

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

Complaint no. : 1080 of 2025
Date of filling : 10.03.2025
Order pronounced on : 12.11.2025

Sandeep Dawar

R/o - D-18, Ashok Vihar, Phase-1, Delhi,
Pin-110052

Complainant**Versus****M/s Vatika Ltd.**

Regd. Office at: - INXT City Centre, 4th
floor, Block A, Sector-83, Vatika India
Next, Gurugram-122012, Haryana

Respondent**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Ms. Garvit Gupta (Advocate)
Sh. Ayush Rai (Advocate)

**Complainant
Respondent****ORDER**

1. The present complaint dated 09.04.2021 has been filed by the complainant/allottee 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 provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details	
1.	Name of the project	"Vatika India Next", Sector-81, 82, 82A, 83, 84 & 85 Gurugram	
2.	Type of colony	Residential Plotted Colony	
3.	Registered/ not registered	Registered 36 of 2022 dated 16.05.2022 valid upto 31.03.2029	
4.	Allotment letter	11.09.2009 (page 59 of complaint)	
5.	Re-allotment letter for new unit	08.10.2013 (page 98 of complaint)	
6.	Plot no. and area	Old unit: C/240/308 admeasuring 240 sq. yds. (As per BBA at page 69 of complaint)	New Unit: 9, Street A-1 , admeasuring 240 sq. yds. (Page 98-99 of complaint)
		Note: Plot changed due to reasons beyond control of respondent, and the change duly accepted by complainant vide Addendum dated 14.11.2013	
7.	Date of execution of buyer's agreement for old unit [Duly signed by both the parties]	28.11.2009 (As per page 61 of complaint)	
8.	Addendum to BBA in regard to new unit/ changed unit [Duly signed by both the parties]	14.11.2013 (page 100 of complaint) [Note: As per Addendum, wherever it is written as C/240/82A, shall be read as Plot no. 9/A-1/240 sq. yrd/sector 82A. All other terms and conditions of BBA dt. 28.11.2009 and consequent documents shall remain and hold good and valid for this new unit.	
9.	Possession clause as per BBA	Clause 10. Handing over possession of the said plot to the allottee <i>"That the promoter based on its present plans and estimates and subject to all just</i>	

		<p><i>exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this agreement unless there is a delay or there is a failure due to reasons beyond the control of the Promoter or due to failure of the Allottee to pay on time..."</i></p> <p>(Emphasis supplied)</p> <p>[As per BBA at page 75 of complaint]</p>
10.	Due date of possession as per clause of BBA	<p>28.11.2012</p> <p>(Calculated as three years from date of execution of buyer's agreement)</p>
11.	Total sale consideration	<p>Rs. 42,96,000/-</p> <p>(As per page 70 of complaint)</p>
12.	Paid up amount	<p>Rs. 38,52,608/-</p> <p>(As per SOA at page 117 of complaint)</p>
13.	Offer of possession	Not offered
14.	Occupation Certificate/Completion Certificate	Not obtained
15.	Respondent's email requesting complainant to visit for settlement	<p>24.08.2022</p> <p>(page 130 of complaint)</p>

B. Facts of the complaint:

3. The complainants have made following submissions by filing the present complaint as well as written submissions dated 24.09.2025: -
 - i. That the complainant, induced by the assurances and representations made by the respondent, decided to book a plot in the project of the respondent and made part-payment out of the total sale consideration of Rs. 2,50,000/- on 31.07.2009. The said payment was acknowledged by the respondent vide its receipt dated 05.08.2009. The complainant required the plot in a time bound manner for his own use and occupation and of his family members and this fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the plot to be allotted to the

complainant would be positively handed over within the agreed time frame of three years from the date of booking.

