

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

Complaint no.: 5835 of 2024
Order reserved on: 27.11.2024
Order pronounced on: 13.11.2025

1. Sushil Tripathi
2. Meera Dwivedi

Both R/o: House No. 989, Housing Board Colony,
Sector-18, Faridabad, Haryana-121002.

Complainants

Versus

M/s Vatika Limited

Registered office at: Vatika Triangle, 4th Floor, Sushant
Lok, Phase-1, Block-A, Mehrauli-Gurugram Road,
Gurugram-122001.

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Shri Sanjeev Kumar Sharma, Advocate

Shri Pawan Kumar Ray, Advocate

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Vatika Express City", Sector-88A, Gurgaon
2.	Nature of project	Residential project
3.	Project area	9.548 Acres
4.	DTCP License no.	94 of 2013 dated 31.10.2013
5.	RERA registered or not registered	Registered 271 of 2017 dated 09.10.2017 Valid upto 08.10.2022
6.	Unit no.	26, Street no. G-16, Block-G, Corner Plot (as mentioned in BBA at page 29 of complaint)
7.	Unit area	301.39 sq. yds. (as mentioned in BBA at page 29 of complaint)
8.	Expression of interest for a residential plot	30.07.2013 (Page 20-24 of complaint)
9.	Offer for allotment letter	06.01.2014 (page 25 of complaint)
10.	Allotment letter	05.03.2014 (page 34 of reply) <i>[Note: During proceedings dated 09.10.2025, the date of allotment is inadvertently recorded as 05.03.2015 instead of 05.03.2014]</i>
11.	Buyer's agreement	05.02.2015 (page 27 of complaint)
12.	Possession clause	9.Schedule for possession of the said residential plot: <i>"The company based on its present plans and estimates and subject to all just exceptions, force majeure and</i>

		<i>delays due to reasons beyond the control of the company contemplates to complete development of the said residential plot within a period of 48 months from the date of execution of this agreement unless, there shall be delay or there shall be failure due to reasons mentioned in other clauses...</i> [Emphasis supplied] (as per BBA at page 34 of complaint)
13.	Due date of possession	05.02.2019 (Note: the due date of possession is calculated 48 months from the date of execution of buyer's agreement)
14.	Total sale consideration [BSP+ PLC+ Car parking]	Rs.2,18,46,510/- (as per clause 1.2 of BBA at page 30 of complaint)
15.	Amount paid against the allotted unit	Rs.1,16,13,098/- (As alleged by the complainant at page 9 of complaint as well as amount calculated as mentioned in SOA at page 43-46 of reply.)
16.	Completion certificate	Not yet obtained
17.	Offer of possession	15.09.2022 (As mentioned in reminder letter for intimation of possession at page 39 of reply)
18.	Reminder letter for intimation of possession	18.11.2022 Amount due as per letter is Rs.1,08,75,480.96/- (page 39 of reply)
19.	Pre-termination letters	14.11.2023 & 20.07.2024 (page 41-42 of reply)
20.	Letter for cancellation by respondent	19.07.2024 (page 53 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- That on representation made by the respondent in advertisement through newspapers and social media etc. it has launched residential plots in

sector 88B in project "Vatika Express City" on 100 acres of land in Gurugram, with best of the amenities etc. for which he shall be obtaining license from the authority.

- b. The complainants vide their application dated 30.07.2013 applied for a 300 sq. yd. plot @ Rs.63,500/- per sq. yd. and paid Rs.11,00,000/- through Sh. Pawan Devgun, the agent of the respondent. The complainants chose to purchase plot no. 26 in Street SG-16, Block G, a corner plot, against preferential location charges of Rs.7,53,475/- other than the basic sale of Rs.63,500/- per sq. yd. The respondent allotted them the plot chosen by complainants and executed builder buyer agreement on 05.02.2015 between them for 301 sq. yards having total consideration price as per clauses 1, schedule for possession, clause 9 and payment plans as per annexure-II of BBA. The plot was applied on 30.07.2013 by the complainants and builder buyer's agreement was executed on 05.07.2015, nearly after one years and seven months. The complainants kept on making payments during the period on demands raised by the respondents as instalments. The respondents were under obligation to handover the possession within 48 months from the date of builder buyer's agreement executed between complainants and respondents, that is 04.02.2019.
- c. The complainants paid Rs.1,16,13,098/- as per the account statement issued by the respondents generated on 06.12.2022. An intimation of possession for unit no.26, G-16 was already sent to complainants with demand of Rs.1,08,75,481/- dated 15.10.2022 at P.O Box-97141, Dubai.
- d. The complainants were getting suspicious as the intimation of possession was already late by more than three and half years, where more than 1 crore 16 lacs were already paid to the respondent and nothing concrete happening. Meanwhile RERA was enacted and implemented in India.

