

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

Complaint no. :	966 of 2023
Order pronounced on:	08.05.2024

Ashish Gupta

Address: HD-51, Vishakha Enclave,
Pitampura, Delhi.

Complainant

Versus

Ansal Township Infrastructure Ltd.
Address: - Half Basement-2, 15 East of Kailash
Community Centre, Sandhaya Deep Building,
New South Delhi-110065.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sukhbir Yadav

Complainant

Shri Sachin Yadav

Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 01.03.2023 has been filed by the complainant/allottee in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

Project and unit related details

2. The particulars of the project, the details of 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
1	Name of the project	"Sovereign Floors-Alba, Esencia", Sector-67, Gurugram.
2	Nature of project	Group housing
3	RERA Registered	Registered 395 of 2017 Dated-17.10.2017
4	Date of allotment letter	21.12.2010
5	Date Of BBA	18.01.2011 (As on page no. 28 of complaint)
6	Unit no.	C1104SF, Floor-2 nd , Block-C (As on page no. 30 of complaint)
7	Super area	1349 sq. ft. (As on page no. 29 of complaint)
8	Possession clause	Clause-5 POSSESSION OF FLOOR 5.1 <i>Subject to Clause 5.2 and further subject to all the buyers of the</i>



		<p><i>Dwelling Units in the said Sovereign Floors - Alba, Esencia, making timely payment, the Company shall endeavor to complete the development of residential colony and the Dwelling Unit as far as possible within 30 (Thirty) months with an extended period of 6 (six) months from the date of execution of this Agreement or the date of sanction of the building plan whichever falls later.</i></p> <p><i>[Emphasis supplied]</i></p>
9	Due date of possession	18.01.2014 [Calculated from the date of BBA plus 6 months grace period]
10	Agreement to sell dated	05.02.2013
11	Endorsement in favor of complainant	09.02.2013 (As on page no. 57 of complaint)
12	Sale consideration	Rs. 69,28,800/- (As per payment plan on page no. 56 of complaint)
13	Total amount paid by the complainant	Rs. 64,56,034/-
14	Occupation certificate	07.01.2015



		(As stated in written submissions by the respondent)
15	Offer of possession	08.11.2014 (As on page no. 73 of complaint)

Facts of the complaint

3. The complainant has made the following submissions in their complaint:

- I. That the respondent "Ansal Townships Infrastructure Ltd." is a company incorporated under the Companies Act, 1956 and the project in question is known as "Esencia" situated at Sector - 67, Gurugram.
- II. That in December 2010, Mr. Ambar Nag (Original Allottee) came to know about the project "Sovereign Floors at Alba, Esencia" being developed by the respondent and booked a residential floor bearing no. C1104SF admeasuring 1394 Sq. Yds in the said project for a total sale consideration of Rs. 66,50,000/- under construction linked payment plan .
- III. That on 21.12.2010, the respondent issued an allotment letter in the name of the original allottee w.r.t the residential floor on the 2nd floor of plot no. C1104 admeasuring 1394 Sq.ft.
- IV. That the builder-buyer agreement was executed inter-se the original allottee and the respondent on 18.01.2011. As per clause No. 5.1 of the said agreement, the respondent had to give possession of the unit



within a period of 30 months with an extended period of six months from the date of execution of this agreement or the date of sanction of the building plan whichever falls later. It is pertinent to mention here that the BBA was executed on 18.01.2011 and the building plans were sanctioned before the execution of the agreement. Therefore, the due date of possession was 18.01.2014.

- V. Thereafter, the complainant i.e., Mr. Ashish Gupta purchased the said unit from the original allottee on 04.02.2013 and all the rights of the original allottee vested in the said residential floor were transferred/endorsed in the name of the complainant by the respondent. Further, the respondent also endorsed the payment of Rs. 55,43,039/- made by the original allottee in the name of the complainant i.e., Ashish Gupta.
- VI. It is pertinent to mention here that the complainant purchased the said Floor from the original allottee at a premium of Rs. 2,56,961/- since the complainant purchased the said floor from the original allottee for a total sum of Rs. 58,00,000/- .
- VII. That on 09.02.2013, the respondent issued a transfer certificate in favour of the complainant. Thereafter, the complainant continued to make the due installments as per the demands of the respondent. That on 8.11.2014, the respondent issued an offer of possession to the complainant and demanded Rs.12,59,140/-. It is pertinent to mention here that in the said offer of possession, various demands have been raised by the respondent which are not acceptable at all.



