

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

Complaint no. : 365 of 2025
Complaint Filed on : 30.01.2025
Order pronounced on: 12.11.2025

Kamal G Shah and Gautam Shah

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 Ashok Sangwan

Member

APPEARANCE:

Shri Gaurav Bhardwaj (Advocate)

Shri Aman Kaushik (Advocate)

**Complainant
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:

CR/365/2025 titled as Kamal G Shah and Anr. Vs. M/s Vikas Park Private Limited

Sr. No.	Particulars	Details
1.	Name of the project	"Hero homes", Sector-104, Dwarka Expressway, Village Dhanwapur, Gurugram, Haryana
2.	Nature of the project	Residential Group Housing
3.	RERA Registered/ not registered	RC/REP/HARERA/GGM/743/475/87 dated 28.08.2023, valid upto 30.09.2027
5.	Unit no.	101, 1 st Floor, T-01 [as page 59 of complaint]
6.	Unit area admeasuring	1689 sq. ft. super area 1082.20 sq. ft. carpet area [as per page 59 of complaint]
8.	Date of Allotment	25.01.2019 [page 51 of complaint]
9.	Date of agreement for sale	Executed on: 18.05.2019 [page 56 of complaint] Registered on: 31.05.2019 [As per page 55 of complaint]
11.	Possession clause	7.1. POSSESSION OF THE APARTMENT FOR RESIDENTIAL ".....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..."

		[as per agreement for sale at page 64 of complaint]
12.	Due date of possession	29.02.2024 (Grace period of 6 months in lieu of Covid-19 included) [as per agreement for sale at page 64 of complaint]
13.	Total sale consideration	Rs.1,16,25,383/- [as per page 60 of complaint]
14.	Amount paid by the complainants	Rs.1,05,06,170/- [as per Customer Ledger dated 01.01.2025 at page 89 of complaint]
15.	Occupation certificate /Completion certificate	20.01.2025 (page 25 of reply)
16.	Offer of possession	25.02.2025 (page 28 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 1000 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.000268 dated 04.12.2018 and Rs.3,00,000/- vide instrument bearing no.000269 dated 22.12.2018 drawn on HDFC Bank totalling amount of Rs.4,00,000/-.
- c) That on 25.01.2019, the respondent sent an allotment letter allotting the unit bearing no.101 (apartment 3 BHK 3 toilet 4 balcony) on first floor located in tower-T-01, ad measuring carpet area 1082.20 sq. ft. and super area 1689 sq. ft. along with basement parking no. B2-004 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 18.05.2019 for the unit in question wherein under clause 7.1, the respondent undertook to complete construction, handover possession of the unit in question along with parking within 51 months from the date of execution of agreement to sale i.e., by 31.08.2023.
- e) That the respondent kept raising payment demands and the complainants kept making payment in accordance with said demands only in the hope of getting possession of their unit and fearing cancellation of her unit as threatened by the respondent time and again. Till date, the complainants have made payment of Rs.1,05,06,170/- as against the total sale consideration of Rs.1,16,25,383/-, in accordance with the demands raised by the respondent, i.e., 90% payment.

- f) That to the utter shock of the complainants, the unit in question is being used as a sample for project office from an unforeseen period of time without the consent of the complainants. To this, the complainants sent an email dated 15.08.2022 raising concerns over the aforementioned issue requesting/asking the respondent for replacement of tiles of the entire area(inclusive of washroom and kitchen), washroom fixtures (inclusive of taps, wash basins etc.), air conditioners and geysers, sliding panels and doors, all the switches in rooms, washroom and kitchen, all the furniture and fixture(whatever has been agreed upon).To this the respondent on 18.08.2022 sent an email mentioning that the said concerns raised by the complainants were acknowledged and the query raised is being taken up internally although the said concerns raised were not literally taken into consideration by the respondent hence causing severe mental agony to the complainants.
- g) That as per the builder buyer agreement, the due date of possession was approaching i.e., 31.08.2023, the panicked complainants again sent an email dated 25.08.2022 to the respondent clearly stating that the complainants will not take up the possession until and unless the respondent won't take-up action against the concern raised as per email dated 15.08.2022. In response, the respondent via email dated 26.08.2022 again gave false assurance to the complainants by mentioning that on the date of possession the complainants will get everything as promised and as per agreement provided at the time of sales.
- h) That thereafter, the complainants kept on waiting endlessly for the possession of their unit but to no avail. Subsequently, on 25.03.2024, the complainants again sent an email mentioning that they have made the payment on "*Application of OC*" and nothing is due as per the annexure

