date of possession till actual handing over of possession. The captioned complaint pertains to the apartment no. 2301, admeasuring 683.83 sq. ft. carpet area in tower-2, on 23rd floor, along with basement parking no. b2-482 basement 2 admeasuring 134.55 sq. ft., in project "Hero Homes" located in Sector – 104, Gurugram, Haryana,

for which an application for grant of occupation certificate has been made on 21.02.2024 and the occupation certificate has been granted by Director Town and Country Planning dated 20.01.2025. An intimation of receipt of OC has also been sent to complainant vide email dated 23.01.2025. The possession in respect of the apartment in question has been offered by the respondent to the complainant vide offer of possession letter dated 25.02.2025.

v. That as a matter of fact, the contents of occupation certificate and the endorsements clearly indicate that the project was complete well in time. The project had received fire NOC from Director General, Fire Service, Haryana on 17.01.2024. District Town Planner had given his endorsement on application for grant of OC on 08.08.2024, thereby clearly indicating the project, despite being complete, was stuck in bureaucratic paperwork.

vi. That the complainant has approached the Ld. authority with unclean hands and has tried to mislead the Ld. authority by making incorrect and false averments and stating untrue and/or incomplete facts. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law.

vii. That the complainant has neither any cause of action nor any locus standi to maintain the present complaint against the respondent. The complainant is now seeking the complete amendment/ modification/ re-writing of the terms and conditions of the agreement/understanding between the parties as per his own whims and fancies while nit-picking facts and laws as per his convenience and blowing hot and cold in the same breath.

viii. The complainant is the subsequent allottee who had purchased the apartment in question from the original allottees Ms. Bharti Vohra vide agreement to sell. In this regard, transfer request was made to the respondent and a registered tripartite agreement was executed between the original allottees, complainant and the respondent company dated 10.11.2023, clearly indicating that the complainant were aware of the stage of construction/development of the project in question and any purported delay. The transfer of apartment in favour of the complainant was completed on 08.12.2023 which was duly intimated to the complainant.

ix. It is pertinent to note that only allotment of the apartment in question was endorsed in favour of the complainant and no other right, as has been asserted by the complainant. Thus, the sale transaction between the original allottee and the complainant cannot be expanded to include actionable claims, such as claim for delay possession interest and therefore, the complainant cannot claim the status of the original allottee and the right to claim purported delay interest, if any.

x. The complaint is barred by law of estoppel. The respondent on the specific undertakings and submissions of the documents by original allottee and the complainant and completion of requisite formalities agreed to endorse the allotment in favour of the complainant. It is pertinent to note that only allotment of the apartment in question was endorsed in favour of the complainant and no other right, as has been asserted by the complainant. That the undertaking given by the complainant categorically recorded the fact that he will not claim any delay interest from the respondent, as the earlier projected timeline had been seriously impacted by the force majeure events/occurrences beyond the control of the respondent company.

xi. That clause 7.1 of the agreement for sale dated 30.04.2019 categorically provides that the liability of the promoter was only till the completion of development. The date of submission of application with the competent authority for obtaining completion/occupancy/part-occupancy certificate is to be reckoned as date of completion of development/possession of the tower/ apartment. In the present case, the application for grant of occupation certificate for tower 1 to 4 and part basement 1 and basement 2 was applied on 21.02.2024, clearly indicating that the construction in respect of the tower – 1 to 4, part of basement 1 and basement 2 of the project were complete.

xii. In terms of the AFS, the respondent is entitled to extension of time for the period the authorities take for providing the occupancy/part-occupancy/completion certificate and no claim of damages or compensation can be made out by the allottee against the promoter in case of delay in handing over possession on account of the said reason. The time taken by the competent authorities in grant of occupation certificate is beyond the control of the respondent.

xiii. In case of delay/failure due to occurrences of force majeure events/ events beyond the control of the respondent company or impacting the real estate project, the respondent is entitled to extension of time. It is clarified that there has been no delay on the part of the respondent, and the extension in delivery schedule is due to force majeure and other reasons stated in the paras below.

xiv. That further without prejudice to the rights of the respondent, it is submitted that the respondent suffered, a lot of setbacks due to reasons beyond its control yet displaying professional conduct and utmost commitment to its customers, executed and completed the project in

terms of the AFS. The various government orders and court orders, received and pronounced, resulted in change in timelines of the project.

