

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

Complaint no. : 6851 of 2022
Date of filing complaint : 28.10.2022
Date of decision : 16.08.2023

Kashmiri Lal Narang and Sunita Kumari Narang R/O: - A-320, Meera Bagh, Paschim Vihar, Sunder Vihar S.o, West Delhi,110087	Complainants
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana-122003	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Rajan Kumar Hans	Advocate for the complainants
Sh. Rahul Bhardwaj	Advocates for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
	Name of the project	'The Leaf', Sector -84-85, Gurugram
	Nature of the project	Group Housing Complex
	DTCP License No.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
	RERA Registered/ Not Registered	RERA registered 35 of 2021 dated 14.07.2021
1.	Unit no.	12B, 12 th Floor, T-7 (BBA on page no. 41 of complaint)
2.	Unit admeasuring	2280 sq. ft. (BBA on page no. 41 of complaint)
3.	Date of execution of builder buyer agreement	10.10.2013



		(On page no. 40 of complaint)
4.	Possession clause	<p>8. Possession</p> <p>8.1: Time of handing over the possession</p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and</p>



		understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex. (Emphasis supplied).
5.	Due date of delivery of possession	10.10.2016 (Calculated from the date of signing of buyer agreement)
6.	Total sale consideration	Rs. 1,22,83,200/- (As per BBA)
7.	Total amount paid by the complainant	Rs. 1,00,47,828/- (As alleged by the complainant)
8.	Occupation Certificate	09.05.2022 (As per page no. 54 of reply)
9.	Offer of possession	12.05.2022 (As per page no. 57 of the reply)



12	Grace period utilization	<p>3. As per the clause for possession, the developer shall be entitled to a grace period of 90 days, after the expiry of thirty six month (36) months or such extended period for applying and obtaining the occupation certificate in respect of the Group Housing Complex. The promoter has not applied for occupation certificate within the time limit prescribed In the builder buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore, the grace period Is not allowed</p>
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B. Facts of the complaint

3. That the original allottee applied for a 3 BHK+PR+SR residential unit in an upcoming project of respondent namely "The LEAF" at Sector 85, Gurugram, Haryana, for which the original allottee had remitted Rs 10,00,000/- towards booking the unit.



4. That on date 10.09.2012, the respondent issued an allotment letter against the allotted unit/ flat no. 12 B, 3 BHK+PR+SR admeasuring 2280 sq. ft. "THE LEAF" at Sector 85, Gurugram, Haryana.
5. That an un-dated construction linked payment plan was executed along with the allotment letter and endorsed subsequently in the favour of the complainants for the said unit. The relevant portion of the plan is being reproduced hereinunder,

S. No	Installments	Charge%	Amount (Rs.)	Total Amount (Rs) 3 B/R
1.	At the time of booking	Basic Fixed	9,70,026/-	9,70,026/-
2.	At the time of Allotment	Basic 10% EDC 10% IDC 10% Park 10% Facing PLC 10%	1,01,574/- 80,940/- 7,980/- 22,800/-	2,13,294/-
3.	On or Before the 45th Day of the Allotment	Basic 10% EDC 10% IDC 10% Park Facing 10% PLC	10,71,600/ - 80,940/- 7,980/- 22,800/-	11,83,320/-
4.	On commence	Basic 10%	10,71,600/ -	11,83,320/-



	nt of constructio n work	EDC	10%	80,940/-	
		IDC	10%	7,980/-	
		Park Facing	10%	22,800/-	
5.	On commence nt of lower basement slab.	Basic	10%	10,71,600/-	11,83,320/-
		EDC	10%	-	
		IDC	10%	80,940/-	
		Park Facing	10%	7,980/-	
				22,800/-	
6.	On commence nt of Ground Floor slab.	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	
7.	On commence nt of 2nd Floor Slab.	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	
8.	On commence nt of 5th Floor Slab.	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	
9.	On commence nt of 8th Floor Slab.	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	



