

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

Complaint no. : 4888 of 2025
Complaint Filed on : 30.01.2025
Date of First Hearing : 06.11.2025
Order pronounced on : 12.03.2026

**Mr. Bhupesh Kumar Thakkar and
Durgesh Thakkar**

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:

Sh. Phool Singh Saini

Member

APPEARANCE:

Sh. Gaurav Bhardwaj (Advocate)

Sh. Jayesh Yadav (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.



A. Unit and Project-related details:

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

CR/4888/2025 titled as Mr. Bhupesh Kumar Thakkar and Durgesh Thakkar 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	Registered RC/REP/HARERA/GGM/743/475/87 dated 28.08.2023, valid upto 30.09.2027 Registered area: 0.1514 acres
4.	DTCP License No. and licensee(s)	246 of 2007 dated 29.10.2007 valid till 25.02.2020 56 of 2011 dated 23.06.2011 valid till 25.02.2020 37 of 2012 dated 22.04.2012 valid till 17.09.2020 66 of 2012 dated 21.06.2012 valid till 06.04.2021 67 of 2012 dated 21.06.2012 valid till 06.04.2021 43 of 2014 dated 16.06.2014 valid till 25.02.2020 44 of 2014 dated 16.06.2014 valid till 25.02.2020
	Name of Licensee(s)	M/s Mabon Properties Private Limited and M/s Juventus Estate Limited
5.	Unit no.	1001, 10 th floor, Tower T-03 with basement parking no. B2-173 (as per agreement for sale at page 58 of complaint)
6.	Unit area admeasuring	1099 sq. ft. super area 683.83 sq. ft. carpet area

		(as per allotment letter at page 52 of complaint and agreement for sale at page 58 of complaint)
8.	Date of Allotment	22.02.2019 (page 52 of complaint)
9.	Date of agreement for sale	Executed on: 01.05.2019 (page 55 of complaint)
		Registered on: 16.05.2019 (page 54 of complaint)
11.	Possession clause	7.1. <i>Possession of the said apartment along with parking:</i> <i>".....The Promoter assures to handover possession of the said apartment for residential usage along with parking on or before 31.08.2023 unless there is delay or failure due to "force majeure", court orders, government policy/guidelines....."</i> (as per agreement for sale at page 63 of complaint)
12.	Due date of possession	29.02.2024 (31.08.2023 + 6 months grace period in lieu of Covid-19)
	Payment Plan	Construction Linked Payment Plan (as per agreement for sale - Schedule C at page 78 of complaint)
13.	Basic sale consideration	Rs.63,24,745/- (as per Customer Ledger dated 26.02.2025 at page 285 of reply)
	Total sale consideration	Rs.63,19,250/- (as per conveyance deed dated 03.07.2025 at page 59 of reply)
14.	Amount paid by the complainant	Rs.71,52,202/- (as per Customer Ledger dated 26.02.2025 at page 285 of reply)
15.	Occupation certificate /Completion certificate	20.01.2025 (Page 33 of reply)
16.	Offer of possession	25.02.2025 (Page 41 of reply)
18.	Conveyance Deed	03.07.2025 (Page 59 of reply)
19.	Demand for maintenance charges	09.07.2025- Rs.58,357/- (Page 297 of reply)



B. Facts of the complaint:

3. The complainants are 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.459541 dated 14.12.2018 and Rs.3,00,000/- vide instrument bearing no.459543 dated 29.12.2018 drawn on Andhra Bank against the total sale consideration of Rs.76,29,259/-.
- c) That on 22.02.2019, the respondent sent an allotment letter allotting the unit bearing no.1001 (apartment 2 BHK 2 toilet 4 balcony) on 10th floor



located in tower-T-03/1001, ad measuring carpet area 683.83 sq. ft. and super area 1099 sq. ft. along with basement parking no. B2-173 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 01.05.2019 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 till 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.78,36,280/- as against the total sale consideration of Rs.76,29,259/-, in accordance with the demands raised by the respondent.
- f) That vide letter dated 25.02.2025 titled as "Demand Notice and Offer of Possession" the respondent informed the complainants that unit bearing no. 1001 located on 10th floor is ready for physical possession. Subsequently, the respondent requested the complainants to clear the outstanding dues as per the said letter dated 25.02.2025.
- g) That the complainants received the possession letter dated 09.07.2025 in which it was clearly mentioned that the possession has been handed over to the complainant along with car parking no. B2-173 and with all the fitting and fixtures as agreed between the complainants and the respondent. The temporary parking has been given to the complainant in B1.

