BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. 5425 of 2025
Date of complaint: 07.11.2025
Date of order: 18.09.2026

1. Dinesh Kumar 2. Sarita **Both R/o:** House No. 425, Kapashera Gaon, South West Delhi, Near Gram Chaupal, New Delhi – 110037.	**Complainants**
Versus	
M/s Vikas Parks Private Limited **Regd. Office At:** - E1, Qutub Hotel Complex, Saheed Jeet Singh Marg, New Delhi – 110016.	**Respondent**

CORAM:	
Shri Arun Kumar	**Chairman**
APPEARANCE	
S/Shri Gaurav Bhardwaj and Ms. Yamini, Advocates	**Complainants**
Shri Avinash Kumar Singh, Advocate	**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 allottees as per the agreement for sale executed inter se.

A. Unit and Project related details:

2. 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Hero Homes", Sector-104, Village Dhanwapur, Gurugram
2.	Project area	9.053 Acres (Total area 34.0228 acres)
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	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.
5.	Name of the Licensee	M/s Mabon Properties Pvt. Ltd. & others
6.	RERA registered/ not registered and validity status	**Registered** 24 of 2018 dated 13.11.2018 Valid up to 13.08.2023
7.	RERA Extension	Extension No. 01 of 2024 dated 29.04.2024
8.	RERA Extension	Project Continuation-RC/REP/HARERA/GGM/24 of 2018/7(3)/64/2025/06 dated 27.03.2025 **Valid up to 28.02.2027**
9.	Unit no.	T-04/2002 on 20th floor, Tower-04 (As mentioned in clause J of BBA at page 58 of complaint)
10.	Unit area	1689 sq. ft. (super area) 1082.20 sq. ft. (carpet area)

		(As mentioned in clause J of BBA at page 58 of complaint)
11.	Allotment letter	06.05.2019 (As per page no. 52 of complaint)
12.	Date of execution of agreement for sale	30.05.2019 (As per page 53 - 82 of complaint)
14.	Possession clause	**7. Possession of the apartment for residential usage:** *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" ...* **(Emphasis supplied)** (As per page 63 of the complaint)
15.	Due date of possession	**29.02.2024** *[31.08.2023 + 6 months on account of Covid-19]* (As mentioned in para 7.1 of the buyer's agreement at page 63 of complaint)
16.	Total sale consideration	Rs.1,15,93,908/- (As mentioned in clause 1.2 of BBA at page 46 of the complaint)
17.	Amount paid by the complainants	Rs.1,18,22,766/- *[Inclusive of Rs.3,88,148/-, being adjusted into the customer ledger of the complainants/ allottees.]* (As per mentioned in the customer ledger dated 10.11.2025 at page 77 - 79of reply)
18.	Occupation certificate	**20.01.2025** [For Tower- 1 to 4] & 07.01.2026 [For Tower- 5 to 7] (As per page 52 - 54 of reply also as per copy of OC available at TCP, Haryana Official website)
19.	Offer of possession	25.02.2025 (As per page 72 - 76 of reply)
20.	Possession letter	29.05.2025 (As per page no. 100 – 101 of complaint)
21.	Conveyance deed	27.06.2025 (As per page 41 - 51 of reply)

B. Facts of the complaint: -

3. The complainants have made the following submissions: -

a. That the Mr. Dinesh Kumar and Sarita are respectable and law-abiding citizens residing at R/o H.no: 425 Kapashera Gaon, South West Delhi, Near Gram Chaupal, New Delhi 110037.

b. That the complainants are allottees within the meaning of Section 2(d) of The Real Estate (Regulation and Development) Act, 2016. The respondent, M/s Vikas Parks Private Limited is a private limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.

c. That the present complaint highlights the gross misconduct on part of the respondent and the injustice meted out to innocent buyers by the former. A stringent action against the said respondent for defrauding the innocent buyers and for violation of the provisions entailed in Real Estate (Regulation and Development) Act, 2016 is sought by way of said complaint.

d. 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 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.

e. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent, that the complainant is opted for PLP (*herein referred as Possession Linked Plan)* the complainants booked a unit by making a payment of Rs.1,00,000/- vide instrument bearing no. 017552 dated 18.01.2019 and Rs.3,00,000/- vide instrument bearing no. 017553 dated 24.01.2019 drawn on Axis Bank against the total sale consideration of Rs.1,15,93,908/-.

f. That on 06.02.2019, the respondent sent an allotment letter allotting the unit bearing no. 2002 (Apartment 3 BHK 3 Toilet 4 Balcony, area 1689 sq. ft.) on 20th floor located in Tower-T-04/2002, ad measuring carpet area 1082.20 sq. ft. and super area 1689 sq. ft. along with basement parking no. B2-572 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.

g. That thereafter, an agreement for sale was duly executed between the complainants and the respondent on 15.05.2019 in respect of the unit in question, wherein, in terms of clause 7.1 thereof, the respondent undertook to complete construction, handover possession of the unit in question along with parking till 31.08.2023.

h. 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 more than 100% payment of Rs.1,18,56,578.06/- as against the

total sale consideration of Rs.1,15,93,908/- in accordance with the demands raised by the respondent.

i. That the respondent, from time to time, continued to raise payment demands towards the unit in question, and the complainants, bona-fide and in strict compliance with the said demands, duly made payments solely in the legitimate expectation and hope of receiving timely possession of the unit as assured by the respondent. It is pertinent to state that, till date, the complainants have paid a total amount of Rs.1,15,04,981/- including interest of Rs.59,736/-, as against the agreed total sale consideration of Rs.1,12,60,511/-, strictly in accordance with and pursuant to the demands raised by the respondent. The aforesaid payments clearly establish the complainant's continuous readiness, willingness, and complete discharge of their contractual obligations under the BBA, whereas the respondent has failed to reciprocate by performing its corresponding obligations.

j. That the complainant paid a substantial amount towards the purchase of the unit in question, for which the complainant took a loan from Axis Bank Ltd. A tripartite agreement dated 05.03.2024 was executed between the complainants, respondent and Axis Bank Ltd. which was duly acknowledged by the respondent. That the complainant had no choice but to rely on the representations made by the respondent. However, despite the passing of the possession due date as per the agreement for sale, the respondent has clearly failed to deliver possession of the unit on agreed date.

k. That the complainants have been severely exploited at the hands of the respondent. The aforesaid series of events clearly portray the amount of harassment and mental agony the complainants have gone through till date. Even after a lapse of 6 years from the date of booking, the complainants have been left with a possession with incomplete facilities as promised

while booking and under financial distress as the respondent has failed in offering what was promised a delayed possession of the unit booked by the complainants, thereby duping the complainants of their hard-earned money and causing them great mental trauma.

l. That later, vide letter dated 25.02.2025 titled as "demand notice and offer of possession", the respondent informed the complainants that the unit bearing no. 2002, located on 20th Floor is ready for physical possession. Subsequently, the respondent requested the complainants to clear the pending dues as per the said letter dated 25.05.2025.

m. That the complainants have received the possession handover process letter dated 29.05.2025 from the respondent, wherein it has been explicitly stated that the maintenance operations shall be undertaken by Vyaptam Infra Pvt. Ltd., which in turn shall engage a professional agency of repute for the said purpose.

n. That the present complaint has been filed in order to seek delayed possession charges on the principal amount paid by the complainants along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the due date of, along with other reliefs mentioned herein below. Hence, this complaint.

o. 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.

p. 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(s) 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.

q. 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 following relief:

i. Direct the respondent to pay the remaining delayed possession charges amounting to Rs.16,81,068.5/-;

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 the possession;

iii. Direct the respondent to handover the possession of parking allotted as per the agreement;

iv. Direct the respondent to not to charge any amount beyond the amount as mentioned in BBA;

v. Direct the respondent to not to levy any holding charges form the complainants;

vi. Direct the respondent to not to levy any maintenance charges form the complainants till date of actual handover;

vii. Any other relief as Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

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 filed by the respondent:

6. The respondent has contested the complaint on the following grounds:

a. That the respondent i.e., Vikas Parks Private Limited, a company duly incorporated under the Companies Act, 1956 and existing under the Companies Act, 2013 and a subsidiary company of Hero Realty Private Limited, real estate arm prestigious Hero Group. That 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 present complaint has been preferred by the complainants on frivolous and unsustainable grounds and the complainants have not approached this Authority with clean hands and are trying to suppress material facts relevant to the matter. The complainants are making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore it is fit to be dismissed in limine.

c. That the defendant has already settled the complainants' financial accounts with the respondent and thereafter the complainants have taken the actual physical possession of the said apartment after being fully satisfied in all respects on 29.05.2025 and registered conveyance deed on 27.06.2025 in their favour. The possession letter has been signed by the complainants on 29.05.2025 after getting fully satisfied with the services of the respondent and full and final settlement of financial accounts with respondent without any force or coercion. The complainants are already enjoying the actual physical possession of the said apartment. para no. 3 of the conveyance deed dated 27.06.2026 clearly states that the complainants before executing the conveyance deed, have taken the vacant, peaceful and physical possession of the said apartment after getting fully satisfied in all respects, and the complainants (vendee) have left with no claim whatsoever with respect to any delays. Again Para no. 29 of the conveyance deed dated 27.06.2025 clearly states that after conveyance deed, the complainants left no claim against the developer.

d. At the outset, the respondent denies each statement, submission, averment, and contention set forth in the captioned complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply. The respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted, and the rest may be read as travesty of facts. The complainant may be put to strict proof in respect thereof.

e. That the complainants are barred by law of estoppel as the complainants have previously at the time of execution and registration of conveyance deed voluntarily agreed to the terms and expressed their full consent and satisfaction with regard to the timelines of the possession as well as other aspects of the transactions and financial accounts. Hence, as per the law of estoppel, the complainants cannot now contradict of the terms of the conveyance deed which he has previously stated as true in the eyes of law. So, the complaint of the complainants should be dismissed on this ground only.

f. That the complainants do not fall within the definition of allottee as provided in Section 2 (d) of the RERA Act, 2016 since the relation of the allottee and a promoter stands concluded and all the obligations of the promoter under the agreement stand discharged after the execution of the conveyance deed as the buyer became the owner of the unit. Therefore, the owner is estopped from claiming any interest on the delay in handing over possession, especially in a condition where the complainants have settled all their financial accounts with the respondent to the full extent of their satisfaction.

g. That upon taking the peaceful possession after getting fully satisfied and after settling the financial account with the respondent, the contractual

obligations between the parties stands fully satisfied and all the rights and obligations of the parties come to an end. That there remain no claim/ grievances of the complainants with respect to the agreement. The Gurugram RERA Authority has noted in RENU GARG Vs. PIONEER URBAN LAND & INFRASTRUCTURE LTD. Complaint No. 3189 of 2019 dated 12.03.2020, that after the execution of conveyance deed and after having taken the vacant and peaceful possession of the unit, the parties have settled their financial accounts and thereafter, no claim persists. Now, the complainants are enjoying the physical possession of the Flat/Unit/Apartment since then.

h. That the respondent after making the due application to the office of the Directorate, Town and Country Planning (DTCP) has obtained the occupation certificate from the department of DTCP.

i. That pursuant to the application submitted by the complainants, the respondents issued the allotment letter dated 06.02.2019 in favour of the complainants and confirmed the allotment of apartment No.- T-04/2002, Tower No. - 04, Floor – 20th, Area 1689 sq. ft., along with pro rata share in the common areas for total sale consideration of Rs.1,16,78,358/- in residential project 'Hero Homes' situated at, Sector - 104, Dwarka Expressway, Gurugram, Haryana, India – 122006, along with the annexure of possession linked payment plan of 30:30:40, for Area 1689 sq. ft.

j. That subsequent to the above referred allotment of the said apartment, the complainants entered into agreement for sale on 15.05.2019 with the respondent and thereafter the said agreement for sale got executed and registered on 30.05.2019 in the office appurtenant to the Sub-registrar, at Kadipur, Gurugram, for the delivery of the possession of the said apartment exclusively on the agreed terms and conditions as contained in the agreement for sale.