People living out of India had a sigh of relief on introduction of RERA against cheatings in Real Estate. The complainants checked and found that the approvals of RERA were not granted to the respondents against sale of plots purchased by the complainants till June 2024. Meanwhile the allotted corner plot against which PLC is also levied does not remain the corner plot for the reason best known to respondents, who kept on demanding the remaining amount from the complainants on intimation for possession including the PLC charges and delay interest on it.

- e. To the utter shock of complainants, a cancellation letter dated 19.07.2024 is received without even bothering to attend the issue of corner plot by the respondent. The respondent chose to communicate with complainants through their employees after cancellation of the plot about alternative plot against the cancelled plot after cancellation. Hence the complainant's u/s 11(5) of the RERA act is filed before the authority for restoration of the plot allotted which has been cancelled unilaterally and without any cause or reason.
- f. The complainant paid instalment as per the demands made by the respondent without any proof of stage wise construction as promised by the respondent at the time of booking as well as per builder buyer agreement. The complainant paid total amount of Rs.1,16,13,098/- to the respondent till date.
- g. As per clause of builder buyer agreement the possession was supposed to be handed over by 04.02.2019. The respondent failed miserably to handover the possession till date.
- h. The promoter respondent has not made true and actual demand as per executed builder buyer agreement. The offer of possession is delayed by 4 years till date. The promoter is under obligation vide section 18 of the

RERA act to pay monthly interest for every month of delay till handing over of possession from the due date of possession as per BBA.

- i. It is established law that allottee is entitled for delay possession interest at the prescribed rate of interest as granted by the act of 2016. Hence without adjustment of delay possession interest in the amount for final demand is not legal and requires to be recalculated.
- j. The complainant prays for delay possession interest for every month of delay from the due date of possession till the actual date of handing over the possession. He may further be directed to offer the possession demand letter after adjusting the delay possession interest from any due pending to be paid by allottee.
- k. That the complainants have approached the Authority under section 31 of the Act. That the complainant also reserves her right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
 - i. Restoration of the plot allotted or re-allotment of any other plot of similar specifications in same pocket of the erstwhile plot G-26/Block-G.
 - ii. Handing over of the possession of plot mutually agreed upon between the parties.
 - iii. The delay possession interest on the amount already paid to the respondent be adjusted against the amount due on whatever plot is agreed upon between the parties.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -

- a. That the present complaint under reply is bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. That the complainants have filed the present complaint with oblique motive of harassing the respondent and to extort illegitimate money while making absolute false and baseless allegations against the respondent.
- b. That the complainants have not approached the Authority, with clean hands and has suppressed the relevant material facts. That the complaint under reply is devoid of merits and the same should be dismissed with cost.
- c. That in around the year, 2013, the complainants learned about the residential project launched by the respondent titled as "Vatika Express City", situated at Sector-88B, Gurugram, and visited the office of the respondent to know the details of the said project. The complainants further inquired about the specifications and veracity of the project and was satisfied with every proposal demanded necessary for the development.
- d. That on 30.07.2013, after having keen interest in the project being developed by the respondent and post being satisfied with the specifications of the project, the complainants decided to book a plot vide application form dated 30.07.2013, and paid an amount of Rs.11,00,000/- , as booking amount for further registration in the project.
- e. The respondent vide invitation for allotment letter dated 06.01.2014, called upon the complainants for taking the allotment and requested to come to the office of the respondent on 15.01.2014, for taking the allotment of the unit.