- h) That the complainant has made payment of maintenance charges Rs.58,357/- vide bearing no. 519012632407 dated 09.07.2025 wherein it had been explicitly stated that maintenance operations shall be undertaken by Vyaptam Infra Pvt. Ltd., which in turn shall engage a professional agency of repute for the said purpose.
- i) 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.
- j) 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 complainants:

4. The complainants have sought the following relief(s):
- I. Direct the respondent to pay remaining delay possession charges amounting to Rs.13,60,980.68/-.
 - II. 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 of possession.
 - III. Direct the respondent to handover a complete unit to the complainants in accordance with the specifications mentioned in the agreement.
 - IV. Direct the respondent not to levy any holding charges on the complainants.
 - V. Direct the respondent not to levy any maintenance charges from the complainants till date of actual handover.

- VI. Direct the respondent not to charge any amount beyond the amount as mentioned in the builder buyer agreement.
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) The captioned complaint has been preferred by the complainant on purported grounds against the respondent, seeking inter-alia delay interest from the due date of possession till actual handing over of possession. The captioned complaint pertains to the apartment no. 1001, admeasuring (super area) 1099 sq. ft. in Tower-T-03, on 10th Floor, along with basement parking no. B2-173, in project "Hero Homes" located in Sector - 104, Gurugram, Haryana, for which an application for grant of Occupation Certificate has been made on 21.02.2024 and the Occupation Certificate has been granted by Director Town and Country Planning ("DTCP") vide office Memo no. ZP-968-Loose/SD(RD)/2025/2603 dated 20.01.2025. An intimation of receipt of OC has also been sent to complainant vide email dated 23.01.2025. The possession in respect of the apartment in question has been offered by the respondent to the complainant vide Offer of Possession letter dated 25.02.2025.
- b) That as a matter of fact, the contents of Occupation Certificate and the endorsements clearly indicate that the project was completed 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.

- c) It is a matter of record that the unit was ready to be handed over pursuant to which offer of possession was given on 25.02.2025. In fact, as is evidenced from the conveyance deed, the complainant delayed in taking possession of the unit and only after much pursual from the respondent, the Conveyance Deed was registered on 03.07.2025.
- d) That under Section 32 of the HRERA Act, the Ld. Authority has an obligation to balance the ends of justice and to protect the interest of the genuine allottees, promoter and real estate agents.
- e) That the complainant has neither any cause of action nor any locus standi to maintain the present complaint against the respondent. The complainant is 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 her 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 complainant raised any objection to any term and conditions of the mutual agreement and the stage of construction of the Project and neither at the time of taking of possession.
- f) The complainant vide Agreement for Sale executed on 01.05.2019 (registered on 16.05.2019) (hereinafter referred to as the "AFS"), whereby the complainant agreed to the explicit terms of the sale. Further, complainant has constantly been updated of the stages of construction/development of the Project vide various emails sent by the Respondent. Hence, complainant has filed this complaint on an absolutely



unjustified ground of delay in delivery of possession, which even to the knowledge of the complainant is false.

- g) It is submitted that the execution of the Conveyance Deed between the complainant and the respondent was undertaken with full knowledge, consent, and acceptance of all terms and conditions contained therein. Clause 28 of the Conveyance Deed expressly stipulates that the complainant shall hold harmless and indemnify the respondent against any claims, damages, costs, liabilities, litigations, etc., arising out of the non-observance of any covenants, bye-laws, laws, rules, and regulations in respect of the project, including the said apartment. Further, Clause 29 unequivocally records that upon execution of the Conveyance Deed, the complainant has been left with no claims, rights, or demands against the respondent in relation to the said apartment. It is pertinent to note that at the time of execution of the Conveyance Deed, the complainant was fully aware of and had agreed to the terms governing possession, including any alleged claims towards delay possession charges, and consciously waived and relinquished any such rights. Therefore, the present complaint is barred by the explicit contractual terms binding upon the complainant, amounts to a clear afterthought, and is devoid of any legal merit. Since the Conveyance Deed clearly records the complainant's waiver of any such claims, he is legally barred from raising the present complaint, which deserves dismissal at the outset. The present complaint is being filed in order to cause wrongful loss to the respondent and for complaint enrich himself from the losses suffered by the respondent.
- h) The complaint is barred by law of estoppel. The sale of subject unit is strictly subject to the terms of the AFS which the complainant had agreed to. The complainant are well-acquainted that clause 7.1 of the AFS unequivocally encapsulates the principle that the complainant cannot



claim delay possession charges in the event of force majeure circumstances mentioned of the AFS. These unforeseen events, entirely beyond the control of the respondent 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 complainant's obligations under the agreement.

