

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

Complaint no. : 6141 of 2024
Complaint Filed on : 20.12.2024
Date of decision : 05.08.2025
Rectification application received on : 13.08.2025
Rectification application decided on: 09.12.2025

1. Mrs. Usha Joshi

2. Vinod Kumar

R/o: H.no. A-27, Gujrat Apartment, Parwana Road,
Pitampura, Saraswati Vihar, North West Delhi

Complainants

Versus

M/s Vikas Park Private Limited

**Regd. office: E1, Qutub Hotel Complex, Saheed Jeet Singh
Marg, New Delhi-110016**

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan
Shri Phool Singh Saini

Chairman
Member
Member

APPEARANCE:

Ms. Yamini
Shri Sumesh Malhotra

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 there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

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

| 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/ registered | RC/REP/HARERA/GGM/743/475/87 dated 28.08.2023, valid upto 30.09.2027 |
| 4. | Unit no. | T-04/2901 along with basement parking no B2-621 admeasuring 134.55 sq.ft. in the basement-2 [as per buyer agreement at page 58 of complaint] |
| 5. | Unit area admeasuring | 1689 sq. ft. super area 1082.20 sq. ft. carpet area [as per page 58 of complaint] |
| 6. | Date of Allotment | 07.03.2019 [page 52 of complaint] |
| 7. | Date of agreement for sale | 24.05.2019 [page 55 of complaint] |
| 8. | Possession clause | 7.1. POSSESSION OF THE APARTMENT FOR RESIDENTIAL "..... <i>The Promoter assures to handover possession of the Apartment for residential usage along with on or before 31/08/2023 unless there is delay or failure due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project...</i> " [as per agreement for sale at page 64 of complaint] |



| | | |
|-----|--|---|
| 9. | Due date of possession | 31.08.2023. |
| 10. | Total sale consideration | Rs.1,11,27,129/- [as per page 59 of complaint] |
| 11. | Amount paid by the complainants | Rs.1,00,27,720/- [as alleged by the complainant, page 7 of complaint] |
| 12. | Occupation certificate /Completion certificate | 20.01.2025 (page 30-32 of reply) |
| 13. | Offer of possession | 25.02.2025 (page 33-34 of reply) |

B. Facts of the complaint:

3. The complainant is making the following submissions:
 - a) That the respondent advertised about the launch of its new group housing project namely "Hero Homes" located in Sector-104, Dwarka Expressway, Gurugram, Haryana. Further, 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 by making a

payment of Rs.1,00,000/- vide instrument bearing no.279178 dated 13.02.2019 and Rs.3,00,000/- vide instrument bearing no.279179 dated 28.02.2019 drawn on Punjab National Bank of India against the total sale consideration of Rs of Rs.1,11,27,129/-.

- c) That on 07.03.2019, the respondent sent an allotment letter allotting the unit bearing no.2901 (apartment 3 BHK 3 toilet 4 balcony) on 29th floor located in tower-T-04, ad measuring carpet area 1082.20 sq. ft. and super area 1689 sq. ft. along with basement parking no. B2-621 admeasuring 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 parties on 24.05.2019 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.1,00,27,720/- as against the total sale consideration of Rs.1,11,27,129/-, in accordance with the demands raised by the respondent, i.e., 90% payment.
- f) That at the time of purchase of the unit in question, the respondent assured the complainants that the project will be completed on time and all the necessary government approvals would be obtained on time and subsequently; after obtaining occupation certificate from the concerned department, the respondent shall endeavour to handover the

possession of the unit to the complainants. 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.

- g) That the respondent had committed to obtain the occupation certificate 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 occupation certificate 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 occupation certificate and not fulfilling their commitments with respect to possession of the unit.
- h) That as per Section 11 (4) of the RERA Act, 2016, the promoter is liable to abide by the terms and agreement of the sale and as per section 18 of the Act, 2016, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- i) That the complainants are entitled to get interest on the paid amount along with interest at the rate as prescribed by the Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession. 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:

4. The complainants have sought the following relief(s):

- I. Direct the respondent to resume construction and offer possession of the unit in question after obtaining Occupation Certificate;
- II. Direct the respondent to handover a complete unit to the complainants in accordance with the specifications mentioned in the agreement.
- 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;
- IV. Direct the respondent not to charge any amount beyond the amount as mentioned in builder buyer agreement.
- V. Direct the respondent to not levy any holding charges from the complainants;
- VI. Direct the respondent to not levy any maintenance charges from the complainants till date of actual handover.