- f. Thereafter, the respondent vide allotment letter dated 05.03.2014, allotted a plot bearing no. 26, Street No. G-16, Sector 88B admeasuring 300 sq. yds., in the aforesaid project.
- g. The respondent sent letters dated 08.07.2014 and 08.10.2014 and a final reminder letter dated 08.12.2014 for making payments of the instalment due upon 12 months of the booking as the Complainants were not making the payments in terms of the agreed payment plan.
- h. The respondent vide letter dated 13.11.2014 served two copies of the builder buyer agreement, for execution and requested the complainants to return the signed copy of the same for further execution. The complainants neither replied to the said letter nor sent a signed copies of the agreement to the respondent. The respondent again issued a reminder letter dated 09.01.2015 for execution of the builder buyer agreement with respect to the booking.
- i. That finally on 05.02.2015, a builder buyer agreement, was executed between the both the parties, for the unit in question having total sale consideration of Rs.2,19,25,510/-.
- j. That as per clause 9 of the agreement, the possession of the unit was proposed to be handed over subject to force majeure conditions within a period of 48 months from the date of execution of the agreement unless there shall be delay or there shall be failure due to reasons beyond the control of developer or due to government rules, orders etc or due to failure of allottee(s) to pay in time the price of unit along with all other charges and dues in accordance with the schedule of the payment.
- k. That the date of offering possession was to be calculated from the date of execution of the agreement and the respondent shall be entitled for extension for such period of delay caused due to force majeure circumstances, which were beyond the control of developer.

- l. That the complainants were aware of terms and conditions under the agreement and post being satisfied with every clause of the agreement and also with the payment plan and total sale consideration agreed to sign upon the same at his own judgement and investigation.
- m. That, the complainants have defaulted in making payments and was charged with interest on due amounts. The complainants were issued various reminder letters for making payment of the instalments but the complainants never paid heed to those letters and did not pay up the instalments. That for smooth completion of the project, timely payment of the instalments by various allottee(s) including the complainants were necessary for the timely completion of project. However, the project in question has been hampered due to delay in instalments by the complainants as well as the other various other allottee(s).
- n. Delay in project due to reason beyond the control of the respondent:

S. NO	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 - 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 - Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 - 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)- EPCA	Press Note - 29.10.2018 and later extended till 12.11.2018	01.11.2018- 12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 - 30.10.2019 (5 days)

8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 – 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union of India W.P. (c) 13029/1985	04.11.2019 – 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
TOTAL			1.4 years (approx.)

- o. Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. That the respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.
- p. That all these factors being force majeure may be taken into consideration for the calculation of the period of the construction of the project. It may also be noted, that the respondent had carried out its obligations in agreement with utmost diligence.
- q. That the complainants did not make a single payment post 06.10.2015 despite issuance of various reminder letters. the respondent having no other option left issued a 'pre-termination letter' dated 14.11.2023 to the complainants as a last reminder for making the payments, failing which the allotment of the complainants shall be terminated.
- r. That despite issuance of the pre-termination letter dated 14.11.2023, the complainants neither replied to the said letter, nor paid a single penny

towards the instalments due. The respondent had no other option and terminated the allotment of the complainants' unit vide letter dated 20.07.2024, 8 months after issuance of the pre-termination letter, giving ample time to the complainants to either reply to the said letter or to make the payment of the instalment due.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Written submission made by both the parties.

9. The complainants have filed the written submissions on 17.10.2025 and respondent has filed written submissions on 31.10.2025 and the same are taken on record. No additional facts apart from the complaint and reply have been stated in the written submissions.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

11. 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 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.

F.II Subject matter jurisdiction

12. 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) The promoter shall-

(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.

13. 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 complainant at a later stage.

G. Findings on the objections raised by the respondent.

G.I Objection regarding delay in project due to force majeure circumstances.