- i) That clause 7.1 of the AFS categorically provides that the liability of the promoter was only till the completion of development. The date of submission of application with the competent authority for obtaining completion/occupancy/part-occupancy certificate is to be reckoned as date of completion of development/possession of the tower/ Apartment. In the present case, the application for grant of Occupation Certificate for Tower 1 to 4 and part basement 1 and basement 2 was applied on 21.02.2024, clearly indicating that the construction in respect of the Tower - 1 to 4, part of basement 1 and basement 2 of the project were complete. Further, Hon'ble NCDRC in consumer case no. 3872 of 2017 titled "Avinash Bhalla versus Mapsko Builders Private Limited" drew a presumption that application of occupancy certificate indicates completion of construction, as the developer is obligated to apply for grant of occupancy certificate only upon completion of construction. Therefore, the present complaint is not legally tenable.
- j) In terms of the AFS, the respondent is entitled to extension of time for the period the authorities take for providing the occupancy/part-occupancy/completion certificate and no claim of damages or compensation can be made out by the allottee against the Promoter in case of delay in handing over possession on account of the said reason. The time

taken by the competent authorities in grant of Occupation Certificate is beyond the control of the respondent.

- k) That further without prejudice to the rights of the respondent, it is submitted that the respondent suffered, a lot of setbacks due to reasons beyond its control yet displaying professional conduct and utmost commitment to its customers, executed and completed the Project in terms of the AFS. The various Government Orders and Court Orders, received and pronounced, resulted in change in timelines of the project. Given the same, the Respondent, for the assistance of this Ld. Authority to arrive at just and proper conclusion while adjudicating the captioned complaint submits that there were certain intervening circumstances causing delay in timelines, which were beyond the control of the respondent.
- l) 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. It is submitted that 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. It is submitted that the Project got delayed and proposed possession timelines were shifted within the framework of the AFS as agreed on account of following reasons among others as stated below:
- a. That over last few years Delhi-NCR has faced unprecedented levels of severe air pollution, especially during winter months, primarily due to construction dust, vehicular emissions, and industrial activities. As a measure to curb arrest the dangerous levels of air pollution and to



improve the air quality, various governmental authorities including DPCC, GRAP Sub-Committee, etc. as well as judiciary including Hon'ble Supreme Court of India and National Green Tribunal imposed restrictions on construction activities to combat the worsening air quality in Delhi-NCR. The notifications and orders specifically target the reduction of dust pollution from construction sites. Throughout from 2019 onwards, the governmental authorities and judiciary continued to impose restrictions on construction activities during peak pollution periods. Whilst, the Respondent has been taking all measures to comply with the directions issued by the governmental authorities and judiciary in its effort to combat further deterioration of air quality and curtail this crisis situation, these bans had have severely impacted the pace of construction at Project site. It is imperative to note that even after revoking the ban on construction activities, the resumption of construction activities takes time on account of mobilization of work force and other resources at Project site. That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project.

- b. Adding to the woes of the developers, COVID-19 had a profound impact on the real estate sector, affecting construction activities in several significant ways. Many construction sites were temporarily shut down due to lockdowns and restrictions imposed to control the spread of the virus. This led to delays in project timelines and halted ongoing work. Social distancing measures and health concerns led to a significant reduction in the availability of construction labour. Restrictions on movement and quarantine protocols further limited workforce



availability. The pandemic disrupted global supply chains, leading to shortages of construction materials and delays in procurement. Transportation restrictions and factory closures contributed to these shortages. Supply chain disruptions led to increased costs for construction materials. Prices for many materials surged due to scarcity and higher transportation costs. Health and safety measures, while necessary, sometimes led to reduced productivity. Social distancing and safety protocols slowed down work processes and affected the efficiency of construction activities. Many projects were delayed or cancelled due to the economic uncertainty caused by the pandemic. Financial challenges, including reduced cash flow and increased costs, led to re-evaluation of ongoing and planned projects. That said, Ld. 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.