- ii. That the respondent on the basis of the application made by the complainant confirmed the allotment of plot no. C/240/308, block C admeasuring 240 sq. yards for the total sale consideration of Rs.42,60,000/- vide allotment letter dated 11.09.2009. That the said allotted plot was located at the prime location.
- iii. That a copy of the plot buyer's agreement was sent to the complainant, which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the respondent and was totally against the interest of the purchaser, including the complainant herein.
- iv. That while in the case of the complainant making the delay in the payment of instalments, the respondent company is shown to be entitled to terminate the allotment and solely on the discretion of the respondent, it can charge interest @ 15% per annum and additional interest @ 3% per annum (total @ 18%) instead of termination of the said plot. However, on account of the respondent abandoning the said project or on account of the delay, the respondent would be entitled to cancel the allotment of the complainant. Furthermore, in case of delay on the part of the complainant in taking the possession of the said plot, the respondent is entitled to terminate the allotment of the said allotted plot and solely on its discretion, the said termination could be replaced with an interest @Rs.15/- per sq. yards per month.
- v. That a bare perusal of the clauses highlights the one-sided arbitrary agreement, and the abuse of dominant position is all pervasive in the terms and conditions of the Agreement executed by the respondent

vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.

- vi. That the respondent/ promoter refused to amend or change any term of the pre-printed plot buyer's agreement and further threatened the complainant to forfeit the previous amounts paid by him if further payments are not made. Since the complainant had already parted with a considerable amount of the sale consideration, he was left with no other option but to accept the lopsided and one-sided terms of the plot buyer's agreement. Hence the plot buyer's agreement dated 28.11.2009 was executed.
- vii. That no default or delay was ever caused by the complainant in complying with his contractual obligations and making the timely payments.
- viii. That as per clause 10 of the agreement, the possession of the plot was to be handed over by the respondent by 28.11.2012. Clause 10 of the plot buyer's agreement is reproduced hereunder:
 - 1. *'10.contemplates to complete the development of the said Township or the sector/part thereof where the said Plot is proposed to be located, within a period of three year from the date of execution of this agreement.....'*
- ix. That the complainant visited the project site in November, 2012 and was shocked to see that no construction activity was going on there and the work has been at standstill. The actual ground reality at the development site was way different than what the respondent had claimed to the complainant regarding the development of the project. The complainant confronted the respondent and enquired about the said delay in development of the project.
- x. That the respondent vide its demand letter dated 06.02.2013 demanded the payment against 'commencement of sewerage &

drainage work'. The complainant without any default remitted the said demanded amount of Rs.4,29,600/- on 22.02.2013. The respondent vide its receipt dated 25.02.2013 acknowledged the receipt of the said amount. The said demand when read with the payment plan forming part of the agreement makes it evident that as per the respondent, substantial work had already been completed against the plot in question.

- xi. That on 08.10.2013, the complainant was shocked to receive a letter of re-allotment from the respondent. That vide the said letter dated 08.10.2013, the respondent informed the complainant that on account of certain revision in the master layout 'necessitated due to architectural and other related considerations', re-allotment of the allotted plots was required to be done. That the complainant made vocal his objections to the said re-allotment process as unilaterally proposed by the respondent. Having already paid 60% of the total sale consideration to the respondent at the time of re-allotment, the complainant had no option but to go-ahead with the re-allotment.
- xii. The complainant had no other option but to believe the said representations of the respondent and thus, the complainant was given no other option but to accept the unilateral change. The respondent vide its allotment letter dated 14.11.2013 confirmed the re-allotment of a plot A-1/No.9 in place of the previously allotted plot No. C/240/308. Subsequent to the re-allotment, the complainant was compelled to execute an addendum to the plot buyer's agreement dated 14.11.2013, vide which the old plot C/240/308 was replaced with plot no. 9/A-1/240 sq.yds/sector 82A in the said plot buyer's agreement dated 28.11.2009. As per the said addendum, it was agreed

that all other terms and conditions of the agreement dated 28.11.2009 would remaining the same and binding upon the parties.