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of Covid-19 etc. and others force majeure circumstances but all the pleas advanced in this regard are devoid of merit. Firstly, the events such as orders of NGT in NCR on account of the environmental conditions, ban on construction activity and others force majeure circumstances does not have any impact on the project being developed by the respondent. As the events mentioned above are for short period which does not make such a huge impact on project which can cause and justify inordinate delay of 6 ½

years. Moreover, these events are of routine in nature happening annually and the promoter is required to take the same into consideration while fixing the due date of possession. Secondly, the Authority has gone through the possession clause of the agreement and observed that the respondent-promoter proposes to handover the possession of the allotted unit within 48 months from the date of execution of buyer's agreement dated 05.02.2015, So the due date of possession comes out to be 05.02.2019, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The Authority put reliance judgment of *Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020* which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrongs.

H. Findings on the relief sought by the complainants.

- H.I Direct the respondent for restoration of the plot allotted or re-allotment of any other plot of similar specifications in same pocket of the erstwhile plot G-26/Block-G.**
- H.II Direct the respondent to handing over the possession of plot mutually agreed upon between the parties.**
- H.III Direct the respondent to pay delayed possession interest on the amount already paid to the respondent and to adjusted against the amount due on whatever plot is agreed upon between the parties;**

16. 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.
17. In the present complaint, the complainants intend to continue with the project and are seeking setting aside of cancellation letter dated 19.07.2024 and to restore the originally allotted unit.
18. In the present case, the complainants had applied for booking a plot in project "Vatika Express City" being developed by the respondent on 30.07.2013 and they were allotted a plot bearing plot no. 26, Street no. G-16, Block-G, corner plot, having admeasuring area 301.39 sq. yds. vide allotment letter dated 05.03.2014. Thereafter, the buyer's agreement was executed on 05.02.2015 inter-se parti for total sale consideration of Rs.2,18,46,510/- against which the complainants had paid an amount of Rs.1,16,13,098/- which constitutes around 53.15% of the sale consideration. The complainants have opted for construction linked payment plan (40-60). As per clause 9 of the said agreement the respondent was obligated to deliver the possession of the unit within 48 months from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 05.02.2019. The respondent has raised various demands and reminder letters for making payment of outstanding dues but the complainant has not made the payment as per the demands and reminders and has raised various queries through emails which respondent has failed to answer. Thereafter, the respondent has cancelled the unit of the complainants vide cancellation letter dated 19.07.2024 due to non-payment of outstanding dues. Now the question arises before the Authority whether the cancellation letter dated 19.07.2024 is valid or not, in the eyes of law?
19. On the consideration of documents available on the record and submissions made by both the parties, the authority observes that the respondent has

raised various demand, reminder and pre-termination letter vide letter's dated 15.09.2022, 18.11.2022 & 14.11.2023 and thereafter, issued a notice for cancellation vide letter dated 19.07.2024, due to non-payment of outstanding dues.

20. The authority observes that the demands raised by the respondent were not as per the agreed payment plan. It is observed that the respondent has raised demand as per payment plan till the milestone "*On commencement of Utility Services (PHE Work)*". Thereafter, instead of raising demand for the next milestone on account of '*On commencement of electrification work*' and '*On commencement of road crust upto dense bituminous macadam (DBM)*', the respondent has raised the demand for the last milestone "*on possession*". Thus, it is evident from the above that the respondent has not raised the demands as per the agreed payment plan. The agreed payment plan is reproduced below for ready reference: -

Annexure-II
Schedule of payment

Plan-A	Instalment Payment Plan
Payment Plan (CLP: 40-60)	
At the time of booking	11 Lacs
Within 30 days from the date of booking	10% of BSP less Booking Amount
Within 60 days of booking	10% of BSP
Within 90 days of booking	10% of BSP
Within 12 months of booking	10% of BSP + 45% of PLC
On commencement of Utility Services (PHE Work)	15% of BSP + 50% of EDC/IDC
On commencement of electrification work	15% of BSP + 50% of PLC
On commencement of road crust upto dense bituminous macadam (DBM)	20% of BSP + 45% of EDC/IDC
On Possession	10% of BSP + 5% of (PLC + EDC/IDC) + 100% IFMS + Electricity Meter Charges + Gas Pipeline Charges + (STP + Water + Sewerage + Electric Connection Charges) + Stamp Duty & Registration charges + Escalation in Construction Cost (If Any)

21. Firstly, 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:

- i. 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.