10.	On commencement of 10th Floor Slab.	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	
11.	On commencement of Final Floor Slab	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	
12.	On the completion of brick work in within the apartment	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-	
13.	On the completion of Internal Plumbing, Electrical Consulting & Internal Plaster within the Apartment	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing PIC	5%	11,400/-	
14.	On completion of external Plaster in	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	



	superstructure	Park Facing	5%	11,400/-`	
15.	On completion of internal and external paint works & fixing doors & window	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-`	
16.	On completion of Finishing works in the Flat including, wooden flooring	Basic	5%	5,35,800/-	5,91,660/-
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park Facing	5%	11,400/-`	
17.	At the time of notice of handling over of possession	Basic	5%	5,35,800/-	10,41,660/-
		Car Parking	100%	3,50,000/-	
		Club Membership	100%	1,00,000/-	
		EDC	5%	40,470/-	
		IDC	5%	3,990/-	
		Park facing PLC	5%	11,400/-	
		TOTAL			1,22,83,200/-
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6. That on 09.09.2013 the said unit was endorsed in the favour of complainant from original allottee.
 7. That the total sale consideration of the said unit was agreed at Rs.1,22,83,200/- as per clause 1.2(a) of the BBA.
 8. That on various demands of the respondent, till date the complainants have already paid an amount of Rs. 1,00,47,828/- (which is 81.80% of the cost) till date to the respondent.
 9. That on 12.05.2022, the respondent issued a letter for notice of offer of possession and requested a balance payment of Rs. 44,06,341/- in annexure a of the possession letter.
 10. That as per clause B of annexure A, of the possession letter dated 12.05.2022, respondent demanded Rs. 5,05,680/- towards the electricity and power backup charges which are completely unjustifiable
 11. That further clause C of Annexure A, of the possession letter dated 12.05.2022, the respondent has demanded another amount of Rs. 6,97,536/- towards an increase in the super area i.e., (128 sq. feet). This demand is completely unjustifiable as no prior communication has been made by the Respondent for an increase in area.
 12. That it is sad to say that the respondent has missed many entries of TDS in their ledger statement and provided an incorrect statement. The complainant has raised this issued and sent a letter on 06.10.2022.
- C. Relief sought by the complainant.**
13. The complainant has sought following relief:

- (i) Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.
- (ii) Direct the respondent not to charge unjustifiable amount towards electricity, increase in area and power backup charges
- (iii) Direct the respondent to correct their ledger statement.

D. Reply by the respondent.

14. That the respondent has perused the complaint filed by the complainants and states that the same is grossly misconceived, blatantly false and frivolous. All averments, submissions, and contentions raised in the complaint are denied by the respondent.
15. It is submitted that earlier the subject unit bearing no. 12B, builder no. 7, having super area 2280 sq. ft. in the residential project developed by the respondent known as "The LEAF" situated in Sector 853, Village Sikhi, Tehsil Manesar & District Gurgaon, Haryana was allotted to Mr. Ghanshyam Das Alloriya, Mr. Manish Alloriya and Mrs. Susheela Alloriya, the original allottees vide an allotment letter dated 10.09.2012.
16. That on pursuant to abovementioned allotment, the original allottees were approached by the complainants herein in order to get the unit in question allotted in their favour. Subsequently, the original allottees and complainants entered into an affidavit dated 13.09.2012 in order to transfer the unit from the original allottees to the complainants and same was nominated endorsed by the original allottees respondent vide a letter dated 13.09.2013.

17. That, the complainants were allotted the apartment bearing no. unit bearing No. 12B, Tower T-7, 12th Floor, having an approximate super area of 2280 sq. ft. of the project "The Leaf" at the basic price of Rs. 4700/- per sq. ft. and preferential location charges (PLC) of 100/-per sq. ft., external development charges (EDC) of Rs. 355 per sq. ft., and infrastructure development changes (IDC) of Rs. 35/-per sq. ft. to be payable as per the payment plan. It is submitted that the sale consideration of the flat booked by the complainants was Rs. 1,22,83,2000/-. However, it is submitted that the sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainants at the applicable stage. It is submitted that the complainants defaulted in making payments towards the agreed sale consideration of the flat from the very inception, i.e., after signing the allotment letter.
18. That it is submitted that at the time of the allotment, the complainants were well aware of the stage of the construction of the project and even willingly opted to enter into an agreement with the respondent. It is submitted that the complainants are habitual defaulters who have never paid their instalments on time. It is pertinent to bring to the kind notice that from 2012 to 2022, the respondent sent numerous demand letters to the complainants.
19. That it is further submitted the project at present date has been completed and accordingly, the respondent has received the occupational certificate of the project by the competent authority on 09.05.2022 and possession letter dated 12.05.2022 and email dated 13.05.2022, the respondent offered the possession of the subject unit

to the complainants and invited them to take possession of their unit as the respondent had received the occupation certificate and the complainants' apartment was ready for possession. But the complainants did not come forward to take the said possession for the reasons best known to them