k. The respondent assured to hand over 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 majeure", Court Orders, Government policy / guidelines, decisions affecting the regular development of the real estate project. If, the completion of the project is delayed due to above conditions, which is totally beyond the control of the respondent then the allottee/ complainants agree that the respondent shall be entitled to the extension of time for delivery of possession of the apartment for residential usage as per the agreed terms of the agreement for sale.

l. That in the light of the abovementioned specifically agreed terms and conditions regarding possession by the complainants, it is important to point out that the delivery of possession was always subject to force majeure circumstances, receipt of occupancy certificate and complainants having timely completed with all obligations and duties under the agreement of sale. That after the completion of the Tower No. 1 to Tower 4, in all manner and after obtaining Fire NOC on 17.01.2024, the respondent applied to the Director, Town and Country Planning, Haryana at Chandigarh, vide its application dated 21.02.2024 along with all requisite documents for the grant of occupation certificate (OC) for Tower 1 to Tower 4, which was submitted on 22.02.2024. After filing of the application for grant of OC, the DTCP did not raise any concern regarding construction of the Tower No. 1 to 4, as the same was completed in all manner and only submission of relevant documents were to be verified. The asked documents were again submitted in the Office of DTCP on 09.07.2024, and thereafter, the occupation certificate was granted for the Tower No. 1 to Tower 4, by the Office of DTCP on 20.01.2025.

m. That after receipt of the occupation certificate on 20.01.2025, the respondent immediately offered the possession to the complainants on 25.02.2025 with

complete guidelines to complete/make the remaining final payments within 15 days and take the physical possession after completing requisite documentations in this regard by the complainants. The complainants made delay in taking physical possession and took the possession after delay of 4 months on 29.05.2026.

n. That it is important to highlight that in accordance with the agreed terms of the agreement for sale, the respondent has also paid an amount of Rs.4,31,275/- including TDS on 24.02.2025 as compensation for delayed possession to the complainants. The complainants have duly acknowledged the payment of the abovementioned compensation amount in his complaint. The above payment is without prejudice to respondent right to defend itself in the ongoing complaint under reply. The same is reflected in the customer/applicant ledger/ statement of account provided by the respondent to the complainant. In spite of all support from the respondent, the complainants failed to take the possession of the apartment in question within stipulated time.

o. That it is the fault of the complainants, that they did not take the physical possession within stipulated time even after receiving the compensation from the respondent, wherein the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA Act) under Section 19(10) puts the allottees under duty to take possession of the apartment, within a period of two months of the occupancy certificate issued for the said apartment in question.

p. That it is the complainants, who intentionally delayed in approaching the respondent and avoided taking physical possession after offering possession, on one pretext or the other, reasons best known to him only. There was no delay from the respondent in handing over the said apartment, and it was the complainants only, who intentionally delayed in taking physical possession,

only with an intension to extract more money from the respondent by dragging into this baseless and legally untenable complaint.

q. That the statement of account/customer ledger reflects that the complainants were not asked any demand in between September 2019 till December 2021, almost for 2 years. The respondent did not put any burden on the allottees/ complainants for the loss incurred by the respondent due to pandemic/ Covid-19 and force majeure situations which was beyond the control of the respondent. Under the payment plan chosen/agreed by the complainants at the time of booking of the apartment in question, the installments were demanded after achieving the construction milestone by the respondent. The expenditure against the construction was managed by the developer/ respondent from its own sources or in some situations by managing finance against the project construction cost. In all these difficult and adverse situations, the allottees were immunized against any increase in the project cost. As there is no extra burden shifted towards the allottees, the developer/ respondent's adverse situations should also be taken into consideration, and the Authority is humbly requested to consider the developer / respondent's condition, in the larger interest of all the allottees, who are coming forward to take possession without dragging the respondent in unwarranted litigations to fulfil their illegal demands. In the light of the above situations, the Authority is humbly submitted to dismiss the present complaint under reply.

r. That the outbreak of Covid-19 has been declared as a pandemic by the World Health Organization on 11.03.2020. The directions for lockdown and various restrictions have been issued by the Government of India as also State Govt. regarding Covid-19. The said pandemic has also serious consequences and was so deadly and contagious that complete lockdown was imposed several times not only in Haryana but in whole of India and rest of the world also.

