

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

Date of order: 23.12.2025

NAME OF THE BUILDER		M/S VIKAS PARK PRIVATE LIMITED	
PROJECT NAME		"HERO HOMES" at Sector-104, Village Dhanwapur, Gurugram	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6138/2024	Dr. Mukesh Kumar V/S M/s Vikas Parks Private Limited	Shri Gaurav Bhardwaj, Advocate And Shri Varun Vats, Advocate
2.	CR/6441/2024	Rohitash Pahuja and Khushboo Pahuja V/S M/s Vikas Parks Private Limited	Shri Gaurav Bhardwaj, Advocate And Shri Sumesh Malhotra, Advocate

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member**ORDER**

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

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Hero Homes**" being developed by the same respondent/promoter i.e., M/s Vikas Park Private Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking delay possession along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	" Hero Homes ", Sector-104, Village Dhanwapur, Gurugram.
Project Area	9.053 Acres (Total area 34.0228 acres)
Nature of the project	Residential Group Housing Colony
DTCP License No.	246 of 2007 dated 29.10.2007 valid up to 28.10.2024, 56 of 2011 dated 23.06.2011 valid up to 22.06.2024, 37 of 2012 dated 22.04.2012 valid up to 21.04.2025, 66 of 2012 dated 21.06.2012 valid up to 20.06.2025, 67 of 2012 dated 21.06.2012 valid up to 20.06.2025, 43 of 2014 dated 16.06.2014 valid up to 15.06.2024, 44 of 2014 dated 16.06.2014 valid up to 15.06.2024.
RERA Registered	Registered 24 of 2018 dated 13.11.2018 Valid up to 13.08.2023
RERA Extension	i. Extension No. 01 of 2024 dated 29.04.2024 ii. PROJECT CONTINUATION-RC/REP/HARERA/ GGM/24 of 2018/7(3)/64/ 2025/06 DATED 27.03.2025 Valid up to 28.02.2027
Possession clause: -	7.1. Possession of the said apartment along with parking: "...The The Promoter assures to handover possession of the apartment for residential usage along with parking, on or before 31.08.2023, unless there is delay due to force majeure, court orders, government policy/guidelines....."

Due date of possession:	29.02.2024 [31.08.2023 + grace period of 6 months on account of Covid-19] Note: A grace period of 6 months is allowed being unconditional.
Occupation certificate: -	20.01.2025 [For Tower- 1 to 4] & 07.01.2026 [For Tower- 5 to 7]
Offer of possession: -	25.02.2025

Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of AL & BBA	Total sale consideration and amount paid
1.	CR/6138/2024 Dr. Mukesh Kumar V/S M/s Vikas Parks Private Limited DOF 20.12.2024 Reply 20.03.2025	T-02/1701 on 17th floor, Tower-02. 1099 sq. ft. (super area) 683.83 sq. ft. (carpet area) (as mentioned in allotment letter at page 36 & 37 of complaint)	Allotment letter: 19.02.2019 (page 36 of complaint) BBA: 29.04.2019 (page 39(i) of complaint) Endorsement in favour of complainant: 24.01.2024 (as per page 77 of complaint)	BSC: - Rs.58,24,700/- & TSC: - Rs.73,37,474/- (as mentioned in clause 1.2 of BBA at page 43 of the complaint) AP: - Rs.69,41,147/- (as mentioned in demand letter dated 25.02.2025 at page 213 of reply)
2.	CR/6441/2024 Rohitash Pahuja and Khushboo Pahuja V/S M/s Vikas Parks Private Limited DOF 14.01.2025 Reply 17.04.2025	T-01/901 on 9th floor, Tower-01. 1689 sq. ft. (super area) 1082.20 sq. ft. (carpet area) (as mentioned in allotment letter at page 35 & Clause J of BBA at page 42 of complaint)	Allotment letter: 17.06.2019 (page 35 of complaint) BBA: 10.07.2019 (page 38 of complaint) Endorsement in favour of complainants: 17.04.2023 (as per page 43 of complaint)	BSC: - Rs.89,51,700/- & TSC: - Rs.1,15,25,733/- (as mentioned in clause 1.2 of BBA at page 44 of the complaint) AP: - Rs.1,08,53,147/- (as mentioned in demand letter dated 25.02.2025 at page 213 of reply)

The complainant in the above complaint(s) have sought the following reliefs:

1. Direct the respondent to offer possession of the unit in question after obtaining occupation certificate;
2. Direct the respondent to handover a complete unit to the complainants in accordance with specifications mentioned in the agreement;
3. 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 specifications mentioned in the agreement;
4. Direct the respondent not to charge any amount beyond the amount as mentioned in builder buyer agreement;
5. Direct the respondent to not levy any holding charges from the complainants;
6. Direct the respondent to not levy any maintenance charges from the complainants till date of actual handover;
7. Any other relief as the Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
BBA	Builder Buyer's Agreement
BSC	Basic Sale consideration
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6138/2024 titled as Dr. Mukesh Kumar V/s M/s Vikas Park Private**

Limited are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Unit and Project related details:

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

**CR/6138/2024 titled as Dr. Mukesh Kumar V/s M/s Vikas Park
Private Limited**

S. N.	Particulars	Details
1.	Name and location of the project	"Hero Homes Tower-8", Sector-104, Village Dhanwapur, Gurugram.
2.	Project area	9.053 Acres (Total area 34.0228 acres)
3.	Nature of the project	Residential Group Housing
4.	DTCP license no. and validity status	246 of 2007 dated 29.10.2007 valid upto 28.10.2024, 56 of 2011 dated 23.06.2011 valid upto 22.06.2024, 37 of 2012 dated 22.04.2012 valid upto 21.04.2025, 66 of 2012 dated 21.06.2012 valid upto 20.06.2025, 67 of 2012 dated 21.06.2012 valid upto 20.06.2025, 43 of 2014 dated 16.06.2014 valid upto 15.06.2024, 44 of 2014 dated 16.06.2014 valid upto 15.06.2024.
5.	Name of the Licensee	M/s Mabon Properties Pvt. Ltd. & others
6.	RERA registered/ not registered and validity status	Registered 87 of 2023 dated 28.08.2023 Valid upto 30.09.2027
7.	Unit no.	T-02/1701 on 17th floor, Tower-02. (as mentioned in allotment letter at page 36 of complaint)
8.	Unit area	1099 sq. ft. (super area) (as mentioned in allotment letter at page 36 of complaint)
9.	Allotment letter [Original allottee i.e., Dhiraj Kumar Mishra & Mrs. Abhilasha]	19.02.2019 (as per page 36 of complaint)

10.	Date of execution of buyer's agreement [Original allottee i.e., Dhiraj Kumar Mishra & Mrs. Abhilasha]	29.04.2019 (as per page 39(i) of complaint)
11.	Possession clause	7. Possession of the apartment for residential usage: <i>7.1... The promoter assures to handover possession of the apartment for residential usage along with parking on or before 31.08.2023 unless there is delay or failure due to "Force Majure" ...</i> (Emphasis supplied) (as per page 47 of the complaint)
12.	Due date of possession	29.02.2024 [31.08.2023 + grace period of 6 months on account of Covid-19] (as mentioned in para 7.1 of the buyer's agreement at page 47 of complaint)
13.	Basic sale price	Rs.58,24,700/- (as mentioned in clause 1.2 of BBA at page 43 of the complaint)
14.	Total sale consideration	Rs.73,37,474/- (as mentioned in clause 1.2 of BBA at page 43 of the complaint)
15.	Amount paid by the complainant	Rs.69,41,147/- (as mentioned in demand letter dated 25.02.2025 at page 213 of reply)
16.	Agreement to sell [B/w Original allottees and complainant]	19.01.2024 (as per page 72-76 of the complaint)
17.	Endorsement / transfer of the allotment in favour of complainant	24.01.2024 (as per page 77 of the complaint)
18.	Tripartite agreement (b/w complainant, respondent and Canara Bank)	07.03.2024 (as per page 80-82 of the complaint)
19.	Occupation certificate	20.01.2025 (page 36-38 of reply)
20.	Intimation to the allottees Via Email w.r.t Receipt of OC	23.01.2025 (page 39-41 of reply)
21.	Offer of possession	25.02.2025 (page 42-46 of reply)

B. Facts of the complaint: -

8. The complainant has made 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. The said respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project nurture wellness and enhance lifestyle with a host of unique and modern facilities providing seamless connectivity to Delhi through a network of flyovers. It was further represented that the project will be a paradise in its own right, featuring 2BHK and 3BHK with a carpet area of over 1000 square feet, equipped with more than 100 amenities.
 - b. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent, the erstwhile owner booked a unit vide application dated 22.12.2018 in the said project by making a payment of Rs.1,00,000/- vide instrument bearing no.040453 dated 22.12.2018 and Rs.3,00,000/- vide instrument bearing no. 040454 dated 22.12.2018 totalling the booking amount to Rs.4,00,000/- drawn on Oriental Bank of Commerce against the total sale consideration of Rs.73,37,474/-.
 - c. That on 19.02.2019, the respondent sent an allotment letter allotting the unit bearing no.T-02/1701 (Apartment 2BHK 2 Toilet 3 Balcony) on 17th floor located in Tower no. T-02, ad measuring carpet area 683.83 sq. ft. and super area 1099 sq. ft. along with basement parking no. B2-446 ad measuring 134.55 sq. ft. in basement no.02 in the Group Housing Society known as Hero Homes, Sector-104, Dwarka Expressway, Gurugram, Haryana.
 - d. That on 24.04.2019, a pre - printed, arbitrary; one-sided, and ex-facie agreement to sell was executed inter-se the original allottees (Dhiraj Kumar Mishra and Abhilasha) and respondents, the contents of this agreement

may kindly be treated as part and parcel of this complaint and the same are not been repeated for the sake of brevity. As per clause No. 7.1 of the agreement to sell, the respondent undertook to complete construction and handover possession of the unit in question along with parking within 4 years 4 months from the date of execution of agreement to sale i.e. by 31.08.2023. Subsequently, on 19.01.2024, an agreement to sell was endorsed by the respondent in favour of the complainant for the unit in question.

- e. That thereafter, on 24.01.2024, the respondent sent a letter to the complainant pertaining to transfer of unit bearing no.1701 having carpet area of 683.83 sq. ft. and super area of 1099 sq. ft. on 17th floor located in Tower No. T-02 in the said project from the original allottees (Dhiraj Kumar Mishra and Abhilasha) to the complainant.
- f. That the respondent kept raising payment demands and the complainant kept making payment in accordance with said demands only in the hope of getting possession. Till date, the complainant has made payment of Rs.68,09,132/- as against the total sale consideration of Rs.73,37,474/- in accordance with the demands raised by the respondent, in favour of the complainant dated 23.02.2024 i.e. 92% payment against the unit in question.
- g. That at the time of purchase of the unit in question, the respondent assured the complainant 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 endeavor to handover the possession of the unit to the complainant. Accordingly, the complainant paid a substantial amount towards the purchase of the unit in question, for which the complainant took a loan from Canara Bank. A Tripartite Agreement

dated 07.03.2024 was executed between the complainant, respondent and Canara Bank which was duly acknowledged by the respondent. That the complainant had no choice but to rely on the representations made by the respondent making payments against the demands raised by the respondent as and when required. However, despite the passing of due date of possession as per the agreement for sale and paying almost 84% of the payment against total sale consideration, the respondent has clearly failed to deliver possession of the unit on agreed date.

- h. That the respondent had committed to obtain the OC and handing over possession on time. However, the prospects of possession being offered in the near future appear uncertain, as the respondent applied for the OC only after the possession due date had passed and has also raised a payment demand. This delay has caused significant distress to the complainant, who is now seeking a clear response or firm commitment from the respondent. To the utter surprise of the complainant, respondent maintained a staunch silence/stereotyped reply on not obtaining OC and not fulfilling their commitments with respect to possession of the Unit.
- i. That it is imperative to mention here that all through this while, the complainant kept reiterating that the delay in handover of possession has caused extreme mental agony as well as financial hardship to him. Accordingly, by way of the present complaint, the complainant seek direction to the respondent for obtaining occupation certificate and handing over of possession of the unit in question along with delay possession charges owing to the delay in handing over of possession in accordance with the builder buyer agreement. The aforesaid series of events clearly portray the amount of harassment and mental agony the complainant has gone through till date. Even after a lapse of more than 5 years from the date of booking, the complainant has been left empty

handed, under financial distress as the respondent has failed in offering and handing over possession of the unit booked by the complainant, thereby duping the complainant of her hard-earned money and causing them great mental trauma.

- j. That the present complaint has been filed in order to seek delayed possession charges on the principal amount paid by the complainant along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the due date of possession. That the present complaint has been filed in order to seek possession of the unit and interest on the delayed possession along with the other reliefs as mentioned in the relief clause of the complaint.
- 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. That as per Section 18 of the RERA 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. Accordingly, the complainant is 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.
- l. The complainant also reserves right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainant:

9. The complainant has sought following relief:
 - i. Direct the respondent to 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 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 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;
 - vii. Any other relief as the Authority may deem fit and proper in the facts and circumstances of the case.
10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply filed by the respondent:

11. 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 prestigious Hero Group. The 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".
 - b. That the 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 complaint pertains to apartment no. 1601, admeasuring 683.83 sq. ft. in Tower-2, on 17th Floor, along with basement parking no. B2-446, 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 vide office Memo no. ZP-968-Loose/SD(RD)/2025/2603 dated 20.01.2025. An intimation of receipt of OC has also been sent to complainants vide email dated 23.01.2025. 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.

- c. That the contents of Occupation Certificate and the endorsements clearly indicate that the project was complete well in time. The project had received Fire NOC from Director General, Fire Service, Haryana on 17.01.2024. District Town Planner had given his endorsement on application for grant of OC on 08.08.2024, Senior Town Planner on 13.08.2024 and Chief Engineer- I, HSVP on 30.08.2024 and 12.09.2024, thereby clearly indicating the project, despite being complete, was stuck in bureaucratic paperwork.
- d. That the complainants have neither any cause of action nor any *locus standi* to maintain the 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.
- e. That the complainant is a subsequent allottee who had purchased the apartment in question from the original allottee Mr. Dhiraj Kumar Mishra and Mrs. Abhilasha vide agreement to sell dated 28.12.2023. In this regard transfer request was made to the respondent and a registered tripartite

agreement was executed between the original allottee, complainant and the respondent on 19.01.2024 i.e., after the due date of offer of possession as asserted by the complainant, clearly indicating that the complainant was aware of the stage of construction/ development of the project in question and any purported delay. The transfer of apartment in favour of the complainant was complete on 24.01.2024, which was duly intimated to the complainant.

- f. The complaint is barred by *law of estoppel*. The sale of unit is strictly subject to the terms of the agreement which the complainants had agreed to. The complainants are well-acquainted that clause 7.1 of the agreement unequivocally encapsulates the principle that the complainants cannot claim delay possession charges in the event of *force majeure* circumstances mentioned in the agreement. These unforeseen events, entirely beyond the control of the respondent company, had significantly disrupted and delayed the originally projected timeline for completion. The clause underscores the acknowledgment of such extraordinary occurrences as legitimate grounds for the delay, absolving the respondent of liability for associated delays while maintaining the complainants' obligations under the agreement.
- g. That clause 7.1 of the agreement for sale dated 24.04.2019 (registered on 29.04.2019) 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. 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. 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.

- h. That in case of delay/failure due to occurrences of force majeure events/ events beyond the control of the respondent company or impacting the real estate project, the respondent is entitled to extension of time. 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.
- i. 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 agreement 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. That 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. That 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 company, the development of proportionate EWS housing for respondent's project got delayed by approximately 24 months which was otherwise planned simultaneously with the development of the project.
- j. That the complainant has willfully concealed that original allottee has received the benefit from the respondent in the form of adjustment of the amount to the tune of Rs.25,000/-, in lieu of cashback vouchers, as informed vide emails dated 03.09.2019 and 25.09.2019 and receipt dated 11.09.2019.
- k. That 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.
12. All other averments made in the complaint denied in toto.
13. 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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority

14. The respondent has raised a preliminary submission/objection that the Authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.I Territorial jurisdiction

15. 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

16. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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

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

F. Findings regarding relief sought by the complainant:

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

18. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
19. In the present case, the original allottee namely, Mr. Dhiraj Kumar Mishra and Mrs. Abhilasha booked an apartment in the project namely "HERO HOMES" located in sector 104, Gurugram, being developed by the respondent herein. Vide allotment letter dated 19.02.2019, they were allotted an apartment bearing no. 1702, 17th floor in tower T-02 admeasuring 683.83 sq. ft. carpet area & 1099 sq. ft. super area in the project namely Hero Homes Tower 02 located in sector 104, Gurugram. Thereafter, on 29.04.2019, an agreement for sale was executed between the respondent and the original allottee and according to clause 7.1 of the agreement the respondent was obligated to complete the construction of the unit as provided under Rule 2(1)(f) of Rules, 2017 i.e., by 31.08.2023 (as mentioned in agreement to sale dated 29.04.2019 as well as HARERA website).
20. Further, on 19.01.2024, the complainant and original allottee's entered into agreement w.r.t sale of the said apartment to the complainant herein. Therefore, on 24.01.2024, the respondent endorsed the said apartment/ unit in favour of the complainant, upon the request from the original allottees and as per agreement dated 19.01.2024. The complainant has paid an amount of Rs.69,41,147/- against the total sale consideration of Rs.73,37,474/-.

21. As per documents available on record, the respondent has offered the possession of the allotted unit on 25.02.2025 after obtaining of Occupation Certificate from the Competent Authority on 20.01.2025. The complainant took a plea that offer of possession was to be made in 2025, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
22. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of Section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

*(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"*

23. Clause 7.1 of the agreement for sale provides the time period for handing over possession and the same is reproduced below: -

"7.1 POSSESSION OF THE APARTMENT FOR RESIDENTIAL USAGE

7.Schedule for possession of the said Apartment for residential usage – The Promoter agrees and understands that timely delivery of possession of the Apartment for residential usage along with parking to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement....

*The promoter assures to handover possession of the apartment for residential usage along with parking **on or before 31.08.2023** unless there is delay or failure due to "Force Majure"
(Emphasis supplied)*

24. **Due date of handing over of possession:** The promoter has proposed to handover the possession on 31.08.2023, Therefore, the due date of handing over of possession comes out to be 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 complainant is 31.08.2023 i.e., after 25.03.2020. As far as grace

period of 6 months is concerned, the same is allowed Therefore, the due date of possession comes out to be 29.02.2024.

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

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]

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."

26. 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;"

27. 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., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

28. **Rate of interest to be paid by complainant/allottee 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.
29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
30. 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 executed between the parties, the possession of the said unit was to be as per Rule 2(1)(f) of Rules, 2017. Therefore, the due date of handing over possession comes out to be 29.02.2024. In the present case, the complainant was offered possession by the respondent on 25.02.2025 after obtaining occupation certificate dated 21.01.2025 from the competent authority. Copies of the same have been already placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant within the stipulated time period as per the terms and conditions of the agreement for sale dated 29.04.2019 executed between the parties.
31. 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 21.01.2025. However, the respondent offered the

possession of the unit in question to the complainant only on 25.02.2025. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 (two) months of reasonable time is being given to the complainant 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.

32. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.80% p.a. from due date of possession till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act, 2016 read with Rule 15 of the Rules, *ibid*.
33. It is further observed by the Authority that at the time of issuance of offer of possession, the respondent has adjusted an amount of Rs.2,44,382/- on account of compensation against delayed possession charges and the same is reflected into customer ledger dated 26.02.2025 (at page 45 of reply). Therefore, the Authority is of the view that the same shall be adjusted/deducted from the total payable amount of delay possession charges.

- **Conveyance Deed**

34. The Authority observes that as per clause 10 of the agreement for sale dated 29.04.2019, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said unit in favour of the allottee(s) but only after receiving full payment of total price of the unit and the relevant clause of the agreement is reproduced for ready reference: -

10. Conveyance of the unit:

The promoter, on receipt of total price of the apartment for residential usage along with parking, shall execute a conveyance deed in favour of allottee(s) preferably within three months but not later than six months from possession.

Provided that, the apartment is equipped with all the specifications, amenities, facilities as per the agreed terms and conditions and common area as provided under Rule 2(1)(f) of Rules, 2017. However, in case, the allottee(s) fails to deposit the stamp duty and/ or registration charges, other ancillary charges within the period mentioned in the notice, the allottee(s) authorizes the promoter to withhold the registration of the conveyance deed in his/ her favour till such stamp duty, registration charges, other ancillary charges are paid by the allottee(s) to the promoter.

35. It is to be further noted that Section 11 (4) (f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the unit along with the undivided proportionate share in common areas to the association of the allottee(s) or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.
36. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee(s) as per Section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: - Transfer of title

17(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."

37. As occupation certificate of the unit has been obtained from the competent authority on 20.01.2025. Therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the registered

conveyance deed of the subject unit in favour of the complainant, after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

- F.V Direct the respondent to not levy any holding charges from the complainants;**
- F.VI Direct the respondent to not levy any maintenance charges from the complainants till date of actual handover;**
- F.VII Any other relief as the Authority may deem fit and proper in the facts and circumstances of the case.**

• **Holding charges:**

38. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.*

• **CAM Charges & Maintenance Charges**

39. The Authority has decided this in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. Further, the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
40. Further, it is pertinent to note that, as per Section 11(4)(d) of the Act, of the Haryana Real Estate (Regulation and Development) Act, 2016, the promoter shall be responsible for providing and maintaining the essential services, on

reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

G. Directions of the Authority:

41. 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 promoter as per the function entrusted to the Authority under Section 34(f):

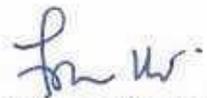
- a. The respondent is directed to pay interest at the prescribed rate i.e. 10.80% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 29.02.2024 till valid offer of possession plus two months after obtaining OC from the competent authority or 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*. The arrears of the interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of Rules, *ibid*.
- b. Also, the amount if any so paid by the respondent towards compensation against delayed possession charges shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to Section 18(1) of the Act.
- c. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- d. The respondent is further directed to issue updated statement of account to the complainant after adjustment of DPC and the complainant shall pay the outstanding dues, if any, to the respondent within a period of 30 days along with equitable rate of interest and the respondent shall handover

the possession thereafter. In case the respondent fails to handover the physical possession of the unit within a period of 30 days after payment of dues, if any.

- e. The respondent is further directed to execute the registered conveyance deed, in favour of the complainant, in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant. 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.
- f. The respondent shall not charge anything from the complainant which is not the part of the agreement for sale.
- g. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.*

42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. Complaint as well as application, if any, stands disposed of accordingly.
44. True certified copy of this order shall be placed in the case file of each matter.
45. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025