

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

Date of decision: 22.02.2023

NAME OF THE BUILDER		M/S ILD MILLENIUM PVT. LTD.	
PROJECT NAME		ILD Spire Greens	
S. No.	Case No.	Case title	Appearance
1	CR/4990/2021	Anvita Pandiya V/S M/s ILD Millennium Pvt. Ltd.	Shri Mehul Sharma Shri Pankaj Chandola
2	CR/4991/2021	Shekhar Tiwari V/S M/s ILD Millennium Pvt. Ltd.	Shri Mehul Sharma Shri Pankaj Chandola
3	CR/4992/2021	Anurag Deepak V/S M/s ILD Millennium Pvt. Ltd.	Shri Mehul Sharma Shri Pankaj Chandola
4	CR/4993/2021	Pushpam Rastogi V/S M/s ILD Millennium Pvt. Ltd.	Shri Mehul Sharma Shri Pankaj Chandola

**CORAM:**

Shri Ashok Sangwan

**Member****ORDER**

1. This order shall dispose of all the four complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the



- Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, ILD Spire Greens situated at Sector-37 C, Gurugram being developed by the same respondent/promoter i.e., M/s ILD Millennium Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
  3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>"ILD Spire Greens, Sector 37 C, Gurgaon, Haryana.</b>
<b>Nature of Project</b>	Residential group housing project
<b>Project area</b>	15.4829 acres
<b>DTCP License No.</b>	13 of 2008 dated 31.01.2008
<b>Name of Licensee</b>	M/s Jubilant Malls Pvt. Ltd. and 3 others
<b>Rera Registered</b>	Registered
<b>Possession Clause: - 10.1 POSSESSION:</b>	
"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said Building/said unit within three years from the date of execution of this agreement with grace period of six month, unless there shall delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Allottee(s) to pay in time the price of the said Unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on	





the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.

**Occupation certificate:** 02.07.2021

**Offer of possession:** 31.07.2021, 02.08.2021, 24.07.2021, 30.07.2021

Sr. No	Complain No., Case Title, and Date of filing of complaint	Unit No.	Unit adm easuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/4990 / 2021 Anvita Pandiya V/S M/s ILD Millennium Pvt. Ltd.  <b>DOF:</b> 11.01.2022  <b>Reply:</b> 10.11.2022	GF-01, Ground Floor, Tower 7  (page no. 43 of complaint)	1355 sq. ft.	11.01.2013	11.01.2016	Rs. 67,39,565 /- AP: - Rs. 55,88,811 /-	Direct the respondent to deliver possession of the said unit to the complainant along with payment of delay interest of Rs. 1,05,12,998/- as since 2nd July 2012 for delay in possession of the unit at 18% p.a.



2.	CR/4991 / 2021 Shekhar Tiwari V/S M/s ILD Millenniu m Pvt. Ltd  <b>DOF:</b> 11.01.20 22  <b>Reply:</b> 10.11.20 22	0301, 3rd floor, tower 7 (page no. 29 of complain t)	1355 sq. ft.	11.01.20 13	11.01.2 016	TSC: - Rs. 67,95,530 /-  AP: Rs. 63,62,173 /-	Direct the responde nt to deliver possessi on of the said unit to the complain ant along with payment of delay interest of Rs 91,61,52 9/ as since 11 July 2013 for delay in possessi on of the unit at 18% p.a..
3.	CR/4992 / 2021 Anurag Deepak V/S M/s ILD Millenniu m Pvt. Ltd  <b>DOF:</b> 10.01.20 22	1201, 12th floor, tower 6  (By Supplem entary agreeme nt)	1875 sq. ft.	19.08.20 10  (page no. 32 of complain t)  <b>Supplem entary agreeme nt:</b> 28.07.20 14	31.12.2 012	TSC: - 50,56,408 /-  AP: - Rs. 54,25,937 /-	Direct the responde nt to deliver possessi on of the unit to the complain ant along with payment of delay interest of Rs.





	<b>Reply:</b> 10.11.20 22						1,08,43,402/- as since August 2010 for delay in possession of the unit at 18% p.a.
4.	CR/4993 / 2021  Pushpam Rastogi V/S M/s ILD Millennium Pvt. Ltd  <b>D.O.F:</b> 10.01.20 22  <b>Reply:</b> 10.11.20 22	1002, 10th floor, tower 7	1355 sq. ft.	03.03.20 12  <b>Supplementary agreement:</b> 28.07.20 14	31.03.2014	TSC: - 41,90,070 /- (as per supplementary agreement)  AP: - Rs. 42,07,733 /-	Direct the respondent to deliver possession of the said unit to the complainant along with payment of delay interest of Rs. 53,28,451/- as since 31 March 2014 for delay in possession of the unit at 18% p.a.