payment plan dated 25.01.2019 and hoping that the respondent had taken up action against the concerns raised by the complainants thereby further requesting the respondent to acknowledge the same and inform the complainants as to when they can come and see/review the items that have been replaced. However, the respondent did not pay any heed towards the complaint's aforementioned request as per email dated 25.03.2024 instead the respondent on 03.06.2024 via email explicitly stated that the physical visit is not permissible and the complainants are requested to wait until further progress.

- i) 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.
- j) 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.

- k) 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.
- l) 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 replace all the above-mentioned item in his unit as it was used as a project office.
- IV. 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;
- V. Direct the respondent not to charge any amount beyond the amount as mentioned in builder buyer agreement.

- VI. Direct the respondent to not levy any holding charges from the complainants;
 - VII. 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.
 - b) The present complaint is misconceived, devoid of merit, and liable to be dismissed. The respondent has complied with all its contractual obligations in good faith and with due diligence. The alleged delay in the handover of possession is not attributable to any default, negligence, or omission on the part of the respondent.
 - c) The complainants have executed an agreement for sale dated 18.05.2019 (registered on 31.05.2019) (hereinafter referred to as the "agreement") whereby the complainants agreed to the explicit terms of the sale. Clause 7.1 of the agreement executed between the parties explicitly stipulates that the date of submission of the occupation certificate application shall be deemed to be the date of completion for the purposes of possession and provides a grace period for obtaining statutory approvals. This contractual provision has been consistently

upheld by judicial precedents, recognising the respondent's entitlement to reasonable extensions in such circumstances without attracting a refund or penal consequences.

- d) In view of the express contractual terms, settled principles of *force majeure*, and the complainants' wilful suppression of material facts coupled with a misrepresentation of the agreement's terms, the present complaint is liable to be dismissed with exemplary costs, to deter the misuse of adjudicatory processes and to uphold the sanctity of these proceedings.
- e) The primary allegation of the complainants that the respondent failed to obtain the occupation certificate and is therefore liable for delay is factually incorrect and legally untenable. The occupation certificate was duly obtained by the respondent from the competent authority and was communicated to the complainants in February 2025. Hence, the very foundation of the complaint is baseless and without merit.
- f) The respondent had submitted its application for the grant of the occupation certificate on 21.02.2024. The occupation certificate was thereafter issued by the Director, Town and Country Planning, Haryana (DTCP), vide Office Memo No. ZP-968-Loose/SD(RD)/2025/2603 dated 20.01.2025. Intimation regarding the grant of occupation certificate was duly sent to the complainants via email dated 23.01.2025. Possession of the subject unit was formally offered by the respondent through an offer of possession letter dated 25.02.2025. The respondent has called upon the complainants to accept the possession and to make a balance payment in accordance with the terms agreed between the parties.
- g) The aforementioned documents unequivocally establish that the project was completed within the timelines envisaged under the agreement. In further support of the respondent's diligent conduct, it is submitted that

the fire no-objection certificate (NOC) was granted by the Director General, Fire Services, Haryana, on 17.01.2024. The District Town Planner endorsed the occupation certificate application on 08.08.2024, followed by endorsements from the Senior Town Planner on 13.08.2024, and from the chief engineer-I, HSVP on 30.08.2024 and 12.09.2024, respectively.

- h) These sequential endorsements by various statutory authorities establish beyond doubt that construction and development activities were completed in a timely manner. Any delay in the final issuance of the occupation certificate was solely due to procedural and administrative factors within government departments factors that are well-recognized by judicial authorities as falling outside the scope of liability for project developers.
- i) It is pertinent to note that the complainants have themselves failed to honour their financial commitments under the agreement and late fee payment to the tune of Rs.6,560.80/- had also accrued.
- j) It is pertinent to mention here that the complainants have deliberately suppressed the material facts that the complainants have been extended a voucher benefit of ₹50,000/- by the respondent. Additionally, compensation to the tune of Rs.3,85,918/- has also been credited to the ledger account of the complainants. Furthermore, the complainants have also been granted an inaugural discount of Rs.7,00,000/- which is reflecting in the allotment letter as well as the ledger statement.
- k) That the alleged delay in handing over possession was occasioned solely due to factors beyond the control of the respondent and squarely falls within the ambit of *force majeure* under section 6 of the RERA Act.

- l) That the development of the project in Gurugram, Haryana, was significantly impacted by a combination of external and unforeseen circumstances, including:
- i. The COVID-19 pandemic which led to multiple phases of nationwide lockdowns, disruption in supply chains, mass labour exodus, and prolonged suspension of construction activities from March 2020 onwards. Even after the phased reopening, operational restrictions and manpower shortages continued to hamper progress.
 - ii. The imposition of recurring annual construction bans in the Delhi-NCR region by the Hon'ble Supreme Court of India, the National Green Tribunal (NGT), and the Environment Pollution (Prevention and Control) Authority (EPCA), under the Graded Response Action Plan (GRAP), during the October to February period each year. These restrictions are mandated to combat seasonal air pollution and have repeatedly stalled construction timelines.
 - iii. Administrative delays by statutory authorities such as the Department of Town and Country Planning, Haryana (DTCP), and Haryana Shahari Vikas Pradhikaran (HSVP) in processing and granting the occupation certificate, despite the respondent's timely and diligent submission of the requisite application.
- m) It is reiterated that the respondent had submitted the application for issuance of the occupation certificate in February 2024, well within the stipulated timelines. As per the contractual arrangement between the parties, the date of possession was agreed to be reckoned from the date of submission of this application to the competent authority.
- n) That the pause in development and the overall project progress was solely attributable to construction bans periodically imposed by governmental authorities, including directions issued each year by the Hon'ble Supreme Court in view of the recurring severe air pollution

across the National Capital Region (NCR). These directions, typically enforced during the winter months, render those periods non-functional for any construction activity, as they are aimed at curbing pollution levels and protecting public health. These measures, though necessary for public health, were wholly beyond the control of the respondent and constitute *force majeure* events within the meaning of section 6 of the RERA Act.

- o) That, no liability, whether by way of compensation, interest, or refund, can be imposed upon the respondent for the delay occasioned by such force majeure events and administrative exigencies, which are legally recognized as justifiable grounds for extension.
- p) That the delay of approximately three months is neither wilful nor attributable to any lapse on the part of the respondent and, therefore, no penal or financial consequences should follow. The alleged delay was entirely due to *force majeure* events and administrative processes—factors beyond the control of the respondent—and not attributable to any fault, negligence, or omission on its part.
- q) That the agreement for sale executed between the parties clearly defines the respective rights and obligations pertaining to possession of the subject apartment. In particular, clause 7.1, titled "*Possession of the Apartment for Residential Usage*," stipulates that the date of submission of the application for the completion/occupancy/part occupancy certificate to the competent authority shall be deemed to be the date of completion and possession for the purposes of the agreement.
- r) Clause 7.1 further provides that no claim for damages or compensation shall lie against the promoter for any delay arising from the time taken by the competent authorities in issuing the requisite certificates. It also entitles the promoter to a corresponding extension of time for such

period. Moreover, clause 7.1 expressly recognizes that delays arising out of *force majeure* events, judicial orders, or governmental guidelines/policies affecting real estate development shall entitle the promoter to an automatic extension of the timeline, without incurring any penal or monetary liability.

- s) In the present case, the respondent has acted diligently, in good faith, and in faithful adherence to the contractual stipulations. The construction of the apartment was completed within a reasonable time, and the application for issuance of the occupation certificate was duly submitted to the Director, Town and Country Planning, Haryana ("DTCP") in February 2024 - well within the contemplated time frame for possession.
- t) In light of clauses 7.1 and 7.6 of the agreement, the date of submission of the occupation certificate application must be treated as the date of completion and readiness for possession. Any delay thereafter, occasioned by statutory processing, is beyond the control of the respondent and must be excluded for the purpose of computing delay.
- u) The complainants demand for interest and/or compensation is devoid of any contractual or statutory foundation. The agreement does not provide for compensation in the event of delays attributable to the statutory process for grant of occupation certificate, nor does it authorize any claim for damages arising from such delays. In the absence of an express contractual stipulation enabling a claim for compensation in cases of delay caused by external authorities, no relief can be granted merely on the basis of general assertions. A judicial forum cannot rewrite the contract to grant relief inconsistent with its terms.

- v) It is a well-settled that a party seeking damages must establish: (i) breach, (ii) loss suffered, and (iii) a legal or contractual basis entitling them to such relief. In the present case, the complainants have failed to demonstrate any such breach or legal right, and their claim is therefore untenable.
- w) That in light of the facts, contractual provisions, and settled judicial principles, the present complaint is liable to be dismissed. The complainants have failed to establish any valid cause of action or legal entitlement to the reliefs sought. The complaint is nothing but a misconceived attempt to unjustly enrich themselves at the expense of the respondent, in abuse of the beneficial provisions of the RERA Act. It is thus liable to be dismissed with exemplary costs. The respondent craves the liberty of the Authority to make additional submissions and produce further material, if so required, at an appropriate stage of the proceedings.

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 replace all the above-mentioned item in his unit as it was used as a project office.**
 - F.IV 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.V 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, F.IV and F.V 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 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 25.01.2019 in favour of the complainants and thereby intimated about the allotment of unit no. 101, 1st floor, tower-01 in the project of the respondent. Thereafter, the agreement for sale was executed between the parties on 18.05.2019 (registered on 31.05.2019) against a sale consideration of Rs.1,16,25,383/-. The complainants have paid a sum of Rs.1,05,06,170/- towards the subject unit.
13. 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.
14. 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."

15. Due date of handing over possession: In terms of clause 7.1 of the Agreement for sale executed between the parties, the promoter has proposed to handover the possession on 31.08.2023. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020, the completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 31.08.2023 i.e., after 25.03.2020. Therefore, period of 6 months is allowed. In view of the above, the due date of handing over of possession comes out to be 29.02.2024.

16. 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.

17. 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.

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. 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. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

21. 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 18.05.2019, and the due date comes out to be 29.02.2024. 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 18.05.2019 to hand over the physical possession within the stipulated period.

22. 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.
23. 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., 29th February 2024 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., 10.85% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid*
24. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the

complainants. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for Occupation Certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit as per specifications provided in the buyer's agreement executed between the parties and 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 obtaining Occupation Certificate from the competent authority.

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.

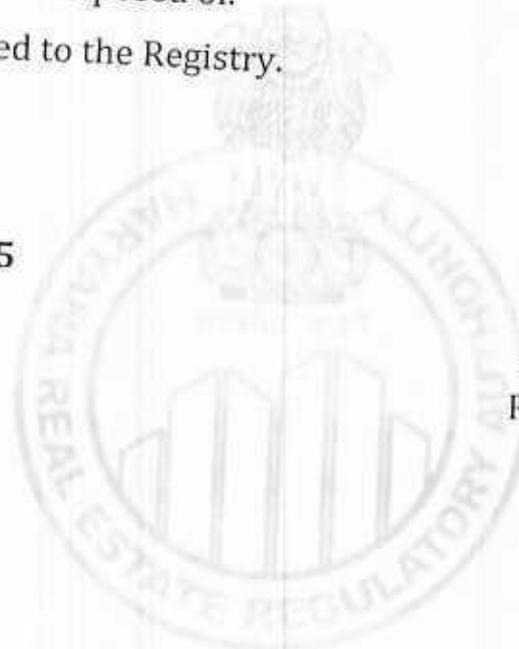
G. Directions issued by the Authority:

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 @ 10.85% per annum from the due date of possession i.e., 29.02.2024 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., 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.
- 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 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.
- 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 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*
- VII. 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.
30. Complaint stands disposed of.
31. File be consigned to the Registry.

Dated: 12.11.2025




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