

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of decision:** 05.08.2025

NAME OF THE BUILDER		VIKAS PARK PVT. LTD.	
PROJECT NAME		HERO HOMES	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6033/2024	Jagdish Chandra Pant & Raj Kumari V/s Vikas Park Pvt. Ltd.	Ms. Yamini Sh. Sumesh Malhotra
2.	CR/6035/2024	Manju Khanna V/s Vikas Park Pvt. Ltd.	Ms. Yamini Sh. Sumesh Malhotra
3.	CR/6063/2024	Kallol Saha & Pushpita Saha V/s Vikas Park Pvt. Ltd.	Ms. Yamini Sh. Sumesh Malhotra
4.	CR/6135/2024	Basant Kumar & Anita Rani V/s Vikas Park Pvt. Ltd.	Ms. Yamini Sh. Sumesh Malhotra

CORAM:Shri. Arun Kumar
Shri Ashok Sangwan**Chairperson**
Member**ORDER**

1. This order shall dispose of all the 4 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Hero Homes" (group housing colony) being developed by the same respondent/promoter i.e., M/s Vikas Park Pvt. Ltd. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"HERO HOMES " Sector-104, Gurugram.			
Possession Clause: "Clause 7.1The Promoter assures to handover possession of the said apartment along with parking (if applicable), on or before 31.08.2023, as per agreed terms and conditions unless there is delay due to force majeure, court orders, government policy/guidelines." (Emphasis supplied)				
Occupation certificate: - 20.01.2025				
Offer of possession: 25.02.2025				
CR No.	CR/6033/2024	CR/6035/2024	CR/6063/2024	CR/6135/2024
Allotment letter	25.01.2019	24.04.2019	19.04.2019	27.06.2019
Unit	G-01, ground floor, tower T-01 admeasuring 1082.20 sq. ft.	304, 3 rd floor, tower T-04 admeasuring 861.97 sq. ft.	1506, 15 th floor, tower T-02 admeasuring 884.58 sq. ft.	504, 5 th floor, tower T-04 admeasuring 861.97 sq. ft.
Date of BBA execution	18.05.2019	19.05.2019	18.05.2019	23.07.2019
Date of BBA registration	28.05.2019	29.05.2019	12.06.2019	-
Due date of possession	28.02.2024	28.02.2024	28.02.2024	31.06.2024
Sale consideration	₹1,16,25,383/-	₹93,63,099/-	₹94,37,858/-	₹94,51,599/-
Amount paid	₹1,04,06,170/-	₹89,70,219/-	₹85,12,596/-	₹77,93,294/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6033/2024 Jagdish Chandra Pant & Raj Kumari V/s Vikas Park Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

7. 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:

CR/6033/2024 Jagdish Chandra Pant & Raj Kumari V/s Vikas Park Pvt. Ltd.

Sr. No.	Particulars	Details
1	Name of the project	"Hero homes", Sector-104, Dwarka Expressway, Village Dhanwapur, Gurugram, Haryana
2	Nature of the project	Residential Group Housing
3	RERA Registered/ not registered	RC/REP/HARERA/GGM/743/475/87 dated 28.08.2023, valid up to 30.09.2027
4	Unit no.	T-01/G-01 along with basement parking no. B2-001 admeasuring 134.55 sq. ft. in the basement-2 [as per buyer agreement at page 41 of complaint]
5	Unit area admeasuring	1689 sq. ft. super area 1082.20 sq. ft. carpet area

		[as per buyer agreement at page 41 of complaint]
6	Date of Allotment	25.01.2019 [pg. 35 of complaint]
7	Date of registration of agreement for sale	28.05.2019 [pg. 37 of complaint]
8	Possession clause	7.1. Possession of the said apartment along with parking: "..... The Promoter assures to handover possession of the said apartment along with parking (if applicable), on or before 31.08.2023, as per agreed terms and conditions unless there is delay due to force majeure, court orders, government policy/guidelines..... " [as per agreement for sale at page 46 of complaint]
9	Due date of possession	28.02.2024 (31.08.2023+6 months grace period on account of Covid-19) [agreement for sale at page 46 of complaint]
11	Total sale consideration	₹1,17,09,833/- [as per buyer agreement on page no. 61 of complaint]
12	Amount paid by the complainant	₹1,04,06,170/-
13	Occupation certificate /Completion certificate	20.01.2025 [pg. 35 of reply]
14	Offer of possession	25.02.2025 [pg. 42 or reply]
15	Demand/Reminder notice dated	25.02.2025
16	Email by complainant for adjustment of DPC	22.11.2024 [pg. 77 of complaint]