The Government of India, Ministry of Housing & Urban Affairs vide Memo No. O-17024/230/2018-Housing-UD-/EFS-9056405 dated 13.05.2020 and State Government of Haryana vide Memo No. 1/32/2020-ITCP dated 15.05.2020 issued advisory pertaining to the Covid-19. Pursuant to the advisory issued regarding outbreak of above situations of Covid-19, the Authority, Gurugram vide notification dated 26.05.2020 had given extension of 180 days starting from 25.03.2020 till 24.09.2020 under Force Majeure keeping in view of the Covid-19 pandemic situation in the country.

s. That the RERA Authority, Panchkula observed that as per office memorandum issued by the Government of India, para 6 (ii), it was also decided that the Regulatory Authority may, on their own discretion consider to further extend the date of completion as per registration for another period up to three (3) months, if the situation in their respective state or any part thereof for reasons to be recorded in writing needs special consideration of evoking force majeure in current pandemic. Keeping in view of the second wave of Covid-19 has adversely hit all sections of society and it being cause of natural calamity, the Authority granted 3 Months general extension of 91 days from 01.04.2021 to 30.06.2021, considering it a force majeure event. Keeping in view the above, it is submitted that the respondent is entitled for grant of exclusion of the period of delay caused due to 2nd wave of Covid-19 and construction ban imposed by competent authorities being decisions affecting the regular development of the real estate project for a period of at least Nine (9) months.

t. That Hon'ble Supreme Court banned all construction activities in Delhi / NCR in the leading Writ Petition (S) (Civil) No(s). 13029 / 1985 on 04.11.2019 and the restrictions on constructions activities were continued till 14.02.2020. The restrictions on construction activities imposed by the Hon'ble Supreme Court vide its order dated 04.11.2019 were recalled

completely on 14.11.2020 after complete ban/stop of construction activities for 102 Days.

u. That the Commissioner of Municipal Corporation Gurugram vide order dated 11.10.2019 issued direction to issue challan for construction activities & lodging of FIR from 11.10.2019 to 31.12.2019 as per direction issued by the chairman of Environment Protection Committee Authority (EPCA) vide letter EPCA-R/2019/L-42 dated 09.10.2019.

v. That it is also matter of record that Gurugram falls within the area of NCR and different competent authorities such as the National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG), Haryana State Pollution Control Board (HSPCB) etc. had directed ban on the construction activities in Delhi / NCR due to rise in pollution level mainly in winter season for various periods (including from October 2019 to February 2024) thereby severely affecting the regular development of the real estate projects for 209 Days.

w. That after the completion of the tower 1 to tower 4, the respondent applied to the Director, Town and Country Planning, Haryana at Chandigarh, vide its application dated 21.02.2024 along with all requisite documents for the grant of occupation certificate (OC) for tower 1 to tower 4, which was submitted on 22.02.2024. After filing of the application for grant of OC, the DTCP did not raise any concern regarding construction of the tower no. 1 to 4, as the same was completed in all manner and only submission of relevant documents were to be verified. All documents were again submitted in the Office of DTCP on 09.07.2024, and thereafter the occupation certificate was granted for the Tower No. 1 to Tower 4, by the Office of DTCP on 20.01.2025.

x. That the pandemic and ban on construction activity by competent authorities are force majeure events which are beyond the control of the parties to prevent the same or its consequences and as in view of clause 7(7.1) of the agreement for sale dated 18.05.2019 and duly registered on 03.06.2019, the

respondent is entitled to exclusion of period where the constructions of the project was affected due to orders/directions of statutory authorities / court orders / government orders etc.

y. That the respondent would have completed the project within given time, but due to force majeure events Covid-19 and restrictions imposed, which were beyond the control of the respondent, the project could not be completed on the expected time. That the Authority is requested to consider such period as force majeure events and the burden of payment of interest for the period must not be put on the respondent as the delay for grant of occupation certificate has been caused without any fault of the respondent. The burden of interest claimed by the complainants must not be put on the respondent, as the reasons of delay were completely out of the control of the developer.

z. That due to change in location for development of EWS (economically weaker section) Flats in compliance of statutory requirements, the project building plan, site plan etc. were revised time to time and the same caused completion time extended.

aa. That there is no fault on the part of the respondent in carrying its obligations towards the completion of the project and its delivery. The respondent has already offered the physical possession of the apartment to the complainants on 25.02.2025 immediately after obtaining occupation certificate on 20.01.2025. The respondent has already made payment of delayed possession charges. The complaint is liable to be dismissed/rejected on the grounds mentioned hereinabove.

7. All other averments made in the complaint denied in toto.

8. 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:

9. 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

10. 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

11. 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."*

12. 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 complainants:

F.I Direct the respondent to pay the remaining delayed possession charges amounting to Rs.16,81,068.5/-;

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 the possession;

F.III Direct the respondent to handover the possession of parking allotted as per the agreement;

F.IV Direct the respondent to not to charge any amount beyond the amount as mentioned in BBA;

F.V Any other relief as Authority may deem fit and proper in the facts and circumstances of the case.

13. The above-mentioned relief 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.

14. In the present case, the complainants booked an apartment in the project namely "HERO HOMES" located in Sector-104, Gurugram, being developed by the respondent herein. Vide allotment letter dated 06.05.2019, they were allotted an apartment bearing no. T-04/2002 on 20th floor, Tower-04 admeasuring 1082.20 sq. ft. (carpet area) & 1689 sq. ft. (super area) along with car parking bearing B2-572 in basement 2, admeasuring 134.55 sq. ft. in the project namely "Hero Homes" located in Sector 104, Gurugram. Thereafter, on 30.05.2019, an agreement for sale was executed between the complainants and the respondent and according to clause 7.1 of the agreement for sale, the respondent assures to handover the possession of the apartment on or before 31.08.2023. The complainants have paid an amount of Rs.1,18,22,766/- (*Inclusive of Rs.3,88,148/-, being adjusted into the customer ledger of the complainants/ allottees)* against the total sale consideration of Rs.1,15,93,908/-.

15. 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 complainants took a plea that the 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.

16. In the present complaint, the complainants intend to continue with the project and are 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"*

17. Clause 7.1 of the agreement for sale dated 30.05.2019 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)***

18. **Due date of handing over of possession:** 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 and the promoter has proposed to handover the possession on or before 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 complainants 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.

19. **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."*

20. 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;"*

21. 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., 18.09.2026 is

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

22. **Rate of interest to be paid by complainants/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.

23. 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 the complainants in case of delayed possession charges.

24. 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 (inclusive of six (6) months of grace period on account of Covid-19). In the present case, the complainants were offered possession by the respondent on 25.02.2025 after obtaining occupation certificate dated 20.01.2025 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 complainants within the stipulated time period as per the terms and conditions of the agreement for sale dated 30.05.2019 executed between the parties.

25. 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. However, the respondent offered the possession of the unit in question to the complainants only on 25.02.2025. Therefore, in the interest of natural justice, the complainants 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 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.

26. 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 complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.80% p.a. from 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, 2016 read with Rule 15 of the Rules, ibid.

27. The respondent/ promoter is further directed to deliver the possession the car parking bearing no. bearing B2-572 in basement 2, admeasuring 134.55 sq. ft. (Equivalent Car Space), as per the agreed terms and conditions of the agreement for sale dated 30.05.2019.

F.VI Direct the respondent to not to levy any holding charges form the complainants;

28. The respondent is also 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 ***Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.***

F.VII Direct the respondent to not to levy any maintenance charges form the complainants till date of actual handover;

29. In the present complaint, the respondent has obtained the occupation certificate on 20.01.2025 from the competent authority and thereafter, offer the possession 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. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per Clause 11, that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee(s).

30. Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession.

G. Directions of the Authority:

31. 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 complainants 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.

b. The arrears of the interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of Rules, ibid.

c. 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, 2016.

d. The respondent is further directed to deliver the possession the car parking bearing no. bearing B2-572 in basement 2, admeasuring 134.55 sq. ft. (Equivalent Car Space), as per the agreed terms and conditions of the agreement for sale dated 30.05.2019.

e. The respondent shall not charge anything from the complainants which is not the part of agreement for sale. The respondent is also 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 ***Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020***.

32. Complaint as well as application, if any, stands disposed of accordingly.

33. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.09.2026