- c. 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. That after continuous and consistent follow up with the landowners, the landowners have confirmed the site for the development of the EWS housing for the Project along with the proportionate EWS housing for their part of the development. The said delay in allocation of site to the respondent company, despite best efforts of the Respondent could not



be avoided and has resulted in some delay in delivery schedule, which is beyond the control of the respondent company.

m) That the complainant has willfully concealed that he has received the benefit from the respondent in the form of adjustment of the amount to the tune of INR 5,00,000/- (Indian Rupees Five Lakh Only), in lieu of inaugural discount along with Early Payment Benefit to the tune of INR 1,76,715/- and further has waived of late payment fee to the tune of INR 4,837/- as reflected in the customer ledger and as such it cannot be alleged, stated, or proved that the complainant was facing any hardship. At that point of time the complainant had no qualms in accepting an undue amount of money or benefit from the respondent but now has approached this Ld. Authority wearing the veil of a victim that purportedly had faced extreme hardship at the hands of the respondent.

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 pay remaining delay possession charges amounting to Rs.13,60,980.68/-.

F.II 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 of possession.

F.III Direct the respondent to handover a complete unit to the complainants in accordance with the specifications mentioned in the agreement.

11. The above-mentioned reliefs F.I, F.II and F.III 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 factual matrix of case reveals that 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 22.02.2019 in favour of the complainants and thereby intimated about the allotment of unit no. 1001, 10th



floor, tower-03 with basement parking no. B2-173 in the project of the respondent. Thereafter, the agreement for sale was executed between the parties on 01.05.2019 (registered on 16.05.2019) against the basic consideration of Rs.63,24,745/-. The complainants have paid a sum of Rs.71,52,202/- 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. Thereafter, conveyance deed was executed between the parties on 03.07.2025.
14. In the present complaint, the complainants intend to continue with the project and 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

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

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. **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, grace 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 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%.

(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., 12.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

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., 10.80% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

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 01.05.2019, 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 01.05.2019 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., 29.02.2024 till the date of valid offer of possession (25.02.2025) 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., 10.80% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, ibid

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

24. 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.

25. 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."

26. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.

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

27. 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.



F.VI Direct the respondent not to charge any amount beyond the amount as mentioned in the builder buyer agreement.

28. The authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021** titled as "**Vineet Choubey V/s Pareena Infrastructure Private Limited**" and also in the complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V/s Emaar MGF Land Limited**", has already decided that the promoter cannot charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. Therefore, the respondent no.2 shall not charge anything from the complainants which is not the part of the buyer's agreement and is directed to charge the demands relying on the above said orders.

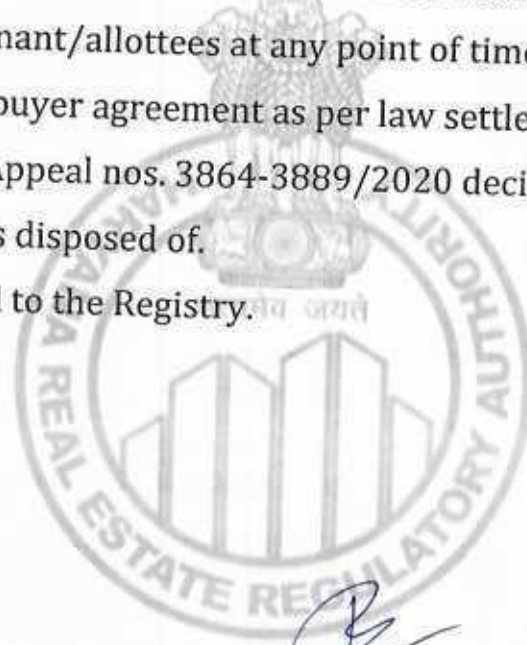
G. Directions issued by the Authority:

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 @ 10.80% 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 i.e., till 25.04.2025, 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., 10.80% 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 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*.



- IV. 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.
- V. The respondent shall not charge anything from the complainant which is not a part of the buyer's agreement executed between them. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 decided on 14.12.2020.
30. Complaint stands disposed of.
31. File be consigned to the Registry.




(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.03.2026