**Note: In the table referred above certain abbreviations have been used.**

**They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/4990/2021 Anvita Pandiya V/S M/s ILD Millennium Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

**CR/4990/2021 Anvita Pandiya V/S M/s ILD Millennium Pvt. Ltd.**

S. N.	Particulars	Details
1.	Name of the project	ILD Spire Greens, Sector 37 C, Gurgaon, Haryana
2.	Nature of the project	Residential group housing project





3.	Project area	15.4829 acres
4.	DTCP license no. and validity status	13 of 2008 dated 31.01.2008
5.	Name of licensee	M/s Jubilant Malls Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	<b>Registered</b> For 64621.108 sq mtrs for towers 2,6 and 7 vide no. 60 of 2017 issued on 17.08.2017 up to 16.08.2018
8.	Unit no.	GF-01, Ground Floor, Tower 7 (page no. 43 of complaint)
9.	Unit area admeasuring	1355 sq. ft. (page no. 43 of complaint)
10.	Date of builder buyer agreement	11.01.2013 (page no. 41 of complaint)
11.	Due date of possession	11.01.2016 [as per possession clause] Note: Grace period is not allowed.
12.	Possession clause	<b>10.1 POSSESSION</b> “The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said Building/said unit within three years from the date of execution of this agreement with grace period of six month, unless there shall delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2,

		11.3 and Clause 41 or due to failure of Allottee(s) to pay in time the price of the said Unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement. (emphasis supplied)
13.	Total sale consideration	Rs. 67,39,565/- (as per SOA dated 30.07.2021 on page no. 100 of complaint)
14.	Amount paid by the complainant	Rs. 55,88,811/- [as per SOA dated 30.07.2021 on page no. 100 of complaint]
15.	Occupation certificate	02.07.2021
16.	Offer of possession	31.07.2021 (Page no. 103 of complaint)

**B. Facts of the complaint**

The complainant has made the following submissions in the complaint:

17. That the complainant is allottee of unit bearing no. GF-01, having approx. super built area of 1355 sq. ft. on ground floor in tower no. 7 of ILD Spire Greens at sector-37C, Gurugram, Haryana.
18. That as per the assurances given to the complainant, the respondent ought to have delivered the unit by July 2015. She booked her unit on 2





July 2012 and have since paid a total sum of Rs. 57,58,576/- which amounts to approximately 90% of the total purchase price of the Unit which was Rs 64,89,505/-.

19. That the possession of the unit in terms of clause 10(1) of the unit buyer agreement was to be delivered within a period of 36 months from the commencement of construction of the block in which the unit is located, or 36 months from the date of the booking of the unit, whichever was later, with a grace period of 6 months. It is pertinent to note that construction of said tower started in February 2012 and date of booking was July 2012, inter alia, due date of possession was July 2015.
20. That as per clause (8) of the buyer's agreement, the respondent was charging the complainant 18% p.a. for any default/delay in payment committed by the complainant. In accordance with section 2 (za), the interest component on the principal amount paid by the complainant amounts to Rs. 57,58,576/-. Along with the principal component this amounts to Rs 64,89,505/-.
21. That the complainant has paid approx. 90% (including H.VAT+TDS) amount i.e., Rs. 57, 58,576/- of the total purchase price till 30.03.2016 as per payment schedule of the BBA. The said amount was inclusive of car parking and other allied charges of actual purchase price, but when complainant observed that there is no progress in the construction of subject unit for long time, they raised the grievance to the respondent. The complainant has always been ready and willing to pay the remaining sum provided that there is progress in the construction of the project.



22. That on 31 July 2021, the respondent sent an offer of possession letter after 5 years of delay to the complainant with increased super area 10 sq ft. and demanding higher charges without informing the complainant and also no occupancy certificate.
23. That despite these assurances, no work had resumed on the project. The complainant was forced to send another demand letter to the respondent that she wants the possession of her unit and in the event the respondent was not willing to provide the same, then the respondent should return the complainant money with requisite interest.
24. That promoter has not fulfilled its obligation. Therefore, under Section 18(1) of the Act, the promoter is obligated to return the amount received with interest at the prescribed rate including compensation.

**C. Relief sought by the complainant: -**

25. The complainant has sought following relief(s):
- I. Direct the respondent to deliver possession of the said unit to the complainant along with payment of delay interest of Rs. 1,05,12,998/- as since 2<sup>nd</sup> July 2012 for delay in possession of the unit at 18% p.a.
26. 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**

The respondent has contested the complaint on the following grounds.

27. That after having keen interest in the project constructed by the respondent, she herein decided to book unit on 02.07.2012, bearing no.



GF-01, having approx. super built area of 1355 sq. ft. on ground floor in tower 7 of ILD Spire greens at sector- 37 C, Gurugram, Haryana.