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- That the Respondent advertised about the launch of its new group housing project namely "Hero Homes" (hereinafter called as 'the project' in question) 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. It was further represented that the project will be a paradise in its own right, featuring 2BHK and 3BHK with a carpet area of over 1800 square feet, equipped with more than 100 amenities such as an indoor planting, reflexology garden, themed gardens, no vehicular movement on the ground, electric car charging points, healing gardens, jogging track, cycling track, cricket pitch, putting greens, modular kitchen with chimney & hob, split air conditioners in living and bedrooms, wooden flooring in all the bed rooms, club house with latest state of the art facilities like Gym, spa, restaurant, swimming pool, party hall, squash court, tennis court, badminton court, and many other facilities.

- b. That believing the false assurances and misleading representations of the Respondent in their advertisements and relying upon the goodwill of the Respondent Company, the Complainants booked a unit vide application dated 23.12.2018 in the said project by making a payment of Rs.1,00,000/- vide instrument bearing no.702269 dated 23.12.2018 and Rs. 3,00,000/- vide instrument bearing no.702270 dated 23.12.2018 drawn on State Bank of India against the total sale consideration of Rs.1,17,09,833/-.
- c. That on 25.01.2019, the Respondent sent an Allotment letter allotting the unit bearing no. G-01 (Apartment 3 BHK 3 Toilet 4 Balcony) on Ground floor located in Tower-T-01, ad measuring carpet area 1082.20 sq. ft. and super area 1689 sq. ft. along with basement parking no. B2-001 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.
- d. That thereafter, an Agreement for sale was executed between the Complainants and the Respondent on 18.05.2019 for the unit in question wherein under clause 7.1, the Respondent undertook to complete construction, handover possession of the unit in question along with

parking within 51 months from the date of execution of Agreement to Sale i.e. by 31.08.2023.

- e. That the Respondent kept raising payment demands and the Complainants kept making payment in accordance with said demands only in the hope of getting possession of their unit and fearing cancellation of her unit as threatened by the Respondent time and again. Till date, the Complainants have made payment of Rs. 1,04,06,170/- as against the total sale consideration of Rs. 1,17,09,833/-, in accordance with the demands raised by the Respondent, i.e. 90% payment.
- f. That upon not receiving an offer of possession, or intimation for key handover of the unit in question, despite making 90% payment, the complainant asked the Respondent for a concrete date of handover and Delay Possession charges to which vide e-mail dated 24.09.2024, the Respondent falsely assured that handover would be given and they will contact as soon as possible, but to no avail.
- g. 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 (herein referred to as "OC") from the concerned Department, the Respondent shall endeavour to handover the possession of the unit to the Complainants. Accordingly, having paid a substantial amount towards purchase of the unit in question, the latter had no option but to believe the representations made by the former but despite lapse of due date of possession as per builder buyer agreement, the Respondent has clearly failed to handover the possession of the unit till date.
- h. That the Respondent had committed to obtain the OC and handing over possession on time. However, the prospects of possession being offered in

the near future appear uncertain, as the Respondent applied for the OC only after the possession due date had passed and has also raised a payment demand. This delay has caused significant distress to the Complainants, who are now seeking a clear response or firm commitment from the Respondent. To the utter surprise of the complainants, respondent maintained a staunch silence on not obtaining OC and not fulfilling their commitments with respect to possession of the Unit.

- i. That it is imperative to mention here that all through this while, the Complainants kept reiterating that the delay in handover of possession has caused extreme mental agony as well as financial hardship to him. Accordingly, by way of the present complaint, the Complainants seek direction to the Respondent for handing over of possession of the unit in question along with delay possession charges owing to the delay in handing over of possession in accordance with the Builder buyer agreement.
- j. That the Complainants have been severely exploited at the hands of the Builder/Respondent. The aforesaid series of events clearly portray the amount of harassment and mental agony the Complainants have gone through till date. Even after a lapse of more than 5 years from the date of booking, the Complainants have been left empty handed, under financial distress as the Respondent has failed in offering and handing over possession of the unit booked by the Complainants, thereby duping the Complainants of their hard-earned money and causing them great mental trauma.
- k. That the present complaint has been filed in order to seek delayed possession charges on the principal amount paid by the Complainants along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the due date of possession, along with other reliefs mentioned herein below. Hence, this complaint.