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

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
 - a) That the respondent i.e., Vikas Parks Private Limited, a company duly incorporated under the companies act, 1956 and existing under the companies act, 2013 and a subsidiary company of Hero Realty Private Limited, real estate arm of prestigious Hero group. Respondent is engaged in the business of construction and development of real estate projects and is known amongst the customers of the real estate and infrastructure sector for its trust and ethical conduct, synonymous with

the name and brand "Hero". The present reply for and on behalf of the respondent is being filed through Mr. Ravi Prakash, who has been duly authorized by the Board of Directors of the respondent vide Board Resolution dated 13.05.2024, to *inter-alia* sign, submit and verify the present reply and to do all such acts ancillary thereto.

- b) That at the outset, respondent denies each statement, submission, averment, and contention set forth in the captioned complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply. The respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted, and the rest may be read as travesty of facts. The complainants may be put to strict proof in respect thereof.
- c) 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. 2901, admeasuring 1082.20 sq. ft. in tower-04, on 29th floor, along with basement parking no. B2-621, in project "Hero Homes" located in Sector - 104, Gurugram, Haryana, for which an application for grant of Occupation Certificate has been made on 21.02.2024 and the Occupation Certificate has been granted by Director Town and Country Planning ("DTCP") vide office Memo no. ZP-968-Loose/ SD(RD)/ 2025/ 2603 dated 20.01.2025. 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.

- d) 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, HSPV on 30.08.2024 and 12.09.2024, thereby clearly indicating the project, despite being complete, was stuck in bureaucratic paperwork.
- e) That the complainants have approached the Authority with unclean hands and has tried to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of "*suppressio veri 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.
- f) 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 their own whims and fancies while nit-picking facts and laws as per their 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.
- g) That the complainants are the original allottee, vide agreement for sale executed on 24.05.2019, whereby the complainants agreed to the

explicit terms of the sale. Further, the 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.

- h) That 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, 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.
- i) 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.

- j) 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.
- k) That in case of delay/failure due to occurrences of force majeure events/ events beyond the control of the respondent 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 penalised to establish precedent to avoid any malicious litigation in the future of similar nature.
- l) 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 the 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.

m) 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. 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. 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:

i. 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 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.

- ii. 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. The 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.

- iii. 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, 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, 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.

Thus, upon finding the reasons to be justified and beyond the control of promoter, the Hon'ble Maha RERA Authority condoned the delay in giving possession. In the present case there has not been one single

delay causing event which can be attributed to the respondent and hence the respondent prays for the respondent not be held liable for timeline changes. Further in matter titled ***Anup Kumar Rath versus M/s Sheth Infraworld Pvt. Ltd. Appeal No. AT006000000010822*** the Hon'ble Maharashtra Real Estate Appellate Tribunal considered delay in project caused by external reasons such as demonetisation, shortage of sand (raw materials), delay by Government department. The Hon'ble Bench in the said matter also held that neither promoter nor the allottee can be held responsible for period for handing over possession after receiving of the Occupation Certificate. The spirit of RERA, 2016 has also been discussed in the aforesaid judgement, considering RERA, 2016 as a social and beneficial legislation, the importance of promoter and allottee in real estate sector, protection of allottee and the project.

- n) That 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.
- o) That the various contentions raised by the complainants are fictitious, baseless, vague, wrong, and created to misrepresent and mislead the Authority, for the reasons stated above. 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 Authority. The present

complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

p) That under the given circumstances and in light of the details of the supervening circumstances mentioned above, the 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, whose financial position is already stressed due to various factors, obvious to the Authority. The respondent pleads that the Authority may dismiss the captioned complaint in the interest of justice. The complaint is liable to be dismissed/rejected on the grounds mentioned hereinabove.

E. Jurisdiction of the Authority:

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

E.I Territorial jurisdiction

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

E.II. Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on relief sought by the complainant:

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

11. The above-mentioned reliefs F.I, F.II, F.III, and F.IV sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
12. The complaint has disposed of on 05.08.2025, while uploading the main order the complainants filed an application for rectification under Section 39 of the Act, 2016 on 13.08.2025, seeking correction of the name of the complainant, the date of allotment, the date of the BBA, and the total sale consideration. The Authority observes that the said errors are inadvertent in nature. Therefore,

in view of Section 39 read with Section 39(2) of the Act, 2016, and considering that the errors are only clerical, the rectification of the order dated 05.08.2025 was allowed on 09.12.2025.

13. The complainants applied for allotment in a group housing project i.e., "Hero Homes" located in sector-104, Gurugram being developed by the respondent i.e., "Vikas Park Private Limited". The respondent issued an allotment letter dated 07.03.2019 in favour of the complainants and thereby intimated about the allotment of unit no. 2901, 29th floor, tower-04 in the project of the respondent. Thereafter, the agreement for sale was executed between the parties on 24.05.2019 (registered on 11.06.2019) against a sale consideration of Rs.1,11,27,129/- . The complainants have paid a sum of Rs.1,00,27,720/- towards the subject unit.
14. As per documents available on record, the respondent has offered the possession of the allotted unit on 25.02.2025 i.e., after obtaining of Occupation Certificate from competent authority on 20.01.2025. The complainants took a plea that offer of possession was to be made on or before the due date of possession i.e., 31.08.2023 as per clause 7.1 of agreement for sale, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
15. In the present complaint, the complainants intend to continue with the project and are seeking possession of the unit along with delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of the possession, at such rate as may be prescribed."