28. That on 11.01.2013, a builder buyer agreement was executed between the complainant and the respondent wherein allotted unit no. GF-1, having approx. super built area of 1355 sq. ft. on ground floor in tower 7 of ILD Spire Greens at sector-37 C, Gurugram.

29. That time was essence in respect to the allottees obligation for making the respective payment and, as per the agreement so signed and acknowledged the allottee was bound to make the payment of installment as and when demanded by the respondent.

30. That the complainant in the present mater has failed to pay the entire instalment as per the agreed payment schedule. it is evident that the complainant was well aware of the payment schedule and despite after being aware of the same the complainant has failed to make any such payments on time.

31. That the building plan has been revised o 16.06.2014 vide memo no. ZP370/AD(RA)/2014/16 dated 16.06.2014 and further revised on 21.09.2015 vide memo no. ZP370/AD(RA)/ 2015/18145 dated 21.09.2015. the building plans were changed for the benefit of the purchaser and due to this reason, the project got delayed.

32. That the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to



- time by the company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
33. That due to ban levied by the Competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of laborer's in the NCR Region. Despite, after lifting of ban by the Hon'ble Court the construction activity could not resume at full throttle due to such acute shortage.
34. That project was not completed within time due to the several other reasons which are beyond the control of the respondent such as interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab and Haryana in CWP NO. 20032/2008 where ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in month of April, 2015 and again in November 2016, adversely affected the progress of the project.
35. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the Respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
36. That in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in





Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L- 49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L- 53 dated 01.11.2019.

37. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly These bans forced the migrant laborer's return to towns/states/villages creating an acute shortage the NCR Region. Due the said shortage the activity could not resume at full throttle even after the ban the Hon'ble Apex Court.

38. The demonetization and development work the project. the view of the facts stated above it is submitted that the Respondent has intention to complete the project soon for which the Respondent is making every possible effort in the interest of allottees of the project.

39. That even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.

40. That the Covid-19 pandemic has resulted in serious challenges for the project with no available laborer's, contractors etc. for the construction of



the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25,2020. By virtue of various subsequent notifications the Ministry of Home Affairs, GOI further extended the lockdown time to time and till date the same continues in some or the other form to curb the pandemic.

41. Pursuant to the issuance of advisory by GOI the vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under provisions the RERA 2016 due to "Force Majeure", Real Estate Regulatory Authority has also extended and completion date by months all real whose registration or completion date expired and expire on after March 25, 2020.

42. That the present complaint isa web of lies and liable to be dismissed.

43. 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 submission made by the parties.

#### **E. Jurisdiction of the authority**

44. 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**





45. 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**

46. 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.

47. 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 complainant at a later stage.

### **F.I Objection regarding force majeure conditions:**



48. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, demonetization, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time but all the pleas advanced in this regard are devoid of merit. As per the possession clause 10.1 of the builder buyer agreement, the possession of the said unit was to be delivered within three years from the date execution of agreement. The builder buyer agreement between the parties has been executed on 11.01.2013. So, the due date comes out to be 11.01.2016. The authority is of the view that the events taking place do not have any impact on the project being developed by the respondent/promoter. Thus, the promoter/ respondent cannot be given any leniency based on aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

**G. Findings on the relief sought by the complainant:**

(i) Direct the respondent to deliver possession of the said unit to the complainant along with payment of delay interest of Rs. 1,05,12,998/- as since 2<sup>nd</sup> July 2012 for delay in possession of the unit at 18% p.a.

49. In the present complaint, the complainant intends to continue with the project and seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to section 18(1) of the Act which 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."*

50. Clause 10.1 of the buyer's agreement dated 11.01.2013, provides for handing over possession and the same is reproduced below:

**10.1 POSSESSION**

*"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said Building/said unit within three years from the date of execution of this agreement with grace period of six month, unless there shall delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Allottee(s) to pay in time the price of the said Unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.."*

51. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, 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.*

52. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka** observed as under: -

*"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."*

53. 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 22.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% per annum.





54. 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;"*

55. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

56. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 11.01.2013, the possession of the booked unit was to be delivered within 3 years from the date of execution of agreement of which comes out to be 11.01.2016. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for



every month of delay on the amount paid by them to the respondent from due date of possession i.e., 11.01.2016 till offer of possession of the booked unit i.e., 31.07.2021 plus two months which comes out to be 31.09.2021 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

#### **H. Directions of the authority**

57. 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 respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession till offer of possession of the booked unit after obtaining occupation certificate plus two months as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
- iii. The complainants are also directed to pay the outstanding dues, if any after adjustment of delay possession charges.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% 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.





**HARERA**  
**GURUGRAM**

Complaint No. 4990 of 2021 &  
others

- v. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.
58. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
59. The complaints stand disposed of.
60. Files be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.02.2023



**HARERA**  
**GURUGRAM**