Further the area of the residential floor has been increased by 156 sq. ft. as earlier the area was 1394 sq. ft. and now the area has been increased to 1550 sq. ft without any intimation and justification and raised demand on said account. That the respondent demanded Rs. 30,000/- under the head of Electric Meter Fitting Charges, Rs. 40,000/- under the head of Misc. Charges and Rs. 5,000/- under the head of administrative charges. It is further pertinent to mention that the said charges were not part of agreement.

- VIII. That as per the agreement to sell and payment receipts issued by the respondent, the complainant has paid a total sum of Rs. 70,93,039/- which is more than the total sale consideration i.e., 69,28,800/-. Despite the fact asserted above the respondent has not delivered the possession on time. It is highly pertinent to mention here that at the time of the offer of possession, the subject unit was not ready for occupancy and construction was going on, furthermore, the unit is still not in habitable possession.
- IX. That on 17.11.2014, the complainant sent a grievance email to the respondent. In the said email the complainant asked the respondent to give clarification on the point why the respondent in its offer of possession has mentioned that the total basic sale price of the said floor is 69,30,800/-, however, in the payment plan, the total sale consideration is 69,28,800/- (inclusive of EDC) and apart from this the respondent has also charged Rs. 2,78,000/- in the head of the EDC. It is pertinent to mention here that the total sale consideration



as per the payment plan annexed on page no. 28 of the BBA is inclusive of EDC i.e., Rs.69,28,800/-. That the respondent has increased the area without the consent of the complainant, therefore the complainant is not liable to pay Rs. 2,80,800/-. Moreover, the respondent has shown the receipts of Rs. 59,40,648 + Rs. 2,64,680/- whereas the complainant has paid more than the total of the above-mentioned amount.

- X. That the respondent sent a reminder letter to the complainant and asked to clear the dues. It is pertinent to mention here that the complainant has paid the total sale consideration and no dues are pending on the complainant's end. Additionally, the statement of account dated 01.04.2015 issued by the respondent is not correct either.
- XI. That after being ignored by the staff of the respondent and the respondent itself, the complainant again sent an email to the respondent on 16.01.2023 and made a request to handover the physical possession of a ready flat as promised by the respondent and it was also requested by the complainant to waive off all the illegal dues, however, the respondent did not listen to any of the requests of the complainant.
- XII. That it is pertinent to mention here that it has been more than 12 years since the booking of the said floor, however, the unit of the complainant is not in a habitable condition. It is pertinent to mention here that a decade has lapsed and still the respondent has failed to



hand over the possession of a ready-to-move unit (complete in all aspects).

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

- i. Direct the respondent to deliver the physical possession of the unit.
- ii. Direct the respondent to pay delay possession charges on amount paid.
- iii. Direct the respondent to refrain from charges Rs.30,000/- on account of Electric Meter Fitting Charges, Rs.40,000/- on account of Mis. Charges and Rs.5,000/- under the head of Administrative charges.
- iv. Direct the respondent to refrain from charging on account of an increase in area.
- v. Direct the respondent to remove all the structural and workmanship defects.

5. The defence of the respondent was struck off vide order dated 29.11.2023. However, in the interest of justice the respondent was given a liberty to file written submissions within a period of two weeks. The counsel for the respondent filed written submissions in the authority on 15.03.2024 and following submissions were made by the respondent:

- i. That the instant complaint filed by the complainant is not maintainable, on facts or in law, and is as such liable to be dismissed/rejected at the thresh hold. It is most respectfully submitted by the respondent that the complainant had already taken



the physical possession way back on 05.09.2023. It is submitted by the respondent that the respondent had made the offer of possession to the complainant way back on 08.11.2014 and thereafter issued numerous reminder letters to the complainant for taking possession but complainant has not taken the possession of the aforesaid unit due to the reasons best known to him.

- II. It is further submitted that the unit was in very good habitable condition when it was offered for possession about nine years back i.e. on 08.11.2014. The Occupation Certificate was received on 07.01.2015. Hence the complainant is not himself wrong doer and not liable to received any relief from this Authority.
- III. That the complainant has merely alleged in his complaint about delay on part of the respondent, but have failed to substantiate the same against respondent.
- IV. That the complainant has made false and baseless allegations against the respondent in the instant complaint with a mischievous intention to take illicit benefits from the respondent. It is submitted that there is no cause of action in favour of the complainant and against the respondent to institute the present complaint against respondent and hence needs to be dismissed.