xv. That said, the construction of the project commenced as per schedule, however, in the intervening period when the construction and development was under progress there were various instances and scenarios when the development and construction work had to be put on hold due to reasons beyond the control of the respondent/developer.

xvi. That despite of several adverse contingencies which played against the respondent, the respondent completed the project within the stipulated timeline, and vide an email, issued an offer of possession letter dated 25.02.2025. Along with the offer of possession letter, respondent had sent a demand notice for payment balance amount of INR 5,93,175.06/-, which is to be paid by 12.03.2025, which the complainant till date have not addressed. Thus, it raises a pertinent question with regards to the intention of the complainant. If the complainant was truly distressed with delay in possession of the subject unit, he would have responded to the offer of possession letter, and paid the amount asked for in the demand letter. However, the present complaint exemplifies that the complainant true intention is to harass the respondent and earn undue gains at the expense of the respondent, while squandering time and resources of this Ld. authority.

xvii. That the various contentions raised by the complainant is fictitious, baseless, vague, wrong, and created to misrepresent and mislead this authority, for the reasons stated above.

**E. Jurisdiction of the Authority:**

5. 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**

6. 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 the entire Gurugram District for all purposes 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**

7. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

8. Hence, given 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 complainant at a later stage.

**F. Findings on relief sought by the complainant:**

**F.I Direct the respondent to complete the project and further to obtain occupation certificate as per builder buyer agreement.**

**F.II Direct the respondent to handover a complete unit to the complainant in accordance with the specifications laid down in the builder buyer agreement after obtaining occupation certificate.**

**F.III Direct the respondent to pay delayed possession charges to the complainant on the principal amount paid, from the due date of possession till the date**

**of actual handing over of possession after receipt of valid occupation certificate.**

**F.IV Direct the respondent not to charge any amount beyond the amount as mentioned in builder buyer agreement.**

**F.V Direct the respondent to not levy any holding charges from the complainant.**

**F.VI Direct the respondent to not levy any maintenance charges from the complainant till date of actual handover.**

9. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

10. The complainant applied for the allotment in the group housing project i.e., "Hero Homes" located in sector-104, Gurugram being developed by the respondent i.e., Vikas Park Private Limited. The respondent issued an allotment letter dated 05.02.2019 in favour of the original allottee i.e. Bharti Vohra and thereby intimated about the allotment of unit no. 2301, 23rd floor, tower-02 in the project of the respondent. On 08.12.2023 the original allottee transfers the said unit to the complainant at the sale consideration of Rs.70,45,689/-. The complainant has paid a sum of Rs.65,09,761/- towards the subject unit.

11. As per documents available on record, the respondent has offered the possession of the allotted unit on 25.02.2025 after obtaining of occupation certificate from competent authority on 20.01.2025. The complainant took a plea that offer of possession was to be made in made in 2023, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

> ***Section 18: - Return of amount and compensation***
> *"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*
> .....

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

13. **Due date of handing over possession:** The promoter has proposed to handover the possession on 31.08.2023. Therefore, the due date of handing over possession comes out to be 31.08.2023. 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 complainant is 31.08.2023 i.e. after 25.03.2020. As far as grace period of 6months is concerned, the same is allowed. Therefore, the due date of possession comes out to be 29.02.2024.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and seeking delay possession charges. However, 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]***

*(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.*

15. The legislature in its wisdom in the subordinate legislation under the provision of 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.

16. 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., 11.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

17. 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

19. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of the agreement for sale dated 30.04.2019, and the due date comes out as 29.02.2024. Occupation certificate was granted by the concerned authority on 20.01.2025. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part

of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the agreement for sale dated 30.04.2019 to hand over the physical possession within the stipulated period.

20. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 20.01.2025. The respondent offered the possession of the unit in question to the complainant only on 25.02.2025, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.

21. In view of the above, the complainant is entitled for delayed possession at the prescribed rate of interest @11.10% per annum from the due date of possession till valid offer of possession after obtaining occupation certificate.

**G. Directions issued by the Authority:**

22. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

    i. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 11.10% per annum from the due date of

possession i.e., 29.02.2024 till valid offer of possession (after obtaining occupation certificate) made on 25.02.2025 plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

II. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.

III. The respondent is directed to handover the possession of the allotted unit and execute the conveyance deed thereafter.

IV. The respondent shall not charge anything from the complainant which is not the part of the agreement.

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

23. Complaint stands disposed of.

24. File be consigned to the Registry.

**Dated: 11.07.2025**

**(Arun Kumar)**
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram