

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

Complaint no.	:	896 of 2023
Date of decision	:	01.03.2024

Santosh Sharma

**R/O:** - House no. 60A, 2<sup>nd</sup> Floor mohyal colony, sec-40, gurugram, Haryana - 122001

**Complainant**

Versus

Pivotal Infrastructure Pvt. Ltd.,  
309,3<sup>rd</sup> floor,jmd pacific squar,sector-15,part-ii,  
gurugram-122001

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Vijay Pratap Singh  
Shri Sidhharth Sehjwal

Advocate for the complainant  
A.R. of the respondent

**ORDER**

1. The present complaint dated 17.03.2023 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:

S. No.	Heads	Information
1.	Name and location of the project	<b>"Paradise", Sector-63, Gurugram, Haryana</b>
2.	Nature of the project	Affordable residential apartment
3.	DTCP license no. and validity status	05 of 2016 dated 30.05.2016
4.	RERA registered/ not registered and validity status	<b>Registered vide registration no. 178 of 2017 dated 01.09.2017 and valid up to 29.05.2021</b> Registration expired
5.	Unit no.	Flat no. T5-1003, 10 <sup>th</sup> floor, (Page no. 31 of the complaint)
6.	Unit admeasuring	636 sq. ft. (Page no. 31 of the complaint)
7.	Date of allotment	20.01.2017 (As per page 20 of complaint)
8.	Date of apartment buyer's agreement	17.03.2017 (Page 30 of complaint)
9.	Total consideration	Rs. 25,84,000/- (As per page 33 of complaint)
10.	Total amount paid by the complainant	Rs. 26,16,300/- (As per SOA dated 09.02.2022 at page 58 of complaint)
11.	Possession clause	8.1.

		<p><i>The company shall endeavour to complete the construction and handover the possession of the apartment within a period of said apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations.</i></p> <p><i>(Emphasis supplied)</i></p>
12.	Date of approval of building plans	<b>25.07.2016</b> <i>(Annexure-R/3, page 16 of reply)</i>
13.	Date of environmental clearances	<b>28.07.2017</b> <i>(Annexure-R/4, page 24 of reply)</i>
14.	Due date of delivery of possession	28.01.2021 (calculated from the date of environment clearance i.e., 28.07.2017 being later + 6 months of grace period w.r.t COVID) *inadvertently mentioned as 28.07.2021 in proceedings dated 01.03.2024
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
  - a. The respondent made advertisement in the newspaper 'Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name "affordable group housing colony " commonly known as" PARADISE" floated under

Haryana Government's Affordable Housing Policy, located at SECTOR 62, Gurgaon, Haryana. That the complainant approached to the respondent for booking of a flat vide application bearing no. 01307 having carpet area of 636 sq. ft.

- b. The draw of the said project was held, wherein the complainant was allotted flat no T5-1003 located on 10<sup>th</sup> floor in tower no T5. That the respondent to dupe the complainant in their nefarious net even executed a one-sided builder buyer agreement signed between complainant and respondent through their authorised representative on dated 17.03.2017, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. The apartment buyer's agreement was executed between the complainant and the authorised representative of the respondent. That the total consideration of the flat was ₹ 25,84,000/- and applicable taxes payable the complainant paid the amount towards the cost of flat as and when the demand were raised by the respondent. That as per the BBA clause no 4.1 the respondent was supposed to hand over the actual physical possession of the flat to the complainant latest by 27.07.2021 (Exclusive of the grace period of 6 month).
- c. That the complainant has paid the flat payment as demanded against the total consideration amount against the flat in time bound manner. That respondent has charged interest on delayed instalment @ 15 % P.A. compounded quarterly interest as per clause 7.2.2 of BBA compounded quarterly interest, whereas, as

per BBA the offer of delay possession penalty for the builder towards buyers is just ₹ NIL per sq. ft. per month. This is totally illegal, arbitrary and unilateral.

- d. That the respondent has indulged in all kinds of tricks and illegality in booking and drafting of BBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and his family who has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking delayed possession charges. The builder buyer agreement consists very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature. As every clause of the agreement is drafted in a one sided way, even a single breach of unilateral terms of builder buyer agreement by complainant, will cost him forfeiting of earnest money and about delay payment charges 15% & 10.5%. Respondent has not prepared the builder buyer agreement as per the terms and conditions mentioned under the Haryana Affordable Policy 2013 and also the builder buyer agreement not drafted as per the RERA act 2016.
- e. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant in time has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered dark as the planning with which the complainant invested her hard earned monies have resulted in subzero results and borne thorns instead of bearing fruits.

**C. Relief Sought**

4. The complainant has sought following relief(s):
- a. Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of ₹ 26,16,300/- for delay period starting from 27<sup>th</sup> July. 2021 ( i.e., the date of actual handing over of physical vacant possession ,till actual hand over of the physical possession by the Respondent to the Complainant with penal interest), given that 27<sup>th</sup> July 2021 was the promised date of delivery (along with pendente lite and future interest till actual possession) request the Hon'ble Regulatory.
  - b. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate.
5. On the date of hearing, the authority explained to the respondent/ promoters 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**

6. The respondent by way of written reply made the following submissions:
- a. That the present complaint in the present form cannot be maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.



- b. That this Hon'ble Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
- c. That due to the outbreak of the pandemic covid-19 in March 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view the difficulties in completing the project by Real Estate Developers, this Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26-05-2020. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.
- d. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, 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. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period.
- e. That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance, which is later,

was incumbent upon the complainant making timely payments. Therefore, the complainant is forbidden to demand the timely performance of the 'contractual obligations' by the respondent, wherein the complainant, himself, had failed to perform his part of the 'contractual obligations' on time.

- f. That the present project is an affordable group housing project being developed in accordance with the provision of the affordable housing policy, 2013. The allotment price of the apartment was fixed by the government of Haryana and in terms of the policy, the respondent was paid the allotment price in installment. Though, the allotment price was fixed by the government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost for increased manifold but the government of Haryana had failed to increase the allotment price. The government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of affordable housing policy, 2013. The license for the project paradise was granted on 30-05-2016 and the respondent was permitted to sell the units and the allotment price of Rs. 4000 per sq.ft. the project is being constructed by the respondent and is near in completion. The photographs of the current status of the project are attached herewith which clearly proves that the entire construction has been done and the formalities of obtaining occupation certificate remains pending. The respondent had applied for grant of



occupation certificate vide application dated 28-04-2023 and the same is expected soon.

7. Copies of all the relevant documents have been duly 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**

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

**E.I. Territorial jurisdiction**

9. 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**

10. 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.*

11. 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 as per provisions of section 11(4)(a) of the Act 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 jurisdiction of authority w.r.t. authority doesn't have jurisdiction and adjudicate the present complaint.**

12. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the act or the said rules has been executed inter se parties. The authority is of the view that the act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the act. Therefore, the provisions of the act, rules and agreement have to be read and interpreted harmoniously. However, if the act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the act and the rules after the date of coming into force of the act and the rules. Numerous provisions of the act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment

of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

13. Further, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal observed- as under

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*



14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

**G.I. Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of ₹ 26,16,300/- for delay period starting from 27<sup>th</sup> July. 2021 ( i.e., the date of actual handing over of physical vacant possession ,till actual hand over of the physical possession by the Respondent to the Complainant with penal interest), given that 27<sup>th</sup> July 2021 was the promised date of delivery (along with pendente lite and future interest till actual possession) request the Hon'ble Regulatory.**

15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges on the amount paid by him in respect of subject unit. Sec. 18(1) of the Act is reproduced below for ready reference:

***"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. - in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*



*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."*

*(Emphasis supplied)*

16. Clause 8.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

**"8.1. EXPECTED TIME FOR HANDING OVER POSSESSION**

*Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavour to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder."*

17. 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 application, and the complainants 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 flat 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.

18. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (25.07.2016) or grant of environment clearance, (28.07.2017) (hereinafter referred to as the "Commencement Date"), whichever is later. The period of 4 years is calculated from environment clearance i.e., 28.07.2017 being later. The period of 4 years expired on 28.07.2020. *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/due date on or after 25.03.2020.* The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 28.07.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such



case the due date for handing over of possession comes out to be 28.01.2021.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate, 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.

20. 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.
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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
22. The definition of term 'interest' as defined under section 2(z) 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;" सत्यमेव जयते*

23. 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.
24. On consideration of the documents available on record and submissions made by both the parties 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 agreement. By virtue of clause 8.1 of the agreement executed between the parties on 17.03.2017, the possession of the subject apartment was to be delivered within stipulated time i.e., by 28.07.2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Accordingly the due date of possession comes out to be 28.01.2021. The respondent has delayed in offering the





possession and the same is not offered till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the 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., 28.01.2021 till date of valid offer of possession after obtaining OC plus two months or date of actual handover of possession whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

25. Separate proceeding to be initiated by the planning branch of the Authority for taking an appropriate action against the builder as registration of the project has been expired.

**G.II. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate.**

26. The respondent promoter has not yet obtained the OC w.r.t. the tower in which the subject unit is situated. The issuance of occupation certificate by the competent authority in itself is a proven fact that the promoter has sought all necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. as these clearances are preconditions for grant of OC. Therefore, respondent promoter is directed to handover the possession of the subject unit complete in all respect as per specifications mentioned in the BBA under section 17(2) of the Act,



2016 within 2 months after receiving the OC for the same from the competent authority.

**H. Directions of the authority**

27. 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):

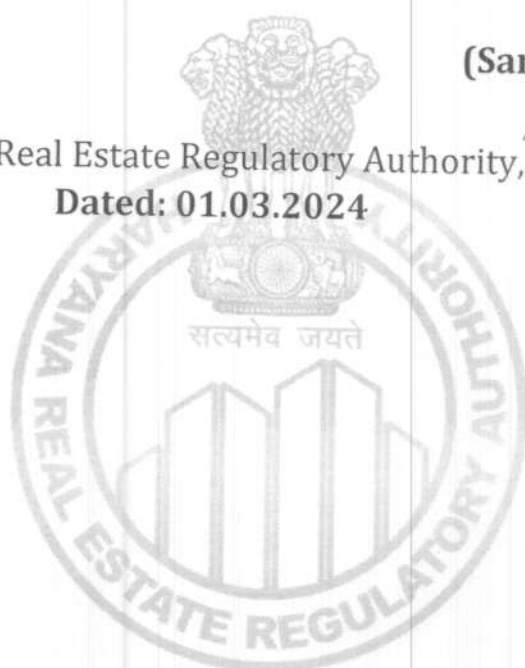
- a. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 28.01.2021 till the date of valid offer of possession after obtaining OC plus two months or date of actual handover of possession whichever is earlier.
- b. The respondent is directed to handover the possession within 90 days after obtaining the OC from the competent authority.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- d. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

- e. The promoter shall not charge anything which is not part of the BBA.
28. Complaint stands disposed of.
29. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024



**HARERA**  
**GURUGRAM**