BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: - 07.02.2025

NAME OF THE BUILDER		ISHV Realtors Private Limited.	
PROJECT NAME		Skyline 109, Sector 109 ", Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/4376/2023	Gaurav Gupta VS 1. ISHV Realtors Private Limited 2. Sh. Jitender 3. Sh. Sudesh Kumar 4. Sh. Hemant Kumar 5. Sh. Sunil Kumar 6. Sh. Ajay Singh 7. Sh. Satya Narayan 8. M/s Anjum and Associates Pvt. Ltd	Adv. Hemant Phogat (Complainant) Adv. Shankar Wig (Respondent No. 1) Adv. Krishan Yadav for Respondent No. 2 to 8
2.	CR/4378/2023	Gaurav Gupta VS 1. ISHV Realtors Private Limited 2. Sh. Jitender 3. Sh. Sudesh Kumar 4. Sh. Hemant Kumar 5. Sh. Sunil Kumar 6. Sh. Ajay Singh 7. Sh. Satya Narayan 8. M/s Anjum and Associates Pvt. Ltd	Adv. Hemant Phogat (Complainant) Adv. Shankar Wig (Respondent No. 1) Adv. Krishan Yadav for Respondent No. 2 to 8
3.	CR/4430/2023	Rajendra Pratap Singh VS 1. ISHV Realtors Private Limited 2. Sh. Jitender 3. Sh. Sudesh Kumar 4. Sh. Hemant Kumar 5. Sh. Sunil Kumar 6. Sh. Ajay Singh 7. Sh. Satya Narayan 8. M/s Anjum and Associates Pvt. Ltd	Adv. Hemant Phogat (Complainant) Adv. Shankar Wig (Respondent No. 1) Adv. Krishan Yadav for Respondent No. 2 to 8
4.	CR/4428/2023	Rajendra Pratap Singh VS	Adv. Hemant Phogat (Complainant)

		1. ISHV Realtors Private Limited 2. Sh. Jitender 3. Sh. Sudesh Kumar 4. Sh. Hemant Kumar 5. Sh. Sunil Kumar 6. Sh. Ajay Singh 7. Sh. Satya Narayan 8. M/s Anjum and Associates Pvt. Ltd	Adv. Shankar Wig (Respondent No. 1) Adv. Krishan Yadav for Respondent No. 2 to 8
5.	CR/4429/2023	Rajendra Pratap Singh VS 1. ISHV Realtors Private Limited 2. Sh. Jitender 3. Sh. Sudesh Kumar 4. Sh. Hemant Kumar 5. Sh. Sunil Kumar 6. Sh. Ajay Singh 7. Sh. Satya Narayan 8. M/s Anjum and Associates Pvt. Ltd	Adv. Hemant Phogat (Complainant) Adv. Shankar Wig (Respondent No. 1) Adv. Krishan Yadav for Respondent No. 2 to 8

CORAM:
Shri Arun Kumar

Chairman

ORDER

1. The order shall dispose off all the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, Skyline 109, Sector 109, Gurugram being developed by the same respondent-promoter i.e. ISHV Realtors Private Limited. The terms and conditions of the builder buyer's agreements that had been executed between the

parties *inter se* are also similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges.

2. The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, date of start of construction, due date of possession, offer of possession and relief sought are given in the table below:

ISHV Realtors Private Limited Skyline 109, Sector 109								
Possession Clause 15: *That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) **within Four years from the date of this Agreement.** If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient* **Occupation certificate is not obtained in the project till date.**								
Sr. No	**Complaint No./Title/Date of filing/ Reply status**	**Unit /shop no.**	**Re-allotment shop no. as per settlement agreement**	**Date of execution of builder buyer's agreement**	**Date of settlement agreement**	**Due date of possession**	**Offer of possession**	**Relief sought**
1	CR/4376/2023 03.10.2023 Reply not filed	63 ground floor 1278 sq. ft.	LG-50	07.02.2014	20.08.2020	07.02.2018	Not offered **OC-** N/A **TC-** Rs. 1,29,87,695/-	1. DPC 2. Possession of the Re-allotted the unit as per the settlement agreement.

