

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

Complaint no.: 6493 of 2022
Date of decision:- 20.11.2024

Mr. Mohit Bansal
R/o: - D-90, South City-1, Gurgaon,
Haryana.

Complainant

Versus

M/s. Anant Raj Ltd.
Regd. office: Cp-1, Sector-8, IMT Manesar,
Haryana-122051

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Harshit Batra (Advocate)

Complainant

Mr. Umang Mahindra (Advocate)

Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint dated 30.09.2022 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Maceo", Sector- 91, Gurgaon
2.	Nature of project	Group housing colony
3.	RERA registered/not registered	Registered vide registration no. 314 of 2017 dated 18.08.2017
	Validity status	17.08.2019
4.	DTPC License no.	71 of 2008 dated 25.03.2008
	Validity status	24.03.2025
	Licensed area	15.575 acres
	Name of licensee	Jubliant Software Service Private Limited
5.	Allotment letter	22.03.2014 (As per page no. 18 of complaint)
6.	Date of apartment buyer agreement	24.09.2015

		(As per page no. 23 of complaint)
7.	Unit no.	A-703 on 7 th floor of tower A (As per page no. 29 of complaint)
8.	Unit area admeasuring	2320 sq. ft. [Super area] (As per page no. 29 of complaint)
9.	Possession clause	<p>Clause 7.1</p> <p><i>The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover the possession of the said Apartment to the Allottee <u>within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure</u> . The Allottee(s) understands and agrees that the developer shall be entitled for a <u>grace period of 180 days after the expiry of the aforesaid 36 months</u>. The Developer after completing the construction shall apply and obtain the occupation certificate in the in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.</i></p>
10.	Due date of possession	24.03.2019 (Calculated from date of apartment buyer agreement i.e. 24.09.2015 + grace period of 180 days) <i>Grace period of 180 days is allowed.</i>

11.	Total sale consideration	Rs. 1,40,80,425/- (As per page no. 33 of complaint)
12.	Amount paid by the complainant	Rs. 43,78,413/- (As per SOA dated 29.11.2019 on page no. 77-79 of complaint)
13.	Occupation certificate	28.11.2019 [page 29 of reply]
14.	Offer of possession	30.11.2019 [As per page no. 32 of reply]

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:
- I. That relying upon the representations, warranties, and assurances of the respondent about the timely delivery of possession, the allottee booked a unit bearing no. 703, 7th Floor in Tower-A, admeasuring 2320 sq. ft. super area in the project known as "Maceo" situated in Sector-91, Manesar, Gurugram by making a payment of Rs.14,00,000/- as a booking amount on 27.02.2014.
 - II. That the respondent lured the complainant into booking the unit. It is submitted that the respondent made false representation with respect to the timely delivery of the project to the complainant and the overall conduct of the respondent, which has been malafide, since the very beginning.
 - III. That the respondent allotted the unit to the respondent vide Allotment letter dated 22.03.2014. The respondent after a delay of 1.5 years from

the date of allotment sent the Builder Buyer Agreement dated 24.09.2015 for signing to the complainant.

- IV. That the respondent collected a sum of Rs.43,78,995/- i.e., 28% of the total sale consideration of Rs.1,55,90,619 from the complainant before the execution of the Agreement. That the Agreement establishes the strict contractual relationship between the parties and the relationship between the parties is to be directed as per the terms and conditions of the Agreement, however, in the present case, the respondent miserably delayed the execution of the agreement further delaying the due date of delivery of possession.
- V. That as per Clause 3.7 of the Agreement, the complainant is bound to pay an interest @18% p.a. for any default/delay in making timely payment of instalments. Whereas, on the other hand, as per Clause 7.7, the respondent shall have to pay the interest @ Rs.10 per sq. ft. of the super area per month only, in case of delay in handing over of the possession of the unit by the respondent.
- VI. That in case the complainant fails to take over the possession of the unit, the respondent is charging holding charges which is bad in the eyes of law and contrary to the findings of Hon'ble Supreme Court and this Authority, that has evidently held that a Builder/Promoter cannot charge holding charges. That the relevant abstract from Clause 7.4 of the Agreement is mentioned below for ready reference:
- Clause 7.4: "...Any delay by the Allottee(s) to take possession would require the Allottee(s) to pay **holding charges amounting to a sum of Rs. 10/- (Rupees 1ten Only) per sq. ft. per month** of the super area of the said Apartment for any delay of full month or any part thereof in taking possession of the said Apartment for the entire period of delay..."*
- VII. That as per Clause 7.1 of the Agreement, the respondent was under an obligation to deliver the possession of the unit by 24.09.2018, i.e.,