D. Jurisdiction of the authority

5. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

6. 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.

D.II Subject-matter jurisdiction

7. 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)

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.

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation



which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings of the authority on the relief sought by the complainant:

E.I. DPC & Possession.

14. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges along with interest on the amount paid. Clause 5 of the floor buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

*"5.1 Subject to Clause 5.2 and further subject to all the buyers of the Dwelling Units in the said Sovereign Floors-Alba, Esencia, making timely payments, the Company shall endeavour to complete the development of residential colony and the Dwelling Unit as far as possible **within 30 (Thirty) months with an extended period of 6(six) months from the date of execution of this Agreement or the date of sanction of the building plans whichever falls later.**"*

15. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are 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 promoters



may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the floor buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

- 16. Admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 30 months from date of agreement or the date of sanction of building plan whichever is later plus grace period of 6 months. As no approval/sanction has been placed on record by the respondent therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 18.01.2011. The period of 30 months expires on 18.07.2013. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage, accordingly the due date of possession comes out to be 18.01.2014.
- 17. Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at



such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under 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.
19. 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., **08.05.2024** is 8.85%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.85%.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—



(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default;

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made regarding contravention of 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 builder buyer agreement. That the BBA was executed between the parties on 18.01.2011, so the authority calculated the due date from the date of builder buyer agreement i.e., 18.01.2011. The, the due date of handing over possession is 18.11.2014. The respondent offered the possession of the unit to the complainant on 08.11.2014 but, the said offer of possession was made without obtaining the occupation certificate. The respondent has stated in the written submissions that the occupation certificate was granted on 07.01.2015. Thus, the said offer of possession is bad in the eyes of law. It is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the builder buyer's agreement to hand over the possession within



the stipulated period. Accordingly, the 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.01.2014 till the obtaining of occupation certificate plus 2 months as per as per section 18(1) read with section 19(10) of the Act 2016 read with Rule 15 of the Rules.

23. As regarding handing over of possession of the unit, on the query from the bench regarding handover of possession, the complainant has admitted that the unit has been handed over to him and the date of handing over shall be submitted in the written submissions, but the same has not been submitted by the complainant till date.
24. The authority is of the view that as the possession of the unit has already been handed over to the complainant the respondent is further directed to execute a registered conveyance deed of the unit in favour of the complainant as per Section 11 (4) (f) of the Act, 2016 within 3 months of this order.

E.II. Restrain the respondent from demanding certain charges.

• **Electric meter fitting charges**

25. With respect to the electricity connection charges there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. These connections are applied on behalf of the allottee and allottee has to make payment



to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also entitled to get proof of all such payment to the concerned department along with composite proportionate to his unit before making payment under the relevant head. In case of bulk supply of electricity, the concerned department/agency releases connection with certain terms and conditions of bulk supply and these are to be abided by the allottee. The allottee is also asked to give undertaking not to apply directly to any other electric supply company in his individual capacity for additional load of electricity other than being that provided through bulk supply arrangement. In this case, apart from bearing proportionate charges for bulk supply of electricity connection to the project, the allottee has also to bear the individual meter connection expenditure from the bulk supply point to his unit.

26. Accordingly, the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection 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 will also be entitled to proof of such a payment to the concerned department along with a



computation proportionate to the allotted flat, before making payment under the aforesaid head.

- **Misc. Charges cum Administrative Charges**

27. At the time of the offer of possession, the respondent raised a demand of Rs. 40,000/- under the head of Misc. Charges and as defined in the offer of possession, Misc. Charges means :

"These are incidental charges to be paid for professional arrangement towards registration of conveyance/sale deed. The registration fee shall be paid over and above to Misc. Charges at the time of registration of Conveyance/Sale Deed in Sub-Registrar office. "

28. The authority is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter – developer for any expenses which it may have incurred for facilitating transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

E.III. Direct the respondent to refrain from charging on account of an increase in area.

30. The complainant was allotted unit bearing no. C1104SF, having a built up area of 1394 sq.ft. also the floor buyer's agreement dated 18.01.2011 mentions about the same area. As per the final statement of account (undated) at page no. 76 of complaint, the area of the unit is shown as 1550sq.ft. and an increased area of 156 sq.ft. An amount of Rs.2,80,800/- has been charged on this account.



31. After taking into consideration the judgement of *National Consumer Disputes Redressal Commission, New Delhi, consumer case no. 285 of 2018 titled as Pawan Gupta Vs. Experion Developers Pvt. Ltd. (Decided on 26.08.2020)* which has been upheld by the Hon'ble Supreme Court of India in civil appeal nos. 3703-3704 of 2020 decided on 12th January 2021, the authority after going through the facts and circumstances of the case, deduces that without giving any justification for increase in the super area, there is no case made out for charging it. There was a need to put system in place so that at the time of the approval of building plans, the promoter was obligated to disclose all the relevant details of super area and whenever there was a revision of building plans, the approval of the competent authority should have been taken before hand prior to raising any demands.
32. There is no harm in charging for the extra area, if justifiable, at the final stage but for the sake of transparency, the respondent-promoter must share the calculations for increase in the super area based on the comparison of the originally approved building plans and finally approved building plans. The premise behind this is that the allottee must know the change in the finally approved lay-out and areas of common spaces viz-a-viz the originally approved lay-out plans and common areas.
33. The authority therefore opines that until this is done, the promoter is not entitled to payment of any excess super area over and above what has been initially mentioned in the builder buyer's agreement, least in the



circumstances where such demand has been raised by the builder without giving supporting documents and justification.

E.IV. Direct the respondent to remove all structural and workmanship defects.

34. Under Section 11(4)(a) of the Act, 2016 the promoter/builder is responsible for all obligations, responsibilities and functions under the Act, 2016 and also under the rules and regulations made under the Act. The promoter/builder is also responsible to the allottees or the association of allottees, as the case may be as per the agreement for sale till the conveyance of all apartments to the allottees or the common areas to the association of allottees or the competent authority, as the case may be. Moreover, the responsibility of the promoter with respect to the structural defects or any other defect as referred in sub section 3 of section 14 of the Act, 2016 continues even after the conveyance deed is executed. Relevant section is reproduced below:

"Section -14 Adherence to sanctioned plans and project specifications by the promoter.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

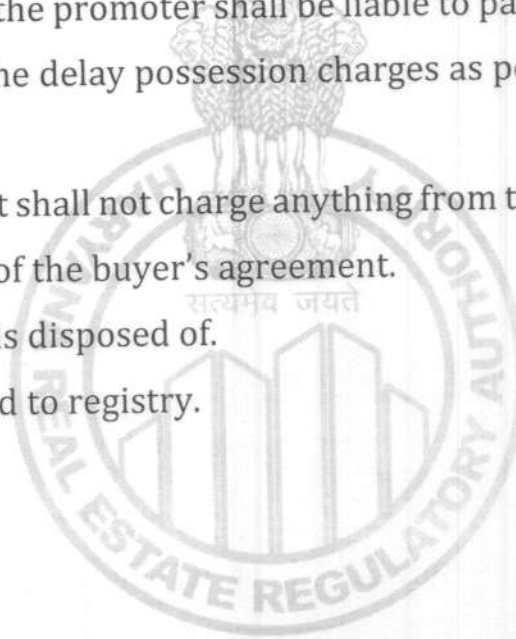
35. Thus, in view of the above, the authority directs the respondent/promoter to rectify the structural defects or any other

agreement within 30 days of this order and in case the respondent fails to rectify the said defects , then the complainant can approach the Adjudicating Officer and seek compensation.

F. Directions of the authority

36. 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 10.85% p.a. for every month of delay from the due date of possession i.e., 18.01.2014 till the date of obtaining the occupation certificate plus 2 months from the competent authorities, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.
 - ii. The respondent is directed to execute a registered conveyance deed of the unit in favour of the complainant as per Section 11(4) (f) of the Act, 2016 within 3 months of this order.
 - iii. The respondent is directed to demand charges on account of Electric meter fitting charges, Misc. charges, administrative charges, on account of increased area., as directed in the detailed above mentioned respective para's.
 - iv. The respondent/promoter is directed to rectify the structural defects or any other defect in workmanship, quality or provision of services as per the agreement within 30 days of this order and in case the respondent fails to rectify the said defects , then the complainant can approach the Adjudicating Officer and seek compensation.

- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The rate of interest chargeable from the complainant /allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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 delay possession charges as per section 2(za) of the Act.
- vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
37. Complaint stands disposed of.
38. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.05.2024

HARERA
GURUGRAM