							AP- Rs. 35,82,915/-	
2.	CR/4378/2023 03.10.2023 Reply not filed	63 ground floor 1278 sq. ft.	LG-15	07.02.2014	20.08.2020	07.02.2018	Not offered **OC**- N/A **TC**- Rs. 1,29,87,695/- **AP**- Rs. 35,82,915/-	1. DPC 2. Possession of the Re-allotted the unit as per the settlement agreement.
3.	CR/4430/2023 06.10.2023 Reply not filed	94 ground floor 1278 sq. ft.	LG-16	07.02.2014	20.08.2020	07.02.2018	Not offered **OC**- N/A **TC**- Rs. 1,29,87,695/- **AP**- Rs. 35,82,915/-	1. DPC 2. Possession of the Re-allotted the unit as per the settlement agreement.
4.	CR/4428/2023 06.10.2023 Reply not filed	94 ground floor 1278 sq. ft.	LG-49	07.02.2014	20.08.2020	07.02.2018	Not offered **OC**- N/A **TC**- Rs. 1,29,87,695/- **AP**- Rs. 35,82,915/-	1. DPC 2. Possession of the Re-allotted the unit as per the settlement agreement.
5.	CR/4429/2023 06.10.2023 Reply not filed	94 ground floor 1278 sq. ft.	LG-17	07.02.2014	20.08.2020	07.02.2018	Not offered **OC**- N/A **TC**- Rs. 1,29,87,695/- **AP**- Rs. 35,82,915/-	1. DPC 2. Possession of the Re-allotted the unit as per the settlement agreement.

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/4376/2023*** titled as ***Gaurav Gupta VS ISHV Realtors Private Limited and Ors.*** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

4. 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:

CR/4376/2023 titled as ***Gaurav Gupta VS ISHV Realtors Private Limited and Ors.***

S. N.	Particulars	Details
1.	Name of the project	Skyline 109, Sector 109, Gurugram
2.	Project area	3.78187 Acres
3.	DTCP license	24 of 2011 dated 24.03.2011 Valid up to 23.03.2015
4.	RERA registered/ or not	Not registered
5.	Shop No. and size as per BBA	63, ground floor admeasuring 1278 sq. ft. (Page no. 47 of complaint)
6.	Re-allotted shop no. and area as per settlement agreement dated 20.08.2020	LG-50 admeasuring 443 sq. ft. (Page no. 99 of complaint)

7.	Date of builder buyer agreement	07.02.2014 (Page no. 46 of the complaint)
8.	Possession clause	**15.** *That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S)* ***within Four years from the date of this Agreement****. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient.*
9.	Due date of possession	07.02.2018
10.	Settlement agreement	20.08.2020 (Page no. 95 of complaint)
11.	Total sale consideration	Rs. 1,29,87,695/- (As per BBA at page no. 48 of the complaint)

12.	Amount paid by the complainant	Rs. 35,82,915/- (Page no. 99 of complaint)
13.	Occupation certificate on	Not Obtained
14.	Offer of possession made on	Not Offered

B. Facts of the complaint

5. The complainant has made the following submissions in the complaint:

I. That the respondent no. 1 is the developer while respondent nos. 2 to 8 are the license holders bearing license no. 24 of 2011 dated 24.03.2011 issued by the Directorate of Town & Country Planning, Haryana for setting up a commercial colony/ project namely "Skyline 109" situated at Sector-109, Gurugram, Haryana on land measuring 3.78187 Acres situated within the revenue estate of Pawal Khusurpur, Distt. Gurugram. That the developer i.e. respondent no. 1 and the landowners i.e. respondent nos. 2 to 8 have entered and executed a collaboration agreement dated 24.06.2011 vide vasika bearing no. 8083, registered at the office of sub-registrar, Gurugram.

II. That on the basis of rights and privileges conferred to the developer i.e. respondent no. 1 in the collaboration agreement dated 24.06.2011, the respondent no. 1 approached the complainant and represented that the respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the shop/retail space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments

etc. and persuaded the complainant to purchase a commercial unit in their upcoming project "Skyline109" being developed at Sector-109, Gurugram, Haryana.

III. That believing upon the representations of the respondent no. 1, the complainant purchased and booked a showroom/ office space/ restaurant/ other space no. 63 (corner shop) situated at Ground Floor, measuring 1278 Sq. Ft. @ of Rs. 9250 per Sq. Ft. for a total sale consideration of Rs. 1,29,87,675/-. Flat Buyer Agreement was executed between the respondent no. 1 and the complainant on 07.02.2014 and in lieu of its consideration, the complainant paid an amount of Rs. 35,82,915/-. As per clause 15 of the flat buyer agreement, the respondent no. 1 promised and assured the complainant that the possession of the said unit shall be delivered to the complainant within 4 years of the execution of flat buyer agreement.

IV. That after execution of flat buyer agreement, the complainant visited at the site of the project and noticed that there was no sign of construction and the land on which the project was to be developed was lying vacant, upon which the complainant confronted the respondent no. 1 and tried to enquire about the status of the project but the respondent no. 1 made no contact with the complainant and avoided any form of communication with the complainant.

V. That the complainant after being harassed and not getting any assurance and reply despite running from pillar to post for getting

any update about his unit and amount paid to the respondent no. 1, the complainant sent a legal notice dated 24.01.2019 to the respondent no. 1 and its directors for seeking refund of his amount paid by the complainant in lieu of the unit.

VI. That despite of serving legal notice, there was no reply from the respondent no.1 and subsequently the complainant gave a written complaint to the SHO, PS-Connaught Place, New Delhi against the respondent no. 1 and its directors upon which an FIR bearing no. 0037 dated 30.04.2019, U/s 420/406/120-B/34 IPC was registered at PS-Connaught Place, New Delhi against the respondent no. 1 and its directors.

VII. That after the registration of FIR, the respondent no. 1 approach the complainant for settlement and conveyed to the complainant that they could not start the construction of the project as they have revised the building plans of their project and will soon start the construction once the revised building plans are approved. That as per the settlement, the respondent no. 1 entered into a settlement agreement dated 20.08.2020 whereby the respondent no. 1 due to the revised building plan allotted three alternative units and one of the unit allotted is bearing no. LG-50, measuring 443 Sq. Ft. @ Rs. 9250/- per Sq. Ft. The said allotment was made in lieu of the same terms and conditions of the flat buyers agreement dated 07.02.2014.

VIII. That the respondent nos. 2 to 8 have got their license renewed from the Directorate of Town & Country Planning, Haryana vide

memo no. LC-1813/Asstt(MS)/2021/17894 dated 26.07.2021 on the ground that they could not start the construction as the respondent nos. 2 to 8 are in process of revising the approved building plans. That despite of the settlement agreement and revising of the building plans, the possession of the unit of the complainant has not been delivered by the respondent no. 1 and the project is extremely delayed and is far away from completion.

IX. That the complainant has abided by the terms and conditions of the agreement and have paid all his installments in a timely manner as and when demanded by the respondent no. 1 and no default was ever made on the part of the complainant and till date the complainant has paid a sum of Rs. 35,82,915/- which has been adjusted for the said re-allotted unit bearing no. LG-50, measuring 443 Sq. Ft. as per the settlement agreement dated 19.08.2020.

X. That as per clause15 of the flat buyers agreement, the respondent was under legal obligation to handover the possession of the unit to the complainant within 48 months from the date of execution of buyers agreement. That due to the personal disputes and interest relating to monetary greed among the respondent no. 1 (developer) and respondents no. 2 to 8 (landowners), the construction of the project is being hampered and the complainant has been trapped in the vicious circle of the personal disputes of the respondents without there being any fault on his part.

XI. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondents to deliver his

unit on time agreed. Therefore, respondents have forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on his part. The complainant being common person just made the mistake of relying on respondent no.1 false and fake promises, which lured him to buy a unit in the aforesaid project of the respondents.

XII. The cause of action accrued in favour of the complainant and against the respondents, when due to their personal disputes, the construction of the project was delayed, and the building plans were proposed to be revised by the respondents and further arose when the respondent no.1 failed to deliver the project as per its commitment and to pay the delayed possession charges to the complainants. The cause of action is continuing and is still subsisting on day-to-day basis.

C. The complainant is seeking the following relief:

6. The complainant has sought following relief(s):

I. Direct the respondent no. 1 to pay the delayed possession charges till valid offer of possession for the re-allotted unit bearing no. LG-50, along-with prevailing interest as per the provisions of the RERA Act.

II. Direct the respondents no. 2 to 8 being the license holders of the project, to complete the project and deliver the physical possession of the re-allotted unit to the complainant.

D. Reply filed by the respondents No. 2 to 8

7. The respondents had contested the complaint on the following grounds:

I. That the respondents 2 to 8 are the land-owning entity of the project in question. Schedule of the land is already on record with the complaint. That a licence bearing no. 24 of 2011 dated 24.03.2011 had been obtained by us for setting up a commercial colony of land measuring 3.7187 acres by the respondents 2 to 8 which was valid up to 23.03.2015. The license issued by the DTCP Haryana, Chandigarh is already on record with the complaint.

II. That the landowners, i.e. respondents 2 to 8, and the respondent no. 1 had entered into a collaboration agreement dated 24.06.2011 vide Vashika bearing number 8083, registered at the office of Sub Registrar, Gurugram. That this collaboration was executed with ISH Realtors Pvt. Ltd. (later changed to ISHV Realtors Pvt. Ltd.) as the developers through their directors Naveen Gambhir and Pankaj Gambhir. The directors were thereafter changed to Vivek Arora and Prashanta Arora and thereafter a new director Amit Yadav was introduced into the firm.

III. That in terms of the said collaboration agreement, it was agreed that the said developer shall be obligated and contractually bound to develop the said project by 24.01.2016. That at the time of execution of the collaboration agreement, the said developer had represented that it had reasonable expertise and considerable experience in developing and setting up a commercial complex. It was relying upon these representations that were entered upon in the said collaboration agreement.

IV. That as per the terms and conditions of the collaboration agreement, the developer was liable for getting the requisite permissions concerning the project and thereby the developer got the licence renewed on 26.07.2021. The renewed license is already on record with the complaint. That in fact the said developer had specifically assured us that all the stipulations, obligations, terms and conditions recorded in the agreement or provisions of law, rules, regulations, notifications, by laws applicable to the project or imposed by the competent authorities while granting letter of intent, license, license renewal, sanctioning of zoning plan approval of building plan shall be abide strictly by the developer during the subsistence of the agreement.

V. That after the renewal of licence, the landowners had signed and handed over the documents for change of developer but only for the reasons known to the developer the same was delayed for a long time and finally the change in developer was got done vide memo no. LC-1813/JE(RK)/2022/38141 dated 19.12.2022 of DTCP Haryana, Chandigarh. That after the change in developer, the developer had further applied for HARERA registration of the project and the same was obtained as registration no. 37 of 2023 dated 02.02.2023.

VI. That it remains an undeniable fact that the respondent no.2 to 8 have not received even a single rupee from any person alleging himself/herself or itself to be an allottee of any area in the project in question. That the respondent no.2 to 8 have had no concern with the said complainant, transactional or contractual, at any

point of time and further that none of us has made any sales whatsoever out of the area proposed to be developed and none of us have received any amount whatsoever from any person/entity towards the sale of any area to be developed in terms of the license mentioned in the preceding paragraphs.

VII. That the respondent no.2 to 8 have been subject of a preplanned fraud and conspiracy by the said developer. The said developer has kept us entangled last more than 12 years thereby depriving us of our own land as well as the benefits of the license no. 24 of 2011. Furthermore, we have suffered huge monetary losses as well. On the other hand, the said developer has not only defrauded us but has also violated the rules and regulations of the honourable authority as well as the said Act and those rules set by the Town & Country Planning Haryana. That the answering respondents have no role or responsibility with respect to the development or construction of the above said project.

VIII. That the builder buyer agreement mentioned in the complaint by the complainant had been entered into between the complainant and the respondent no. 1 and no sums/ amounts whatsoever have been received by the respondents 2 to 8 from the complainant. That as such, there is no legal or contractual relation between the complainant and the respondents, and the present complaint is bad for misjoinder of parties and is liable to be dismissed qua respondents as there is no privity of contract between the complainant and respondents no.1 and there is no deficiency whatsoever on part of respondents.

IX. That the flat/builder buyer agreement is executed between the complainant and the respondent no. 1 which clearly shows that the transaction and commitments made were between them and the respondents 2 to 8 were never party to the sale. Further, as prayed by the complainant in his complaint for completion and delivery of the project by the respondent number 2 to 8 is not feasible due to the capacity of the respondents 2 to 8 and the third-party rights created by the respondent no.1.

X. In fact, the respondents have also incurred huge losses on account of the inaction and omissions on behalf of respondent no. 1. The respondents have no liability whatsoever towards the complainant and cannot in any way, manner or form be held responsible for the actions/in-actions of respondent no. 1. There is no cause of action raised in respect of respondents as the respondents have never received any amounts whatsoever from the complainant and has no privity of contract with the complainant.

XI. Furthermore, the respondents had never published any advertisement in any newspaper inviting any proposal for commercial retail/shops/office/restaurant space by the name "Skyline 109".

8. The present complaint was filed on 03.10.2023 in the authority. The notice for hearing was duly served to respondent no. 1. On 02.02.2024 Shri Shankar Vig Advocate appeared on behalf of the respondent no. 1 and requested for a sought short adjournment for filing of reply. The said request was allowed, and the respondent was directed to file the reply in the registry along with a cost of Rs.5,000/- to be paid to the

complainant. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent no. 1. Thus, keeping in view the opportunity given to the respondent no. 1 and that despite lapse of more than one year, the respondent has failed to file the reply in the registry. Therefore, in view of the above-mentioned fact, the defence of the respondent no. 1 is hereby struck off by the authority.

9. Also, it is pertinent to mention here that the Act mandates that the Authority shall deal with the complaints as expeditiously as possible and shall dispose of the same within a period of sixty days from the date of receipt of such application/complaint and in case the time period is not adhered to, the Authority shall record the reasons in writing. The legislative intent for the said enactment is to provide speedy summary trial of the complaint filed by the complainant. The spirit and object of the benevolent legislation will be frustrated and defeated if the complaints filed are not disposed of expeditiously. The present matter is pending for more than 1 years. The pleadings are complete, there is no justification in adjourning the proceedings anymore.

10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. 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

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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

13. Section 11(4)(a) of the Act 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.*

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

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

F. Findings on the objections raised by the respondent.

Objection with regard to mis- joinder of respondent no. 2 to 8 in the complaint.

15. While filing the complaint, the complainant sought relief against ISHV Realtors Private Limited and 7 others being the developers of the project. On failure to fulfil their obligation to complete the project by the due date, the complainant approached the authority seeking relief of possession and delay possession charges against the allotted unit. A bare perusal of various documents placed on the record shows that respondents no. 2 to 8 are landowner. The buyer's agreement with regard to the allotted unit was executed between the complainant and respondent no. 1. Even after allotment and buyer's agreement, demands for various payments were raised against the allotted unit by respondent no. 1 only. Thus, it shows that there is no privity of contract between respondent no. 2 to 8 and the complainant and as such the plea of the respondent no. 2 to 8 with regard to misjoinder is valid and thus, would be justified to delete its name from array of party.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent no. 1 to pay the delayed possession charges till valid offer of possession for the re-allotted unit bearing no. LG-50, along-with prevailing interest as per the provisions of the RERA Act.

G.II Direct the respondents no. 2 to 8 being the license holders of the project, to complete the project and deliver the physical possession of the re-allotted unit to the complainant.

16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

17. Clause 15 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

> **15. POSSESSION**
>
> ***(a) Schedule for possession of the Unit***
>
> *That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) **within Four years from the date of this Agreement.** If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this*

Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient.

18. **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.*

19. 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.

20. 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., 07.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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;"*

22. 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.

23. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent no.1 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 dated 07.02.2014. By virtue of clause 15(a) of the buyer's agreement executed between the parties on 07.02.2014, the possession of the subject flat was to be delivered within a period of four years from the date of this agreement. Therefore, the due date of handing over possession comes out to be

07.02.2018. However, the respondent no.1 has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, it is the failure of the respondent no.1 to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

24. 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 no.1 is established. As such, the complainant/allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 07.02.2018 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

25. Further, the authority observes that the buyer's agreement executed between the complainant and the respondent no.1 was superseded by the settlement agreement executed inter se parties. Thus, by virtue of the settlement agreement dated 20.08.2020, the respondent no.1 is under an obligation to allot the unit bearing no. LG-50 at lower ground floor. In view of the above submissions, the respondent no.1 is directed to allot the unit bearing no. LG-50 to the complainant as per the

settlement agreement dated 20.08.2020 and is further directed not to create any third party right against the unit bearing no. LG-50.

H. Directions of the authority

26. 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 promoter as per the functions entrusted to the authority under section 34(f) of the Act:

i. The respondent no.1 is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 07.02.2018 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

ii. The arrears of such interest accrued from 07.02.2018 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.

iii. The respondent no.1 shall handover possession of the shop/unit as agreed by the respondent no.1 in terms of the settlement agreement dated 20.08.2020 executed inter se parties in terms of section 19(10) of the Act and is further directed not to create any third party right against the said unit.

iv. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the builder buyers agreement.

vi. The rate of interest chargeable from the allottee(s) 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 promoter shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vii. It is also noted by the Authority that the project of the respondent falls under the category of 'ongoing projects' under section 3(i) of the Act of 2016. The promoter has prima facia violated the above provision of the Act,2016 and is liable to be proceeded against under section 59 of the Act, 2016. The Planning branch of the Authority is directed to initiate action against the promoter in this regard within 30 days of passing of this order.

27. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.

28. Complaint as well as applications, if any, stands disposed off accordingly.

29. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.02.2025