22. However, in the present case, there is no record available on the paper book to show why the completion certificate has not been obtained by the respondent from the competent authority. Accordingly, the authority keeping in view the above-mentioned facts considers that the respondent may not have applied a complete application for grant of completion certificate and has not rectified the defects, if any pointed out by the concerned authority. Further, during the proceedings dated 09.10.2025, the counsel for the respondent states that the occupation certificate/completion certificate of the project is not yet received. So, without getting completion certificate, the respondent is not competent to issue any offer/intimation of possession to the complainants. It is well settled that for a valid offer of possession, there are three prerequisites as mentioned above. Hence, the intimation regarding the offer of possession offered by respondent on 15.09.2022 is not a valid or lawful offer of possession.

23. Furthermore, during proceedings dated 09.10.2025, the counsel for the respondent has stated that third-party rights over the subject unit of complainants stands created. However, the respondent has not submitted any document pertaining to such third-party rights over the subject unit or any other document with this regard before the Authority.
24. Moreover, the counsel for the complainants have contended that the unit booked and allotted to them is a corner unit/plot. However, on 22.06.2023, the official of respondent company informed the complainants that as per new layout plan, the unit allotted to them become second plot from the corner. Upon this, vide email dated 02.10.2024, 14.10.2024 and vide letter dated 26.09.2024, the complainants requested the respondent to revise the invoice raised reflecting revised plot area as allocation and with no PLC charge as the allotted plot is no more corner plot but the respondent failed to reply the same. No response from the respondent call for an inference against the respondent.
25. 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 19.07.2024 is not valid in the eyes of law, as the demands raised on offer of possession dated 15.09.2022 is not a valid demand and reminder and notice for termination letter dated 18.11.2022 and 14.11.2023 is hereby set aside. In the light of these observations, the respondent is directed to restore the allotted unit/plot of the complainants, in case, if the same is not available, the respondent shall offer an alternative unit/plot to the complainants of same size, similar location and at the same rate and specifications at which the unit was earlier purchased in the said project, within 30 days from the date of this order.
26. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same 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 complainant cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.

27. 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.

28. 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.
29. 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., 13.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. 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;”

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
32. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit/plot to the complainants as per the terms and conditions of the buyer's agreement dated 05.02.2015. Accordingly, it is failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period.
33. Accordingly, the respondent is liable to offer alternative similar situated unit to the complainants as per specifications, at the same rate at which the unit was earlier purchased and on a similar location of original BBA dated 05.02.2015 on account of its inability to deliver the said unit. The rationale behind the same that the allottees booked the unit in the project way back in 2013 and paid the demanded amount in a hope to get the possession of allotted unit.
34. 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 prescribed rate of the interest @ 10.85% p.a. w.e.f. due date of possession i.e., 05.02.2019 till valid offer of possession after obtaining of OC/CC 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.

I. Directions of the authority

35. 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. The cancellation letter dated 19.07.2024 is not valid and is bad in eyes of law and is hereby set aside. Therefore, the respondent-promoter is directed to restore the allotted unit/plot of the complainants, in case, if the same is not available, the respondent is directed to offer an alternative unit/plot of same size, similar location and at the same rate and specifications at which the unit was earlier purchased in the said project, within 30 days from the date of this order.
- ii. The respondent is further directed to handover the physical possession of the allotted plot/ alternative plot to the complainants, after obtaining of occupation 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 physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- iii. The respondent is directed to pay the interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% p.a. w.e.f. due date of possession i.e., 05.02.2019 till valid offer of possession after obtaining of OC/CC 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.

- iv. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- v. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within a period of 30 days and the complainants are directed to pay the outstanding dues, if any remains after adjustment of interest for delayed period.
- vi. The rate of interest chargeable from the complainants-allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent-promoter which is same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.
- vii. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement dated 05.02.2015.

36. Complaint stands disposed of.

37. File be consigned to registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.11.2025