- xiii. The respondent showed the complainant the layout plan with plot numbers for the location of the plot A-1/9. This plot A-1/9 is also there in layout plan approved by DTCP. The complainant later shockingly discovered that the respondent maintains two versions of the layout plan – one with plot numbers used to sell plots to customers and another where plot numbers are suppressed and used by respondent for submission and approval to DTCP.
- xiv. That after repeated requests from the complainant, the respondent vide its mail dated 17.05.2019 further intimated the complainant that the development process is ongoing and that the possession would be soon handed over to the complainant. The respondent vide the said email sent the latest statement of account vide which it is evident that the complainant had till date paid a sum of Rs.38,52,608/- out of the called amount of Rs.38,48,995/-. Furthermore, as per the said statement, the only instalment left to be paid by the complainant was at the stage of 'Offer of possession' which the respondent had confirmed would be initiated.
- xv. That the complainant visited the site of the project in June, 2019 and was shocked to see that the respondent had changed the entire layout of the project and that the new layout of the project did not correspond with the layout plan that was approved by the DTCP in the year 2014. The complainant thus confronted the Respondent about the said changes in the layout as observed by him after visiting the project site and vide letter dated 14.06.2019 requested the respondent to share the map of the project and specifically of the plot of the complainant. However, the complainant was in complete shock to receive an email

dated 25.06.2019 from the respondent wherein the respondent stated that on account of certain events beyond the control of the respondent, the respondent could either allot a 3 BHK apartment unit to the complainant instead of the allotted plot or could refund the amount as per the buyer's agreement. The complainant vide his email dated 27.06.2019 very categorically and specifically made it known to the respondent that he was not interested in any of the options and wanted clear answers to his grievances and map of his plot.

- xvi. That, despite numerous mails, no such map of the plot of the complainant was shared by the respondent. The respondent vide its email dated 28.06.2019 informed the complainant that the allotted plot was effected due to the road alignment in Sector-82A. the complainant requested the respondent vide its email dated 30.06.2019, 19.07.2019, 06.03.2020 to provide the complainant with the details of the road alignment and the map of the plot being allegedly affected by the road alignment. Furthermore, details pertaining to the date of planning and execution of the road alignment was also sought.
- xvii. The complainant vide its email dated 12.11.2020 detailed the illegality on the part of the respondent as to how the respondent was blatantly breaching the terms of the agreement. It was made known to the respondent by the complainant that despite several communications and follow-ups, the Respondent has completely failed to address the grievances of the complainant. The complainant vide the said email again requested the respondent to intimate him about the due date of possession. The contents of the said email dated 12.11.2020 be read as part and parcel of the present complaint.

- xviii. That the respondent vide its email dated 24.08.2022 informed the complainant about the termination of the allotment of the plot of the complainant on account of some cogent and other reasons which are beyond the control of the respondent and that it would not be in a position to hand over the possession of the said allotted plot to the complainant. It was stated that the said alleged reasons resulted in the hampering of the development of the project.
- xix. That the complainant after receiving the said frivolous mail dated 24.08.2022 approached the respondent and enquired about the contents of said email and the actual reasons behind the termination of the said plot. However, despite the concerns raised by the complainant, the respondent refused to take into consideration the genuine requests made by the complainant rather the respondent stopped answering to the telephonic calls of the complainant. After several failed efforts, the complainant came to know that the change in the layout of A block of Sector 82A was done by the respondent unilaterally and with complete malafide motives on the basis of the drawing no. DTCP 6712 dated 10.12.2018 which was approved in principal vide Letter of intent dated 19.12.2018. The complainant found out about an RTI response from the office of DTP who vide its letter dated 17.05.2022 informed that on account of failure of the respondent and its non-compliance, the said LOI had become infructuous and was withdrawn on 11.06.2021. Thus, even in the year 2021, the only approved layout plan by DTCP was of 2014 based on which Plot no. 9 was allotted to the complainant.
- xx. That the complainant thereafter, vide its complaint to the DTP highlighted the said illegalities of the respondent. DTP, Gurugram after physical survey, vide its report dated 10.11.2022 held that the

said action of the respondent was completely illegal and unauthorized. It was observed by DTP, Gurugram that the allegations regarding change/difference in the plot numbers at site from the originally approved layout plan of 2014 were true.

