

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

Complaint no. : 1209 of 2024
Date of filing complaint: 02.04.2024
Date of decision : 04.07.2025

Rajesh Kohli

R/o - 1376 P, Sector - 10 A,
Gurugram-122001, Haryana

Complainant

Versus

M/s. Sumel Heights Pvt. Ltd.

Office - A-10/6, Vasant Vihar, New Delhi - 110057

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Sanjeev Kumar Sharma (Advocate)

Complainant

Shri Shriya Chanda (Advocate)

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 thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Arcadia, Sector – 83 and 84, Gurugram
2.	RERA Registration	Not Registered
3.	Date of booking	28.08.2009 [Page 15 of complaint]
4.	Unit No.	83/CE/42, 2 nd floor in Ebony admeasuring 1522 Sq. ft. (Super Built-up area) [Page 15 of complaint]
	New Unit	Revised unit – K-7.3/14 – SF, 2 nd floor having same revised area (Page 44 of complaint)
5.	Date of allotment	Undated [Page 15 of complaint]
6.	Date of builder buyer agreement	Not executed
7.	Possession clause	18. <i>The company proposes to handover the possession of the unit to the intending allottee in 3 years from the date of allotment or after all the necessary approvals and sanctions have been obtained from sanctioning authorities whichever is later.</i> [Page 20 of complaint]
8.	Due date of possession	28.08.2012 [Calculated from the date of booking in absence of date of allotment and date of sanction plans approval]

9.	Total Sale Consideration	Rs. 27,55,000/- [Page 19 of complaint]
10.	Amount Paid	Rs. 45,75,093/- [As per customer statement at page 7 of reply]
11.	Occupation certificate	Not on record
12.	Offer of possession	Not on record
13.	Possession certificate	29.08.2020 [Page 45 of complaint and page 6 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- i. That upon the representation by the respondent and advertisement done, the respondent was to construct a Residential Group Housing Colony namely "**Arcadia**" on parcel of land located at Sector-83 & 84, at N.H. 8, Gurugram, Haryana.
- ii. That the complainant who is the original allottee/purchaser was allotted apartment/unit no. 83/CE/42 admeasuring approximate super built-up area 1522 sq. ft. and covered area 1091 sq. ft. on SF in Ebony complex of the said project for a total sale consideration of Rs.27,55,000/- vide allotment letter dated 28.08.2009.
- iii. That as per clause 18 of the allotment letter, the vacant, peaceful and physical possession of the unit in question was to be handed over within 3 years' time i.e., 36 months from the date of allotment i.e., by 28.08.2012, however, the possession of the same was not handed over on time.
- iv. That the respondent has re-allocate the unit No. K-7.2/14-GF on ground floor in Sector 83 to the complainant on 27.07.2015.

- v. That it is pertinent to note that as per payment receipt, the complainant has made a total payment of Rs.48,25,093/- as and when demanded by the respondent without any delay.
- vi. That the complainant after an exorbitant delay of 8 years received Letter for offer of possession in August 2020 i.e. on 29.08.2020 with respect to the unit in question. Though the Respondent offered the possession of the unit in question after a delay of 8 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant visited the office of the respondent with the request to pay delayed possession charges but the same were in vain. Hence the present complaint is filed under section 31 of the Act. 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 complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to pay delayed possession charges as per prescribed rate of interest till actual valid handover of possession.
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 respondent:

6. The respondent made the following submissions in its reply:
- i. That each and every averment, contention, statement, submission and allegations made, urged, raised and contained in the captioned

- complaint is denied and refused to be incurred unless explicitly admitted. That no claim, contention or allegation raised by the plaintiff be admitted solely on the ground of non-traverse.
- ii. That the present complaint is liable to be dismissed at threshold, as the complainant has failed to state the complete set of facts and has not disclosed the cause of action for filing of the present complaint.
 - iii. That the present complaint is barred by limitation as the complainant received the possession of the allotted unit on 29.08.2020, however, the present complaint has been filed on the lapse of three years of obtaining possession i.e., on 26.03.2024. The same is delayed and hence, is liable to be dismissed.
 - iv. That the complainant in the present complaint with the malafide intention not stated the date of the possession and has exaggerated the claim if any due with the unfair rate of interest and without stating the actual date from which the same is alleged to be due and till which date. Therefore, the present complaint be dismissed for non-disclosure of the cause of action and for raising claims without any cause of action
 - v. That the right to claim any interest is subjected to the terms and conditions of the allotment letter and the said claim is not derivable from the allotment letter and hence, is not maintainable. Further, any delayed compensation if payable, the same is subjected to taking into consideration the facts of each case at hand and hence, the consideration of the state of facts in the development of the project "Arcadia" is necessary to be dealt at first before deciding of any claim.
 - vi. That the payment of any refund or interest is subjected to the view of the status of the project and that the reason of the delay being in the control of the respondent or not. That the time period of 36 months of

handing over of the possession from the date of allotment is subjected to the other pre-conditions as stated in clause 18 of the allotment letter. That the said conditions entail the time period being subjected to the necessary approvals and sanctions from the concerned sanctioning authorities and also on the availability of the building materials and other reasons beyond the control of the respondent. That the agreement entails the extension of time if the same is reasoned and would thereof, not be liable to pay under the inevitable circumstances.

- vii. That it is a matter of fact known to the complainant herein that "Arcadia" project was launched in August, 2009 but the said project was subjected to the agreed terms and conditions vide the MOU dated 26.02.2008 with M/s Vatika Ltd. M/s Vatika Ltd. made a provisional allotment in favour of the Respondent. That the complainant was made clear qua the conditional allotments. The construction of the project was delayed on account of the concerned Government authorities had to acquire for 24 mtrs sector road and the authorities were unable to acquire the said land. In addition to the aforesaid issue there were other ancillary issues pertaining to the confirming of the layout plan. Thereafter, the sanction plan was rejected by the district town planner vide letter dated 01.05.2012.
- viii. That the respondent through M/s Vatika Ltd. had submitted the revised layout plan on 11.06.2014 before DTP Gurgaon. The said approval clearly showed the diversion of the sector roads passing between Sector 84 and 85, Gurugram, Haryana. That it was on 02.07.2015, the building plan for 7 plots (21 units) was approved by the office of DTP, Gurgaon and accordingly, the construction was finally started in respect of the project.

- ix. That thereafter, the respondent had applied by the grant of the Occupancy certificate in time but the same was held up by the office of DTP, Gurugram on account of the pending complaint against M/s Vatika Ltd. against violation of certain environmental norms.
- x. That the construction could not be completed in the 19 months' time frame on account of reasons which were beyond the control of the respondent. One of the major factors involved here are the demonetization policy of the Government, due to which the construction work was stalled and delayed and made it further difficult to procure materials for construction. In addition, there were certain orders passed by the Hon'ble National Green Tribunal staying the construction at the site and further added to delay in the completion and delivery of the possession of the residential units.
- xi. That the respondent made several attempts in order to acquire and regularization of the 24 mtrs road and with regard to the same made various efforts. Despite the same, the construction, on receiving the handover from M/s Vatika Ltd. in 2015, has been done by the respondent at a very fast pace and the possession to the complainant herein was given on 29.08.2020.
- xii. That the complainant herein was given the possession despite the fact that the payments by the complainant have not been made as per the terms of the agreement and the major payments have been made only in the year 2018-2019. Hence, any delayed payment, if due is subjected to be calculated from the dates of the substantial payment made. It is further submitted that the complete payment due has been cleared by the complainant on the date of obtaining possession.

xiii. That the alleged delay in the handing over the possession and construction of the units as states above was on account of force majeure conditions which were beyond the power and control of the respondent and hence, the delayed interests cannot be attributed to the respondent.

That the number of obstacles is listed below:

- a) Delayed handover of plots for construction and development by Vatika Ltd. till 2015.
- b) Change in Government policy regarding the compounding fee, obtaining of sanctions at various stages, etc.
- c) Demonetization-labour reduction/labour diversion due to paucity of cash.
- d) NGT- stay orders against Vatika/Bans in Gurgaon.
- e) Time taken by the concerned authority in granting occupation certificates-applied in July 2017 and received in July 2018.

xiv. That in light of the facts and circumstances of the present case, it is humbly prayed that the present complaint be dismissed as is devoid of any merit and being an abuse of process of law and is liable to be dismissed.

7. 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:

8. 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

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

offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

11. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objection that the present complaint is barred by limitation

12. The respondent raised an objection that the present complaint is barred by limitation as the complainant received the possession of the allotted unit on 29.08.2020, however, the present complaint has been filed on the lapse of three years of obtaining possession i.e., on 26.03.2024. The same is delayed and hence, is liable to be dismissed.
13. So far as the issue of limitation is concerned the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate

(Regulation and Development) Act, 2016. However, the Authority under section 38 of the Act is to be guided by the principle of natural Justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation, a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However, this shall not apply to the provisions of section 14 of the Act where specific period has already been defined.

14. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
15. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the compliant on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. Limitation if any, for a cause of action would accrue to the complainant w.e.f. 29.08.2020. The complainant has filed the present complaint on 02.04.2024 which is 3 years 7 months and 4 days from the date of cause of action. In the present matter, the three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on **28.02.2025**. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay delayed possession changes at prescribed rate of interest till actual valid handover of possession.

16. The brief facts are that the complainant was allotted a unit bearing no. 83/CE/42 admeasuring super area 1522 sq. ft. and covered area 1091 sq. ft. on SF in Ebony complex of the said project for a total sale consideration of Rs.27,55,000/-. The Allotment letter was issued on 28.08.2009. Later, respondent re-allocate the unit no. K-7.2/14-GF on ground floor in Sector 83 to the complainant on 27.07.2015 vide an intimation for relocation of the unit, which states that "All other terms and conditions as per the earlier allotment made to you shall be applicable on the unit allotted to you as per new allocation...". Hence, the due date of possession of newly allotted unit remains same i.e., 28.08.2012. But, the offer of possession of newly allotted unit no. K-7.2/14-GF was offered on 29.08.2020, which is almost more than eight years from the due date of possession.
17. The apartment buyer's agreement was not executed between the parties. As per clause 18 of the allotment letter, the possession was to be handed over within 3 years from the date of allotment or after all the necessary approvals and sanction of building plans. The clause 18 of the allotment letter is reproduced below:
- "18. The company proposes to handover the possession of the unit to the intending allottee in 3 years from the date of allotment or after all the necessary approvals and sanctions have been obtained from sanctioning authorities whichever is later."*
(Emphasis supplied)
18. **Due date of possession:** The respondent/promoter proposed to hand over the possession of the said unit within a period of 3 years from the date of allotment or after all the necessary approvals and sanctions building plans.

In absence of date of allotment and date of sanctions or necessary approvals, the due date is calculated three years from the date of booking i.e., 28.08.2009. Therefore, the due date of handing over possession comes out to be 28.08.2012.

19. 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.
20. 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., 04.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. 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;"*

22. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the allotment letter. By virtue of clause 18 of the allotment letter, the due date of handing over of possession comes out to be 28.08.2012 as delineated hereinabove. In the present complaint, the occupation certificate was granted by the competent authority however, the same has not been placed on record despite assurances by the counsel for the respondent. The possession was obtained by the complainants and the same is evident from the possession letter dated 29.08.2020.
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant-allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 28.08.2012 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the Authority:

24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent is directed to pay delayed possession charges against the amount paid by the complainants at the prescribed rate of interest

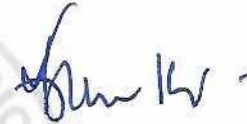
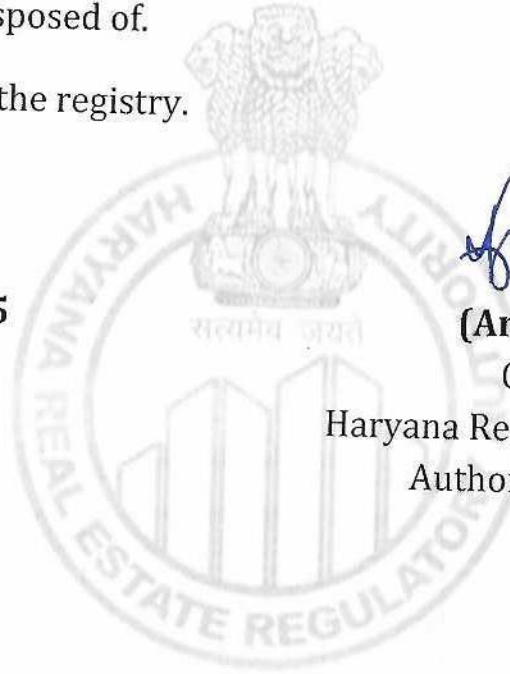
i.e., 11.10% p.a. for every month of delay from the due date of possession (i.e., 28.08.2012) till offer of possession plus 2 months after obtaining OC or actual handover of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid.

ii. 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, ibid.

25. Complaint stands disposed of.

26. File be consigned to the registry.

Dated: 04.07.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram