

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

Complaint no. :	2923 of 2025
Date of Filing:	20.06.2025
Date of Decision:	09.01.2026

1. Neelesh Pratap Singh
2. Lalita Singh

R/O: Ward No. 9, Near Subhash Stadium,
Dhanpuri No. 3, Dhanpuri Shahdol, Madhya
Pradesh - 484114

Complainants

Versus

M/s Vatika Limited

Office: Unit no. A-002, INXT City Centre,
Ground Floor, Block-A, Sector-83, Vatika India
Next Gurugram

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Ramnish Khanna

Ms. Omita

Advocate for the complainants

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/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 provisions of the Act or the

Rules and regulations made there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Vatika India Next, Sector 82, 82A, 83, 84 & 85, Gurugram. (Bellevue Residencies)
2.	RERA Registered/ not registered	Not Registered
3.	Unit no.	52/240/Duplex/BR (as per BBA at page no. 32 of complaint)
4.	Area admeasuring	Plot size: 240 sq. yds. Built up area of villa: 2659 sq. ft.
5.	Date of buyer's agreement	05.11.2010 (page no. 29 of complaint)
6.	Addendum to BBA	09.02.2012 (page no. 76 of complaint)
7.	Shifting of unit	09.02.2012 30/240/Duplex/ST82D1-2 Admeasuring 2659 sq. ft. (page no. 76 of complaint)
8.	Shifting of unit	29, S-5, Signature Villa 2 Admeasuring 3045 sq. ft. (page no. 82 of complaint)

9.	Possession Clause	11.1 Schedule for Possession of the Said Unit The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit within a period of three years from the date of execution of this Agreement.
10.	Due date of possession	05.11.2013 (as per possession clause)
11.	Total sale consideration	Rs. 1,18,63,738/- (as per BBA on page no. 32 of complaint) Rs. 1,34,77,146/- (revised TSC after shifting of unit at page no. 83 of complaint)
12.	Total amount paid by complainants	Rs. 1,03,60,915/- (as per SOA at page no. 78 of complaint)
13.	Payment plan	Construction linked payment plan (page no. 53 of complaint)
14.	Occupation certificate	NA
15.	Intimation of possession	21.02.2024 (page no. 122 of complaint)
16.	Cancellation of booking	01.04.2025 (page no. 126 of complaint)
17.	Legal notice by complainants seeking possession of unit	11.04.2025 (page no. 127 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainants deposited the booking amount to the tune of Rs. 12,55,739/- also deposited subsequent amount as demanded by the respondent against which receipt dated 18.05.2010, 07.06.2010, 27.09.2010, 07.12.2010, 03.01.2011, 28.03.2011 etc., were issued respective. The complainants vide application form dated 16.05.2010 applied for the booking in the said project.
 - II. That post payment of initial booking amount the complainants were provided with builder-buyer's agreement ("BBA") along with its terms and conditions. The clauses stipulated vide buyer's agreement were pre-set. Wherein, the possession, builder's default etc., have been subject to numerous terms and conditions and force majeure circumstances. The drafting of concerned clauses are not only vague but so heavily loaded in favour of the promoters/builder that even a single bona-fide mistake/default by the allottee in fulfilling obligations, payments, formalities, and documentations etc.
 - III. That the complainants were constrained to sign the said BBA dated 05.11.2010 as it is, without considering complainant(s) genuine request to change such one-sided terms and conditions. Vide BBA dated 05.11.2010, initially a Duplex Bellevue villa No. 52/240/Duplex/BR admeasuring 2659 sq. ft. in the said project was allotted to the complainants. Vide said BBA respondent promised to handover the physical possession of said unit within 3 years from date of signing of the buyer's agreement i.e., handover date 05.11.2013.

- IV. That the concerned bank on 31.01.2011 approved a Housing Loan for an amount of Rs. 75,00,000/- having rate of interest @ 9.25 p.a. on a variable rate basis which was duly repaid on 06.01.2017.
- V. That the complainant(s) based on payment plan paid regular instalments as demanded by the respondent. However, in the year 2011 post payment of last demand in the year 2011, when complainants visited at site they were shocked to note that construction at site was negligible. Thereafter, complainant(s) on many occasions visited at the respondent's office and raised queries regarding completion of construction and handover of the said Unit as per the promised date of possession.
- VI. That in the year 2012, it was also informed to the complainant(s) that in the said Bellevue Villa some dispute had arisen and requested complainants to change the aforesaid villa to another villa namely Signature 2 villa. It was assured that the respondent will handover said Signature 2 villa on the promised handover date i.e., 05.11.2013. Resultant, complainants got deceived to exchange original allotted villa with new Signature -2 Villa. On 09.02.2012 parties executed an addendum agreement whereby previous Bellevue Villa bearing no. 52/240/Duplex/BR was changed to Signature -2 Villa bearing No. 30/240/duplex/ST82DI-2. The said addendum agreement was considered as an integral part & parcel of the BBA dated 05.11.2010 and all others terms and conditions of the BBA dated 05.11.2010 remained unaltered and effective, including clause with respect to handover of physical possession of the said Unit i.e., handover date being 05.11.2013.

- VII. That post execution of said addendum agreement dated 09.02.2012, the respondent again started raising demand in the year 2013 and all such demands, even were not as per the construction link/Annexure II of BBA, were duly paid by the complainant(s). However, construction at site remained stagnant and the respondent miserably failed to complete the construction of said new villa as per the BBA and promised date of handover of possession got elapsed. However, to utter shock, the respondent had imposed interest on alleged overdue amount.
- VIII. That thereafter the complainant(s) did regular follow up with the respondent via, e-mails, WhatsApp messages, phone calls and office visits. However, on one pretext or another, the respondent delayed completion of construction and failed to handover physical possession of said villa to the complainants. On each occasion, it was assured to the complainant(s) that the respondent had started to handover possession of units in said project but not for said signature 2 Villas. In the year 2013 it was assured that by mid of 2014 the respondent shall handover the physical possession of said villa to the complainant(s). In the year 2014, it was assured that by mid of 2015, the respondent will hand over the possession. On such wrong and purposefully misleading assurances the respondent delayed the handover of possession and avoided payment of delay interest to the complainant(s).
- IX. That eventually in the year 2017, it was represented to the complainant(s) that the respondent shall handover a possession of another villa to the complainants within 6 months. Resultant, the complainant(s) were again deceived to change the said unit/ Signature

-2 Villa bearing No. 30/240/duplex/ST82DI-2 (30, S-4, Signature Villa 2) with another Signature -2 Villa bearing no. 29, S-5.

- X. That the respondent provided pre-drafted addendum agreement and the complainant(s) were deceived to execute the said addendum agreement by stating that within six months of execution of said addendum agreement, the respondent shall handover the physical possession of said new villa bearing no. 29, S-5. However, again the respondent failed to adhere with its obligations to handover the possession. Moreover, the area of the Villa was increased from original allotted villa and the complainant(s) were forced to pay for such extra area.
- XI. That the complainant no.1 due to his work commitment lives outside India and every time during his visits to India he was constrained to run pillar to post with respect to possession and delay interest, causing harassment, mental & physical agony, and loss of time and money, but to no avail. It is pertinent to mention herein that complainant(s) paid all instalments as demanded the respondent. Further, post demise of the complainant no. 1's father, the complainant no. 2 (senior citizen, mother of the complainant no.1) and as the complainant no. 1 lives outside India, in the year 2022 wrote to the respondent to handover the possession of the concerned Villa on an urgent basis. However, the respondent even failed to respond to such bonafide/ compassionate request of the complainants. In fact, the respondent was forcing the complainants to cancel the allotment and take the refund. However, as the complainants were deceived to wait for such prolonged time for the villa, the complainants always requested to handover the possession of the concerned Villa. It appears that as the price of the

concerned villa has been increased, the respondent were keen to cancel the allotment for their unjust enrichment at the costs of the complainants.

XII. That the respondent, eventually issued an intimation of possession letter dated 21.02.2024 whereby, exorbitant amount was demanded without considering delay interest. The complainant(s) on multiple occasions requested the respondent, including via emails, to come forward and explain the said alleged exorbitant demand with proper break-up and also to pay delay interest for delayed possession. However, the respondent failed to provide any satisfactory response to the complainants.

XIII. That the complainant(s) were shocked when the respondent, vide letter dated 01.04.2025, illegally and with malafide intentions wrongly cancelled the complainants' allotment. It appears that as price of said concerned villa has been increased since the complainant(s) have purchased the same and also to avoid payment of delay interest the respondent, malafidely cancelled the said allotment.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- (i) Declare that alleged cancellation letter dated 01.04.2025 is null and void.
 - (ii) Direct the respondent to withdraw the cancellation letter dated 01.04.2025.
 - (iii) Direct the respondent to also, waive off the alleged interest on the alleged delayed payment.
 - (iv) Direct the respondent not to create third party interest in the said unit.

- (v) Direct the respondent provide all permissions including occupation certificate and thereafter handover the possession of the Signature -2 Villa bearing no. 29, S-5 and the common facilities complete in all respects to our client
- (vi) Direct the respondent that post obtaining occupation certificate / completion certificate, handover the possession of the unit bearing no. 29, S-5, Signature Villa 2, and common facilities complete in all respects.
- (vii) Direct the respondent to pay delay interest @ 18% p.a. from promised day of possession as per BBA dated 05.11.2010 till actual handover of physical possession of said concerned Signature -2 Villa bearing no. 29, S-5.
- (viii) Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants.
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 has contested the complaint on the following grounds.
- I. That the construction of the said project and the unit of the complainants is complete and the respondent has also offered possession of the unit of the complainants however, the complainants did not come forward to take over the possession of the said unit and further has taken shelter by filing the present complaint just to arm-twist the complainants and to avoid making payment of the holding charges to the respondent. The complainants have not taken over the

possession of the said unit even after repeated reminders and have not made the balance payment of dues which the complainants were liable to make as per the terms of the builder buyer agreement. Therefore, in the present case the complainants themselves are in default and have come before this Hon'ble Authority with unclean hands to harass the respondent and therefore the complaint must be dismissed on the same ground itself.

- II. That the complainants had entered into builder buyer agreement in 2010 and the said agreement was executed by and between the parties. They have read the clauses of the agreement and have signed the same after having read the document and further the complainants were under no coercion to sign the same. Therefore, the allegation made by the complainants that the agreement was one-sided and in favour of the respondent is totally misconceived and untenable.
- III. Hence, the present complaint under reply is an utter abuse of the process of law, and hence deserves to be dismissed.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire

Gurugram district for all purposes. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

- (i) Declare that alleged cancellation letter dated 01.04.2025 is null and void.**
- (ii) Direct the respondent to withdraw the cancellation letter dated 01.04.2025.**

- (iii) Direct the respondent to also, waive off the alleged interest on the alleged delayed payment.**
 - (iv) Direct the respondent not to create third party interest in the said unit.**
 - (v) Direct the respondent provide all permissions including occupation certificate and thereafter handover the possession of the Signature -2 Villa bearing no. 29, S-5 and the common facilities complete in all respects to our client**
 - (vi) Direct the respondent that post obtaining occupation certificate / completion certificate, handover the possession of the unit bearing no. 29, S-5, Signature Villa 2, and common facilities complete in all respects.**
 - (vii) Direct the respondent to pay delay interest @ 18% p.a. from promised day of possession as per BBA dated 05.11.2010 till actual handover of physical possession of said concerned Signature -2 Villa bearing no. 29, S-5.**
12. In the present matter, the complainants booked a unit/villa in the project of the respondent namely, Vatika India Next named as Bellevue Residences and were allotted a unit/villa bearing no. 52/240/Duplex/BR, admeasuring 2659 sq. ft. The buyer's agreement was executed on 05.11.2010, as per possession clause 11.1 of the BBA, the possession of the unit was to be delivered to the complainants within a period of three (3) years from the date of execution of agreement. Hence, the due date of possession comes out to be 05.11.2013. On 09.02.2012 an addendum to the said buyer's agreement was executed and the earlier allotted unit was shifted to 30/240/Duplex/ST82D1-2 admeasuring 2659 sq. ft. Thereafter again

the unit of the complainants was shifted to 29, S-5, Signature Villa 2 admeasuring 3045 sq. ft. The total sale consideration of the unit/villa as per the buyer's agreement was Rs. 1,18,63,738/- and after shifting of the unit/villa to a new villa the total sale consideration was Rs. 1,34,77,146/- out of which the complainants paid an amount of Rs. 1,03,60,915/-.

13. That the respondent has not obtained the occupation certificate till date and on 21.02.2024 respondent offered the possession of the unit to the complainants. Thereafter on 01.04.2025 respondent sent a cancellation letter for cancellation of unit/villa allotted to the complainants.

Now, the question before the Authority is whether this cancellation is valid or not?

14. On the basis of documents placed on record and submission made by both the parties, the Authority observes that the respondent has not obtained the occupation certificate (OC) for the project till date. Despite the absence of the occupation certificate, the respondent vide letter dated 21.02.2024 purportedly offered possession of the unit to the complainants. The Authority is of the considered view that any offer of possession made without obtaining the occupation certificate from the competent authority cannot be treated as a valid offer of possession in the eyes of law. The Authority further observes that thereafter the respondent, instead of taking steps to complete the project and obtain the occupation certificate issued a cancellation letter dated 01.04.2025 cancelling the allotment of the complainants. The said cancellation letter dated 01.04.2025 have been issued without serving any prior notice, reminder or opportunity to the complainants

to cure any alleged default. Such action on the part of the respondent is arbitrary and contrary to the principles of natural justice.

15. Moreover, the record reflects that the complainants have already paid a substantial amount of Rs. 1,03,60,915/- out of the total sale consideration of Rs. 1,34,77,146/- which clearly demonstrates their bonafide intention to honour their contractual obligations. In light of the aforesaid reasons, the Authority is of considered view that the cancellation made by the respondent vide letter dated 01.04.2025 is not valid in the eyes of law. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the said cancellation letter dated 01.04.2025 is hereby set aside being bad in the eyes of law.
16. In the present complaint, the complainants are seeking 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

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."

(Emphasis supplied)

17. Clause 11 of the buyer's agreement provides for handing over of possession and is reproduced below:

Clause 11. Schedule for Possession of the Said Unit

The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit within a period of three years from the date of execution of this Agreement."

18. **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]

- (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.

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.80%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.
23. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 11 of the buyer's agreement dated 05.11.2010 the possession of the subject unit was to be delivered within 3 years from the date of execution of agreement. Therefore, the due date of handing over possession comes out 05.11.2013. Till date no occupation certificate has been obtained by the respondent/promoter. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.
24. The Authority further finds that there has been a delay on the part of the respondent/promoter in offering possession of the allotted unit to the complainants in accordance with the terms of the buyer's agreement. This delay constitutes a failure on the part of the

respondent/promoter to fulfill their contractual obligations, including the timely delivery of possession as stipulated in the agreement. 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.

25. 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/promoter is established. As such, the allottee shall be paid by the promoter interest at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 05.11.2013 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

(viii) Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants.

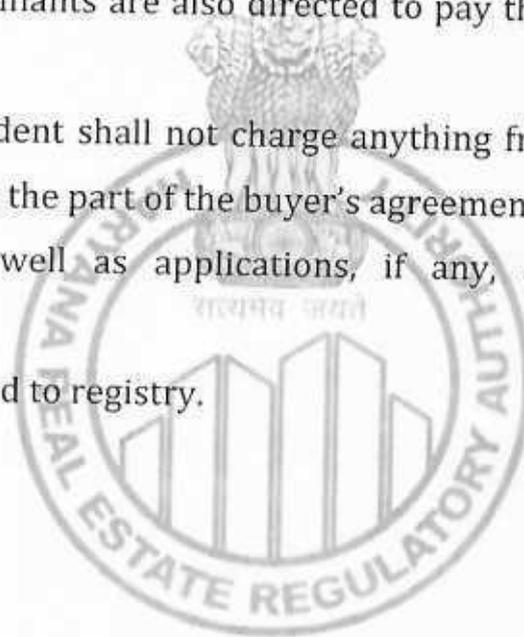
26. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the

complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

27. Hence, the authority hereby passes this order and issues 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):
- i. The cancellation of the allotted unit is set aside.
 - ii. The respondent is directed to restore the subject unit/villa to its original position in favour of the complainants.
 - iii. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/villa of same size and specifications at same rate as per the buyer's agreement/addendum agreement in the said project to the complainants.
 - iv. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 05.11.2013 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing

- over of possession shall be paid on or before the 10th of each succeeding month.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vii. The complainants are also directed to pay the outstanding dues, if any.
 - viii. The respondent shall not charge anything from the complainants, which is not the part of the buyer's agreement.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. File be consigned to registry.



(Arun Kumar)
Chairman

HARERA
GURUGRAM

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.01.2026