- xxi. That the complainant had simultaneously also filed a grievance with the CM window. As per the final findings of the action taken report of the CM window dated 22.11.2022, DTP (HQ) confirmed the illegalities of the respondent on the basis of the report of the DTP, Gurugram. The ATR stated as follows:

"Findings by Investigating Officer/ Enquiry Officer:

The field report also reveals that the licensee has developed the area as per in principle approved layout plan issued with the LOI dated 19.12.2018 for inviting objections/ suggestions which was further become infructuous and withdrawn therefore, development taken place on the basis of in-principle approval layout plan is totally illegal and unauthorized.

Since the licensee has violated the approved layout plan and developed the area for which LOI stands lapsed is violation of terms and conditons of license as well as the Act No. 8 of 1975 and Rules 1976, framed thereunder, therefore DTP(E) Gurugram may be directed to take strict actions against the colonizer as per provisions of Acts/Rules. It may also be directed that the original approved layout plan be enforced at site and all the streets as well as plots particularly the plot of the complainant (A-1/9, Sector 82A, Gurugram as per the layout plan on site." [Emphasis Supplied]

- xxii. That even otherwise, the said act of the respondent in unilaterally modifying/revising the plans of the project was in contrast and in violation of Section 14 of the RERA Act, 2016. As per the said Section, no revision/change in the layout plan can happen without seeking consent of the allottee(s) of the said project. Furthermore, as per Section 14(1)(f) of the RERA Act, 2016, the proposed project is to be developed only in accordance with the approved and sanctioned plans.
- xxiii. That the respondent failed to inform/invite objections/suggestions and take consent from the complainant of the LOI changes in both LOIs of 2018 and 2023, even though the respondent omitted the plot of the allottee, completely in violation of the provisions of Section 14 of the

HRERA Act. This repeated behaviour in 2018 and 2023 clearly shows that the respondent is a habitual violator of law, time and again violating the provisions of the Act with the intent to defraud the allottees of their plots.

- xxiv. That the complainant thereafter requested the respondent vide email dated 28.11.2022 and also by visiting the site of the respondent to update him about the date of handing over of the possession after making the said changes in the layout of the project. The complainant reiterated the facts that the reason for not handing over his plot is not unforeseeable circumstances but intentional layout change by the respondent, which is completely illegal and requested to immediately restore the allotment. The representatives of the respondent assured the complainant that the possession of the plot would be handed over to him very shortly as per the originally approved layout plan of 2014.
- xxv. In furtherance to the DTCP survey report and ATR of November 2022, DTCP issued a show cause notice under Section 10(2) of the Haryana Development and Regulations of Urban Areas Act, 1975 to Vatika vide memo 2638 dated 21.02.2023 reiterating the contents of the Action Taken report. However, the respondent failed to provide a satisfactory response to the said show cause notice. DTCP was hence constrained to issue a restoration order under Section 10(2) of the Haryana Development and Regulations of Urban Areas Act, 1975 to the respondent vide memo 4511 dated 31.03.2023. Vatika has failed to comply with the restoration order and has continued with the illegal layout, which can clearly be seen at the project site.
- xxvi. Thereafter, the respondent, anticipating potential legal action, applied for an additional license on 02.02.2023 and again on 26.07.2023 for 24.09 acres, which included 12.5 acres from the previously withdrawn