within 36 months from the date of execution of the Agreement (24.09.2015) however the respondent has failed to do so. That the respondent issued the offer of possession to the complainant on 30.11.2019, i.e., after a delay of 1 year 2 months and 6 days from the due date.

- VIII. That despite the delay, the respondent failed to provide any delay possession charges for the delay caused. The complainant was entitled to delay possession charges along with the offer of possession which the respondent has failed to pay at the time of offer of possession.
- IX. That the respondent himself has not only breached the terms of the Agreement but has also delayed the completion of the project, and instead of offering delay possession charges, the respondent has charged an exorbitant rate of interest from the complainant which is contrary to the provisions of the Act.
- X. That the respondent has charged a hefty amount in the name of "PLC" when actually, the unit is "*not preferentially located*". That it is to be noted that the respondent has charged an amount of Rs.3,81,102/- in the name of a green PLC which is actually not present.
- XI. That the project has been substantially delayed by the respondent even after receiving the payment of Rs.1,54,49,619/- from the complainant as and when demanded by the respondent. That it is pertinent to highlight that the complainant has paid almost 100% of the total sale consideration.
- XII. That the complainant in regard to such arbitrary demands and the delay caused by the respondent, made several visits and had written several emails to the respondent but the same was to no avail. That despite multiple personal visits of the complainant, the respondent



again remained struck by the arbitrary and one-sided demands through its email dated 26.08.2022. The complainant duly replied to the said email and on 26.08.2022 itself, and again communicated about his grievances for the arbitrary charges of PLC and requested the respondent to refund the complete amount with interest. Hence, the complainant herein is completely entitled to get a refund of the amount paid by him along with the interest.

C. Relief sought by the complainant:

4. The complainant filed an application for amendment in relief on 09.01.2024. By way of the said application, the complainant submitted that after the filing of the reply by the respondent, the complainant came to know about the grant of Occupation Certificate in respect of the unit to the respondent and thus, the complainant wants to continue with the project. The said application for amendment was allowed by the Authority on 10.04.2024. The reliefs sought by the complainant are as follows:

- I. Direct the respondent to handover physical possession of the unit along with interest at the prescribed rate of interest from the due date of possession till the date of handing over of possession of the unit.
- II. Direct the respondent to refund the PLC amount of Rs.3,81,102/- paid by the complainant along with prescribed rate of interest,
- III. Direct the respondent to execute the conveyance deed.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.

- I. That the complainant after satisfying himself with the construction of the project had executed the Apartment Buyer Agreement dated 24.09.2015. It is submitted herein that the complainant miserably failed to comply with the terms of the Payment Plan. Thus, the respondent was constrained to send repetitive "reminders letters" and "Demand letters cum service invoice" to the complainant to clear his due and outstanding amounts.
- II. That the complainant was well verse with the facts that there was a short delay in handing over the possession of the aforesaid unit. Moreover, the Complainant has also acknowledged the delay in possession of 8 months owing to certain force majeure events vide an email dated 13.01.2020, wherein the complainant was ready to adjust the delay possession charges of Rs.96,868/-.
- III. That even thereafter, the respondent herein again showing their bonafide intention agreed to adjust the delay compensation charges vide an E-mail dated 30.01.2020 adjusting the delay compensation amount in maintenance (CAM) charges which amounted to Rs.96,868/-.
- IV. That the possession of the unit was to be handed over to the complainant by 22.03.2019, and was duly offered on 30.11.2019, thereby causing a delay of merely 8 months and thus the present complaint seeking refund of the sale consideration amount is only an *afterthought* of 3 years even when the complainant is duly being compensated for the delay possession charges and the possession of the unit is ready since 30.11.2019.
- V. At the outset, it is submitted that the delay in handing over of possession was caused owing to force majeure conditions, which



were beyond the control of the respondent and are duly covered under Clause 19 of the said Agreement. The nominal delay of 8 months was caused on account of orders passed by the Hon'ble National Green Tribunal, Environmental Pollution (Prevention and Control) Authority and the State Pollution Control Board, which issued various directions to builders to take additional precautions and steps to curtail pollution. On account of such directions, the progress of the work of was abruptly hampered.

- VI. In view of the aforesaid facts and circumstances, it won't be out of place to mention herein that even after facing various hindrances, the respondent herein showing their bonafide had sent several project update letters to the complainant wherein the respondent had clearly stated that the superstructure construction at the project is completed and internal finishing works have commenced and it will be able to complete the construction work by October 2017. That even after receiving such construction update letters from the respondent, the complainant never objected to the delay in handing over the possession of the said unit.
- VII. That by highlighting the aforesaid non-intentional delay on the part of the respondent, the complainant has very conveniently tried to conceal the delay on his part in making the requisite payments as per the Payment Plan. It is further submitted herein that even after offering the possession of the said unit and adjusting the delay compensation charges, the complainant was at willful default in remitting the remaining installments which were due and payable. The respondent sent a Reminder Letter dated 20.09.2021 to the complainant requesting him to remit his dues amounting to



Rs.1,84,732/- against the said unit. That further the said reminder letter was also sent vide an E-mail dated 20.09.2021.

- VIII. As such, the due and outstanding amount payable by the complainant as per the schedule set out in Payment Plan was done belatedly and after receiving repeated reminder/Demand Letters from the respondent. Hence, owing to such conduct of the complainant, an amount of Rs.2,24,658/- is still due and payable by the complainant.
- IX. That the complainant after duly accepting the PLC Charges at the time of execution of the Agreement which has been incorporated in Clause 3 of the said Agreement as well as in the Payment Plan as annexed with the said Agreement, cannot seek a discharge from the same at this stage, thereby putting the respondent at a disadvantageous position.
- X. That a bare perusal of Clause 3 of the said Agreement shows that the parties had deliberated upon the preferential location of the unit of the complainant, and pursuant to such deliberation only, the complainant chose the said unit on which 2 PLCs are chargeable, i.e., Corner and Green. As can be seen, there are options of 1 PLC as well as of more than two PLCs, however, the complainant intentionally and knowingly made an informed decision to select the unit with two PLCs, and hence, is now barred by estoppel to go back on such payments. Needless to state that the complainant chose a unit which is located at the corner location and has a green facing view, thereby obligating the complainant to make such payments.
- XI. That the unit has been ready since November 2019 however, the complainant has refused to take possession of the same despite



repeated reminders having been issued to the complainant in this behalf, thereby constraining the respondent to incur maintenance charges for the upkeep of the unit.

- XII. That vide email dated 26.08.2022, the respondent again reminded the complainant to clear all their dues and outstanding payable amounts along with the submission of the requisite documents for taking over the possession which was blatantly ignored by the complainant by giving a false and frivolous reply.
- XIII. That the amount paid by the complainant towards the sale consideration has already been utilized by the respondent towards construction of the unit and the project as a whole. Therefore, grave injustice would be caused to the respondent if the respondent is directed to pay back the entire sale consideration at such belated stage when the offer has been made more than 3 years before and the respondent has been maintaining the said unit since then on their cost.
6. Copies of all the relevant documents have been filed and placed on 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:

7. 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

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. 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.

F. Findings on objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority,. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 7.1 of the Apartment Buyer Agreement dated 24.09.2015 which comes out to be 24.03.2019. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover physical possession of the unit and pay interest on the delayed possession from the due date of possession till the actual handover of possession of the unit.

12. In the present complaint, the complainant booked a unit in the project of the respondent namely "Maceo" situated at Sector-91, Manesar, Gurugram. The allotment was made in favour of the respondent on 22.03.2014 and thereafter, the Builder Buyer



Agreement was executed between the complainant and the respondent on 24.09.2015. As per Clause 7.1 of the agreement, the respondent undertook to hand over possession of the unit to the complainant within a period of 36 months from the date of execution of the agreement along with a grace period of 180 days. Thus, the due date of possession comes out to be 24.03.2019. The respondent has obtained the Occupation Certificate from the competent authorities on 28.11.2019 and thereafter, offered possession to the complainant on 30.11.2019.

13. In the present complaint, the complainant intend to continue with the project and is seeking possession and delay possession charges along with interest on the amount paid. 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.

"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."***

14. Clause 7.1 of the Apartment Buyer Agreement provides for handing over of possession and is reproduced below:

Clause 7.1

The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover

the possession of the said Apartment to the Allottee Within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure. The Allottee(s) understands and agrees that the developer shall be entitled for a grace period of 180 days after the expiry of the aforesaid 36 months. The Developer after completing the construction shall apply and obtain the occupation certificate in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.

15. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of execution of apartment along with grace period of 180 days which comes out to be 24.03.2019. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period of 180 days in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 180 days shall be allowed to the promoter at this stage.
16. **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."

17. 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.
18. 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., 20.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
19. 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;"*
20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

21. 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 agreement. By virtue of clause 7.1 of the agreement executed between the parties on 24.09.2015, the possession of the subject apartment was to be delivered within 36 months from the date of execution. Due date of possession is calculated from the date of execution of apartment buyer's agreement i.e., 24.09.2015. The period of 36 months expired on 24.09.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 24.03.2019. The respondent has offered the possession of the subject apartment to the complainant on 30.11.2019 after receiving the occupation certificate from the concerned authorities on 28.11.2019, which is delayed than the due date of possession of the unit. 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.
22. Vide proceedings dated 10.04.2024, the counsel for the respondent submitted that the possession of the unit shall be handed over to the complainant subject to payment of the maintenance charges from the date of offer of possession and the complainant's counsel agreed to the same. The respondent has submitted by way of written submissions that the complainant has taken possession of the unit on 19.10.2024.



of written submissions that the complainant has taken possession of the unit on 19.10.2024.

23. The non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 24.03.2019 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.II. Direct the respondent to refund the PLC amount of Rs.3,81,102/- paid by the complainant along with prescribed rate of interest,

24. The complainant has submitted that the respondent has charged Rs.3,81,102/- towards PLC but the unit allotted to him is not preferentially located. The respondent has submitted that the PLC charges paid by the complainant against the subject unit were upon the request of the complainant against the preferential location and that to upon going through the plans and approvals as shown to the complainant. As per the additional charges annexed to the Apartment Buyer Agreement on page no. 68 of the complaint, it is amply clear that the PLC Charges were for corner and green facing.
25. After considering the documents available on record as well as submissions made by the parties, it is determined that the unit is preferentially located and thus, no direction in this regard is effectuated.

G.III. Direct the respondent to execute conveyance deed in favour of the complainant.

26. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. In view of the above, the respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one month of the order.

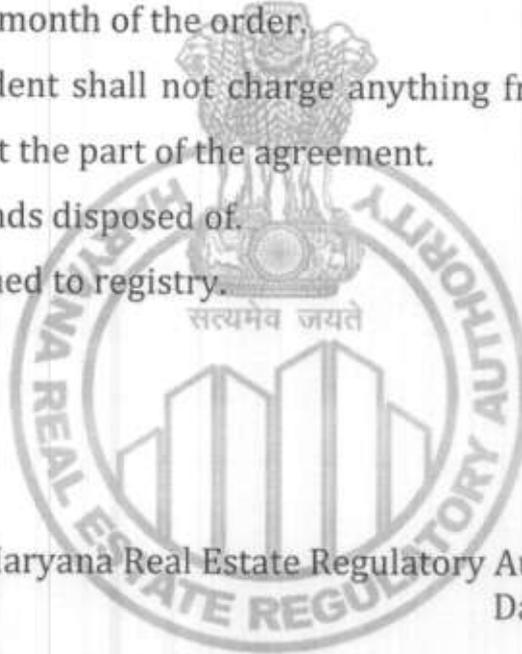
H. Directions of the authority

27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 24.03.2019 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottee/complainant by the promoter, in case of default shall be charged at the



- prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one month of the order.
- v. The respondent shall not charge anything from the complainant which is not the part of the agreement.
28. Complaint stands disposed of.
29. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.11.2024

HARERA
GURUGRAM