16. Due date of handing over possession: In terms of clause 7.1 of the Agreement for sale executed between the parties, the promoter assured to handover possession of the said apartment along with parking (if applicable), on or before 31.08.2023. In view of the same, the due date of handing over of possession comes out to be 31.08.2023.

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

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

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

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

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

18. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules ibid, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. 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

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

20. 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;"***

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

22. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of the agreement for sale dated 24.05.2019, and the due date comes out to be 31.08.2023. Occupation Certificate was granted by the concerned authority on 20.01.2025. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and

responsibilities as per the agreement for sale dated 24.05.2019 to hand over the physical possession within the stipulated period.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the Occupation Certificate was granted by the competent authority on 20.01.2025. The respondent offered the possession of the unit in question to the complainants only on 25.02.2025, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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.

24. 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 allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 31.08.2023 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, ibid

F.VI Direct the respondent to not levy any holding charges from the complainants;

25. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the

unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition.

26. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under.

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

27. Therefore, in view of the above the respondent no.2 is directed not to levy any holding charges upon the complainants.

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

28. The Authority observes that the occupation certificate for the tower in question was obtained by the respondent on 20.01.2025, whereas possession of the unit was offered to the complainant only on 25.02.2025. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be

incurred on a consistent basis in providing these services and making available various facilities. Therefore, the demand on account of maintenance charges can only be demanded by the respondent at the time of offer of possession of unit to the complainant and not before. Keeping in view the facts above, the Authority is of the view that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession.

G. Directions issued by the Authority:

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

- I. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 11.10% per annum from the due date of possession i.e., 31.08.2023 till valid offer of possession i.e., 25.02.2025 plus two months, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
- II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remain, after adjustment of delay possession charges within a period of next 30 days.

IV. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per Rule 16(2) of the Rules, ibid

V. The respondent is directed to handover the possession of the allotted unit to the complainants as per the specifications of buyer's agreement executed between the parties within the next 60 days of this order failing which the respondent shall pay the delay possession charges on the amount paid by the complainant till the date of handover.

VI. The respondent is directed to execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after handing over possession to the complainant.

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

30. Complaint stands disposed of.

31. File be consigned to the Registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date of Decision: 05.08.2025

Date of rectification application decided on: 09.12.2025

PROCEEDINGS OF THE DAY
60

| | |
|------------------------|---|
| Day and Date | Tuesday and 09.12.2025 |
| Complaint No. | MA NO. 579/2025 in CR/6141/2024 Case titled as Usha Joshi and Vinod Kumar VS Vikas Park Private Limited |
| Complainant | Usha Joshi and Vinod Kumar |
| Represented through | Shri Aditya Gupta proxy counsel |
| Respondent | Vikas Park Private Limited |
| Respondent Represented | Shri S.P. Singh proxy counsel |
| Last date of hearing | Application u/s 39 of the Act/18.11.2025 |
| Proceeding Recorded by | Naresh Kumari and HR Mehta |

Proceedings-cum-order

The present application for rectification, dated 13.08.2025, has been filed by the Complainant in Complaint no. 6141 of 2024, which was previously disposed of vide order dated 05.08.2025.

In the said rectification application dated 13.08.2025, the Complainant has sought correction in POD dated 05.08.2025 in respect of the following:

| Particular | Mentioned in POD | Changes requested |
|--------------------------|-----------------------------|---|
| Name of the complainant | Kallol Saha & Pushpita Saha | Usha Joshi & Vinod Kumar |
| Date of allotment | 07.09.2019 | 07.03.2019 (annexure 3, page 52 of complaint) |
| Date of BBA | 11.06.2019 | 24.05.2019 (date of registration of BBA is 11.06.2019) (page 55 of complaint) |
| Total sale consideration | ₹1,12,11,579/- | ₹1,11,27,129/- (page 59 of complaint) |



HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया श्री इन्ड्यू. रो. विधान गृह, मिशन नार्डम, गुरुग्राम, हरियाणा

हरियाणा भू-संपदा विनियमक प्राधिकरण, हरियाणा
MANO 5/25/2025 CR/691/2024

The Authority observes that the said error is inadvertent in nature. Therefore, in view of section 39 read with section 39(2) of the Real Estate (Regulation and Development) Act, 2016 as the error is only clerical in nature and rectification in the proceeding dated 05.08.2025 is **allowed**.

The application stands disposed of. File be consigned to the registry.


P.S. Saini
Member


Arun Kumar
Chairman
09.12.2025