LOI. The same was done to legalize the prior illegal actions highlighted in the Restoration order dated 31.03.2023. DTCP then updated the Action Taken Report (ATR) on the applicant's CM Complaint on 09.08.2023, stating that, based on respondent's application, it has issued a new LOI dated 07.08.2023 which changed the area of the complainant's plot in Block A, Sector 82A and omitted his plot number from the revised layout. The LOI dated 07.08.2023 is provisional in nature for the purpose of inviting objections from the stakeholders. DTCP further directed respondent to inform all allottees through the registered post within 2 days, with an endorsement to a senior town planner, and to publish a public notice. However, respondent did not inform the complainant, an allottee, in violation of DTCP's direction. Instead, it issued only a public notice, so that it could get away with the layout change without facing any objections. This again constitutes a repeat violation of Section 14 of the RERA Act. The complainant became aware of the public notice issued by respondent and subsequently sent an objection letter on 6.09.2023 at respondent's office. But respondent refused to accept the letter and did not provide any acknowledgment/denial in writing. Section 14 of the HRERA Act specifically requires consent of the previous Allottee for layout alterations. It may be noted that 17 objections have been filed against the LOI of 07.08.2023 and the respondent has again violated the terms and conditions of its issue of the LOI dated 07.08.2023.

- xxvii. That there is an inordinate delay of 12 years and 2 months upto the date of filing in February 2025 and to date, the possession of the allotted plot has not been offered by the respondent to the complainant.

- xxviii. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the plot in question to the complainant as per the terms of the plot buyer's agreement. The respondent has deliberately, mischievously, dishonestly, and with malafide motives cheated and defrauded the complainant. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill for several years. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers.
- xxix. The respondent has repeatedly given various, false reasons for their inability to hand over the plot. The respondent stated things are beyond the control of the developer in his email dated 25-June-2019, plot was effected due to road alignment in their email dated 28-Jun-2019, unforeseen and unprecedented circumstances such as acquisition/ alignment of sector roads by HUDA, GAIL corridor in their email dated 15-Sep-2021, cogent and other reasons that hampered development in their email dated 24-Aug-2022, personal hearing with provision of some other site (not complainant's plot) for electric substation in their reply dated 18-Dec-2023 to Director, DTCP. However, the DTCP report of 22-Nov-22 clearly states the true reason that the Respondent has illegally modified the layout by deviating from the sanctioned layout of 2014 and removed the plot. DTCP had fully licensed the layout plan of 2014 in which the complainant plot exists.

- xxx. That the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The complainant believes that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Hon'ble Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant has been forced to chase the respondent for seeking relief.
- xxxi. That the complainant had submitted a letter complaint to HRERA against the various irregularities by the respondent to HRERA vide email dated 13-Jun-23 and 15-Jun-23 and on the basis of which a separate suo moto complaint bearing no. RERA-GRG-4674-2023 was initiated. On the proceedings of RERA-GRG-4674-2023 dated 18-Dec-23, respondent was asked by the bench headed by Chairman HARERA to offer a similarly situated plot to the complainant to amicably settle the matter. The respondent did not come forward with a similarly situated licensed plot as directed by the Chairman.
- xxxii. That when the same was informed to the Authority, the complainant was directed and advised by the Authority to file a separate complaint under Section 31 of the Act of 2016 for the individual relief sought.
- xxxiii. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to reinstate the allotted plot even though the allotted plot exists in the latest sanctioned plans of DTCP of 2014 hand over the possession of the said plot and compensate for the delay on its part and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest

amount and compensation. The complainant reserves his right to approach the appropriate forum to seek compensation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest (SBI MCLR+2%) from 28.11.2012 (due date of possession) till the actual handing of the possession after obtaining the completion certificate for the plot
- II. Direct the respondent to give possession of allocated plot (A-1/9, Sector 82A) and valid offer of possession made without adding any conditions which do not form a part of the PBA like HVAT etc.
- III. Direct the respondent to handover the possession of the plot in a complete habitable condition, with connectivity of all necessary amenities
- IV. Direct the respondent to handover possession of plot, after obtaining the completion certificate from the concerned authorities.
- V. Direct the respondent to not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.
- VI. Direct the respondent to execute the conveyance deed of the allotted plot in favour of the complainant with title clear for conveyance.
- VII. Direct the respondent not to force the complainant to sign any indemnity cum undertaking to indemnify the builder from anything legal as a precondition for signing the conveyance deed.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent/promoter put in appearance through its counsel and marked attendance on 23.07.2025, 03.09.2025 and 01.10.2025. Despite