1. That the present complaint has been filed in order to seek possession of the unit and interest on the delayed possession along with the other reliefs as mentioned in the relief clause of the complaint. The complainants also reserve their right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s)
 - a. Direct the Respondent to resume construction and offer possession of the unit in question after obtaining Occupation Certificate.
 - b. Direct the Respondent to handover a complete unit to the Complainants in accordance with the specifications mentioned in the agreement.
 - c. Direct the Respondent to pay delayed possession charges to the Complainants on the principal amount paid by the Complainants, from the due date of possession till the date of actual handing over after receipt of valid Occupation Certificate and after completing the unit as per the specifications mentioned in the agreement.
 - d. Direct the Respondent not to charge any amount beyond the amount as mentioned in Builder Buyer Agreement.
 - e. Direct the Respondent to not levy any holding charges from the Complainants.
 - f. Direct the Respondent to not levy any maintenance charges from the Complainants till date of actual handover.
10. 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

11. The respondent has contested the complaint on the following grounds:

- a. The captioned complaint has been preferred by the Complainants 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. 01, admeasuring 1082.20 sq. ft. in Tower - 1, on Ground Floor, along with basement parking no. B2-001, in project "Hero Homes" located in Sector - 104, Gurugram, Haryana (hereinafter "the Project"), 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 ("DTCP") vide office Memo no. ZP-968-Loose/SD(RD)/2025/2603 dated 20.01.2025. An intimation of receipt of OC has also been sent to Complainants vide email dated 31.01.2025. The possession in respect of the apartment in question has been offered by the Respondent to the Complainants vide Offer of Possession letter dated 25.02.2025.
- b. 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, Senior Town Planner on 13.08.2024 and Chief Engineer- I, HSVP on 30.08.2024 and 12.09.2024, thereby clearly indicating the project, despite being complete, was stuck in bureaucratic paperwork.
- c. That at the outset it is stated that the present Complaint filed by the Complainants is bad in law, in violation of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017, premature, wholly misconceived, erroneous, unjustified, devoid of merit, untenable in law and suffers from concealment of facts, besides being extraneous and irrelevant having regard to the facts

and circumstances of the case under reference and is thus, liable to be returned at the very threshold for filing as per the rules and prescribed format and regulations.

- d. That the Complainants have 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 and, as such, is guilty of "suppressio very and suggestio falsi". The Complainants have 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. On this short ground alone, the Complaint is liable to be dismissed.
- e. That the Complainants have neither any cause of action nor any locus standi to maintain the present Complaint against the Respondent. The Complainants are now seeking the complete amendment/ modification/ re-writing of the terms and conditions of the agreement/understanding between the parties as per her own whims and fancies while nit-picking facts and laws as per her convenience and blowing hot and cold in the same breath. This is evident from the pugnacious averments as well as the prayers sought in the Complaint which are merely an afterthought, and never did the Complainants raised any objection to any term and conditions of the mutual agreement and the stage of construction of the Project.
- f. The Complainants vide Agreement for Sale executed 18.05.2019 (registered on 28.05.2019) (hereinafter referred to as the "AFS"), whereby the Complainants agreed to the explicit terms of the sale. Further, Complainants have constantly been updated of the stages of construction/development of the Project vide various emails sent by the Respondent. Hence, Complainants have filed this complaint on an absolutely unjustified ground of delay in delivery of possession, which even to the knowledge of the Complainants is false.

- g. The Complaint is barred by law of estoppel. The sale of subject unit is strictly subject to the terms of the AFS which the Complainants had agreed to. The Complainants are well-acquainted that clause 7.1 of the AFS unequivocally encapsulates the principle that the Complainants cannot claim delay possession charges in the event of force majeure circumstances mentioned of the AFS. These unforeseen events, entirely beyond the control of the Respondent company, had significantly disrupted and delayed the originally projected timeline for completion. The clause underscores the acknowledgment of such extraordinary occurrences as legitimate grounds for the delay, absolving the Respondent of liability for associated delays while maintaining the Complainants' obligations under the agreement.
- h. That clause 7.1 of the AFS 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. Further, Hon'ble NCDRC in consumer case no. 3872 of 2017 titled "Avinash Bhalla versus Mapsko Builders Private Limited" drew a presumption that application of occupancy certificate indicates completion of construction, as the developer is obligated to apply for grant of occupancy certificate only upon completion of construction. Therefore, the present complaint is not legally tenable.
- i. 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.

- j. 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. Thus, on this ground alone the complaint is liable to be dismissed and the Complainants should be penalized to establish precedent to avoid any malicious litigation in the future of similar nature.
- k. 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. Given the same, the Respondent, for the assistance of this Ld. Authority to arrive at just and proper conclusion while adjudicating the captioned complaint submits that there were certain intervening circumstances causing delay in timelines, which were beyond the control of the Respondent.
- l. 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. It is submitted that the

parties have agreed that if the delay is on account of force majeure conditions, the Developer/Respondent shall not be liable for performing its obligations. It is submitted that the Project got delayed and proposed possession timelines were shifted within the framework of the AFS as agreed on account of following reasons among others as stated below:

- That over last few years Delhi-NCR has faced unprecedented levels of severe air pollution, especially during winter months, primarily due to construction dust, vehicular emissions, and industrial activities. As a measure to curb arrest the dangerous levels of air pollution and to improve the air quality, various governmental authorities including DPCC, GRAP Sub-Committee, etc. as well as judiciary including Hon'ble Supreme Court of India and National Green Tribunal imposed restrictions on construction activities to combat the worsening air quality in Delhi-NCR. The notifications and orders specifically target the reduction of dust pollution from construction sites. Throughout from 2019 onwards, the governmental authorities and judiciary continued to impose restrictions on construction activities during peak pollution periods. Whilst, the Respondent has been taking all measures to comply with the directions issued by the governmental authorities and judiciary in its effort to combat further deterioration of air quality and curtail this crisis situation, these bans had have severely impacted the pace of construction at Project site. It is imperative to note that even after revoking the ban on construction activities, the resumption of construction activities takes time on account of mobilization of work force and other resources at Project site. That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution

(Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project.

- Adding to the woes of the developers, COVID-19 had a profound impact on the real estate sector, affecting construction activities in several significant ways. Many construction sites were temporarily shut down due to lockdowns and restrictions imposed to control the spread of the virus. This led to delays in project timelines and halted ongoing work. Social distancing measures and health concerns led to a significant reduction in the availability of construction labour. Restrictions on movement and quarantine protocols further limited workforce availability. The pandemic disrupted global supply chains, leading to shortages of construction materials and delays in procurement. Transportation restrictions and factory closures contributed to these shortages. Supply chain disruptions led to increased costs for construction materials. Prices for many materials surged due to scarcity and higher transportation costs. Health and safety measures, while necessary, sometimes led to reduced productivity. Social distancing and safety protocols slowed down work processes and affected the efficiency of construction activities. Many projects were delayed or cancelled due to the economic uncertainty caused by the pandemic. Financial challenges, including reduced cash flow and increased costs, led to re-evaluation of ongoing and planned projects. That said, Ld. Authority considering the grave and unprecedented situation had granted extension of 6 months' and thereafter 3 months' grace period to all developers, vide its notifications dated 26.05.2020 and 02.08.2021, respectively.

- That development of every residential Project mandatorily requires proportionate development of EWS housing. That on account of change of location for development of EWS housing at the behest of the landowners, which is beyond the control of the Respondent Company, the development of proportionate EWS housing for Respondent's project got delayed by approximately 24 months which was otherwise planned simultaneously with the development of the Project. That after continuous and consistent follow up with the landowners, the landowners have confirmed the site for the development of the EWS housing for the Project along with the proportionate EWS housing for their part of the development. The said delay in allocation of site to the Respondent Company, despite best efforts of the Respondent could not be avoided and has resulted in some delay in delivery schedule, which is beyond the control of the Respondent Company.
- m. Further, the Complainants have failed to consider due allowance of force majeure event such as COVID-19 pandemic which is well covered by the terms of the AFS. While recognizing COVID-19 pandemic as a force majeure event, the RERA granted due extension of registration of project to all developers and Promoters. Moreover, Hon'ble NCDRC in its judgment dated 11.05.2023 passed in Complaint bearing no. 111 of 2019 titled "Reenu Singh versus Logix Infrastructure Pvt. Ltd." Has taken cognizance of force majeure events and held that the Respondent/builder is entitled to extension of period of 4 years.
- n. That the various contentions raised by the Complainants are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Ld. Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the Complainants is sustainable, in the

eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

- o. That under the given circumstances and in light of the details of the supervening circumstances mentioned above, the Ld. Authority assuming the role of the regulator, promoter and enabler of the real estate sector shall take a considerate view, as otherwise any adverse order or any order of awarding delay interest to the Complainants, would be a double whammy for the Respondent herein, whose financial position is already stressed due to various factors, obvious to this Ld. Authority.
 - p. That the Complainants have wilfully concealed that she has received the benefit from the Respondent in the form of adjustment of the amount to the tune of INR 1,00,000/- (Indian Rupees One Lakh only), in lieu of cashback vouchers, as informed vide email dated 16.02.2022 and as such it cannot be alleged, stated, or proved that the Complainants were facing any hardship. At that point of time the Complainants had no qualms in accepting an undue amount of money or benefit from the Respondent but now has approached this Ld. Authority wearing the veil of a victim that purportedly had faced extreme hardship at the hands of the Respondent.
 - q. Given the same, the Respondent herein pleads that this Ld. Authority may dismiss the captioned complaint in the interest of justice. The complaint is liable to be dismissed/rejected on the grounds mentioned hereinabove.
12. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. 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

14. 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.

F. II Subject matter jurisdiction

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

Section 11

.....

(4) 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.

16. 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 resume construction and offer possession of the unit in question after obtaining Occupation Certificate.

F.II. Direct the Respondent to handover a complete unit to the Complainants in accordance with the specifications mentioned in the agreement.

F.III. Direct the Respondent to pay delayed possession charges to the Complainants on the principal amount paid by the Complainants, from the due date of possession till the date of actual handing over after receipt of valid Occupation Certificate and after completing the unit as per the specifications mentioned in the agreement.

17. In the present matter the complainant was allotted unit bearing no. G-01, admeasuring 1082.20 sq. ft. in the project "Hero Homes" Sector 104 by the respondent-builder. A buyer's agreement was executed between the complainant and respondent on 28.05.2019. As per clause 7.1 of the BBA, respondent was obligated to complete the construction of the project and hand over the possession of the subject unit on or before 31.08.2023.

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

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

19. Clause 7.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

*"7.1. The Promoter assures to handover possession of the said
apartment along with parking (if applicable), on or before
31.08.2023, as per agreed terms and conditions unless there is delay
due to force majeure, court orders, government policy/guidelines."*

20. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit on or before 31.08.2023. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 28.02.2024.

21. Admissibility of delay possession charges at prescribed rate of interest:

The 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.

22. 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.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (**inadvertently mentioned as 11.10% in the POD dated 05.08.2025*)

24. Rate of interest to be paid by complainant/allottee for delay in making payments: The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

26. 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 buyer's agreement executed between the parties, the

possession of the said unit was to be delivered on or before 31.08.2023. In the present case, the complainant was offered possession by the respondent on 25.02.2025 after obtaining occupation certificate dated 20.01.2025 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.

27. 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. However, 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, he 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 he 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.
28. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.90% p.a. w.e.f. 28.02.2024 till the expiry of 2 months from the date of offer of possession (25.02.2025) which comes out to be 25.04.2025 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

29. As far as the relief related to possession is concerned the Authority considers that the respondent has already offered the possession of the unit on 25.02.2025 after obtaining occupation certificate for the project from the competent authority on 20.01.2025. Accordingly, the offer of possession issued by the respondent is valid. The respondent is further directed to handover the possession of the unit complete in all respect with all the specifications mentioned in BBA within a period of 2 months from the date of this order.

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 complainants.

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

30. The respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

G. Directions of the authority:

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

- a. The respondent is directed to pay the interest at the prescribed rate i.e. 10.90% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 28.02.2024 till the expiry of 2 months from the date of offer of possession (25.02.2025) which comes out to be 25.04.2025. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- b. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - d. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months upon payment of requisite stamp duty by the complainant as per norms of the state government.
 - e. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
33. The complaints stand disposed of.
34. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025