20. Furthermore, it is pertinent to note that the construction of the project was stopped on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.
21. That the possession of the unit as per clause 8.1 of the flat buyer agreement was to be handed over within 36 months (plus the grace period of 90 days i.e., 3 months) from the date of the execution of the flat buyer agreement and not from the date of terms and conditions as stated by the complainant who is trying to confuse this hon'ble authority with his false, frivolous and moonshine contentions. The date of the completion of the project therefore comes out to be 10.10.2016. In addition to this, the date of possession as per the flat buyer's agreement further increased to grace months of 3 months. The date of the completion of the project was further pushed due to the force majeure conditions i.e., due to the NGT orders and the lockdown imposed because of the worldwide Covid-19 pandemic, by which the

construction work all over the NCR region came to halt. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to Covid-19.

22. All other averments made in the complaint were denied in toto.
23. 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

24. 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

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

26. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 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.

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. Findings on the objections raised by the respondent.

F. I Objection regarding force majeure conditions:.

27. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as commonwealth games held in Delhi, shortage of labour due to implementation of various social schemes by Government of India, slow pace of construction due to a dispute with the contractor, demonetisation, lockdown due to covid-19 various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 10.10.2013 and the events taking place such as holding of commonwealth games, dispute with the contractor, implementation of various schemes by central govt. etc. do not have any impact on the project being developed by the respondent.

Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.

28. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

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

29. Clause 8 of the buyer’s agreement provides the time period of handing over possession and the same is reproduced below:

“8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as



prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex

30. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
31. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's

agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

32. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of signing of this agreement. So, the due date for handing over possession of the allotted unit comes to 10.10.2016 (calculated from the date of buyer's agreement). However, there is no material on record that during the period of 90 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. The counsel for the complainant further confirmed that completion certificate of the entire colony is not obtained and the period of 36 months had already been expired. So, the promoters cannot claim the benefit of grace period of 90 days. Consequently, the authority has rightly determined the due date of possession. Thus, the grace period is not allowed, and the due date of possession comes out to be 10.10.2016.
33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

34. 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.
35. 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., 16.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
36. The definition of term 'interest' as defined under section 2(z a) 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;"

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

G.11 Direct the respondent not to charge unjustifiable amount towards electricity, increase in area and power backup charges.

38. The complainant raised an issue with regard to super area i.e., the respondent builder raised unnecessary demand of additional super area. The authority is of view that the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) is legal but subject to condition that before raising such demand, details have to be given to the allottee(s) which in the present case is not intimated to the complainant and also if we consider the present case as per averments made by complainant they have not intimated to them about increase in super area. Thus, without justification of increase in super area, any demand raised in this regard is liable to be quashed.

39. Further, the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

H. Directions of the authority

40. 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):

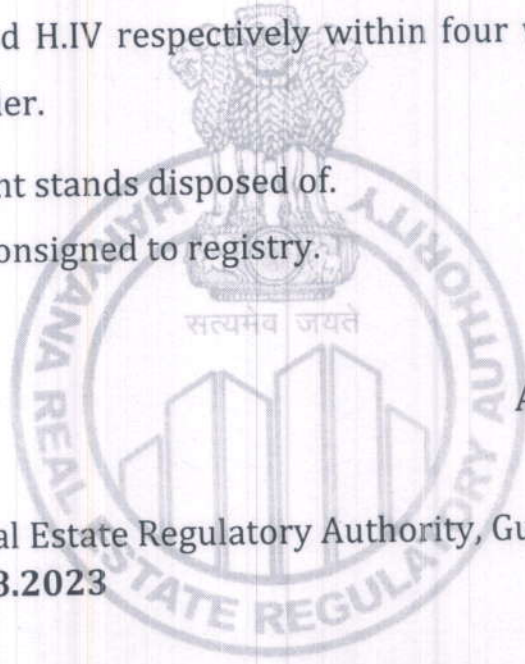
- I. The respondent shall pay interest at the prescribed rate i.e. 10.75 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.; 10.10.2016 till the date of offer of possession (12.05.2022) plus two months i.e. 12.07.2022; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- III. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- 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., 10.75 % 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(z a) of the Act.

V. The respondent/promoter is further directed to issue fresh statement of account after taking into consideration finding of the Authority w.r.t delay possession charges at H. I, H.II, H.III and H.IV respectively within four weeks from date of this order.

41. Complaint stands disposed of.
42. File be consigned to registry.



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.08.2023