specific directions for filing of reply, the respondent has failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of reply in the matter. Therefore, in view of above, the defence of the respondent was struck off vide proceedings dated 03.09.2025. However, in the interest of justice, vide proceedings dated 01.10.2025, the respondent was given an opportunity to file written submissions in the matter, but the same has not been filed by it till date.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions 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 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.

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

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent to pay interest for every month of delay at the prevailing rate of interest (SBI MCLR+2%) from 28.11.2012 (due date of possession) till the actual handing of the possession after obtaining the completion certificate for the plot.
- F.II Direct the respondent to give possession of allocated plot (A-1/9, Sector 82A) and valid offer of possession made without adding any conditions which do not form a part of the PBA like HVAT etc.
- F.III Direct the respondent to handover the possession of the plot in a complete habitable condition, with connectivity of all necessary amenities
- F.IV Direct the respondent to handover possession of plot, after obtaining the completion certificate from the concerned authorities.
- F.V Direct the respondent to not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.

12. The above-mentioned reliefs no. G.I to G.V are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

13. The complainant was allotted plot no. C/240/308 admeasuring 240 sq. yds. vide builder buyer agreement (BBA) dated 28.11.2009 in the project "Vatika India Next", Sector-81, 82, 82A, 83, 84 & 85 Gurugram" by the respondent builder for a total consideration of Rs. 42,96,000/- and he paid a sum of Rs.38,52,68/-. Afterwards, a new plot no. 9, Street, A-1,240 sq. yard was allotted to the complainant vide addendum dated 14.11.2023 stating the reasons beyond the control of respondent. The newly allotted unit was duly accepted by the complainant vide the same Addendum.

14. 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. Section 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."***

15. Clause 10 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

Clause 10. Handing over possession of the said plot to the allottee

"That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years from the date of execution of this agreement unless there is a delay....."

(Emphasis supplied)

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the

prescribed rate. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

17. 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.
18. 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., 12.11.2025 is 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
19. **Rate of interest to be paid by complainants/allottees for delay in making payments:** 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;”***

20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of Rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10 of the buyer agreement dated 28.11.2009, the possession of the subject unit was to be delivered within three years from the date of execution of agreement. Therefore, the due date of handing over possession was 28.11.2012. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

21. 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 allottees shall be paid, by the

promoter, interest for every month of delay from due date of possession i.e., 28.11.2012 till valid offer of possession 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, *ibid*.

F.VI Direct the respondent to execute the conveyance deed of the allotted plot in favour of the complainant with title clear for conveyance.

22. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

23. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC from the concerned

authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

F.VII Direct the respondent not to force the complainant to sign any indemnity cum undertaking to indemnify the builder from anything legal as a precondition for signing the conveyance deed.

24. The respondent is obligated not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **"Varun Gupta V. Emaar MGF Land Limited"** decided on 12.08.2021.

G. Directions of the authority


25. 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:
- I. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay from the due date of possession 28.11.2012 till valid offer of possession after obtaining completion certificate/part CC plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - III. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is 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.
- IV. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules *ibid*.
- V. The respondent is directed to offer the possession of the allotted unit to the complainant with all amenities within 30 days after obtaining occupation certificate/completion certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- VI. The respondent shall not charge anything from complainant which is not part of buyer's agreement.
- VII. The respondent shall execute the conveyance deed of the allotted unit of the allotted unit within 3 months from the final offer of possession after the receipt of the CC/part CC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
- VIII. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the

authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.

26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 12.11.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM