

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

Complaint no. : 1042 of 2024  
Date of filing complaint: 22.03.2024  
Date of Decision: 14.02.2025

1. Rajiv Chaturvedi  
2. Rohit Chaturvedi  
**Address:-** House no. 75, C-2 C, Pocket 2, Janakpuri,  
New Delhi - 110058

**Complainants**

**Versus**

Chintels India Private Limited  
**Registered office:** A-11, Kailash Colony,  
New Delhi - 110048  
**Corporate-Office:** Chintels Corporate Park,  
Near Chintels Chowk, Sector 114,  
Gurugram-122017

**Respondent**

**CORAM:**

Shri Arun Kumar

**APPEARANCE:**

Sh. Harshit Goyal (Advocate)

Sh. Shubhum Dayma (Advocate)

**Chairman**

**Complainants**

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 allottees as per the agreement for sale executed inter se.

#### A. Unit and project related details

- The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	Chintels Serenity, Sector- 109, Gurugram Haryana
2.	Project area	20.169 acres
3.	Nature of the project	Group Housing complex
4.	DTCP license no. and validity status	50 of 2012 dated 17.05.2012 valid upto 16.05.2025 250 of 2007 dated 02.11.2007 valid upto 01.11.2019
5.	RERA Registered/ not registered	Registered Vide 125 of 2017 dated 28.08.2017 valid upto 31.12.2018
6.	Date of allotment	15.12.2020 [Page 22 of complaint]
7.	Date of BBA	12.11.2021 [Page 26 of complaint]
8.	Unit no.	T6-001, GF, Tower-T6 [Page 30 of complaint]
9.	Area of the unit	2100 sq. ft. (Super area) 1132 sq. ft (Carpet area) [Page 30 of complaint]
10.	Possession clause	<b>Clause 7. POSSESSION OF THE APARTMENT/PLOT</b> <b>7.1 Schedule for possession of the said-</b> <i>The promoter agrees and understand that timely delivery of possession of the</i>



		<p>apartment to the allottee and the common areas to the association of allottees or the competent authority is the essence of agreement. The promoter assures to handover possession of the apartment along with parking in <b>18 months from the date of booking with 6 months of grace period as per agreed terms and condition</b>, however it has been informed to the allottee that the promoter have declared before RERA the date of completion of entire project is December 2023 unless there is a delay or failure due to war flood road fire earthquake or any other calamity caused by nature affecting the regular development of the real estate project.</p> <p style="text-align: right;"><b>(Emphasis supplied)</b> [Page 35 of compliant]</p>
11.	Due date of possession	<p>15.12.2022</p> <p>[due date of possession is calculated from the date of allotment i.e. 15.12.2020]</p> <p>Note:- Grace period is included being unqualified and unconditional</p>
12.	Total sale consideration	<p>Rs. 1,41,75,000/-</p> <p>[Page 30 of compliant]</p>
13.	Amount paid by the complainant	<p>Rs. 55,00,000/-</p> <p>[Page 60 of compliant]</p>
14.	Occupation certificate received on	N/A
15.	Offer of Possession Note:- without obtaining OC	<p>01.02.2022</p> <p>[Page no. 19-20 of the reply]</p>
16.	Demand letters/reminders sent by the respondent	<p>15.12.2020, 23.12.2020, 07.08.2021, 04.09.2021, 16.10.2021, 19.11.2021, 24.01.2022, 16.05.2023, 18.12.2023, 19.12.2023</p>

**B. Facts of the complaints:**

3. The complainants have made the following submissions in the complaint: -
- a. That the complainants are the innocent allottees of the real estate project "Chintels Serenity Phase II" developed by respondent company. The respondent company had obtained License No. 250 of 2007 and License No 50 of 2012 from Director of Town and Country Planning Department Haryana for development of real estate project in question.
  - b. On basis of assurance of timely delivery of possession, the complainants submitted an Application Form for booking of Unit No. T6-001 at Tower 6, Chintels Serenity Phase II situated at Sector 109, Gurugram. The respondent company had issued allotment letter dated 15.12.2020 in favour of complainants in respect of booked unit.
  - c. The builder buyer agreement was duly executed between the complainants and the respondent company on 12.11.2021 and registered with sub registrar office in respect of the subject unit. As per clause 7.1 of the builder buyer agreement dated 12.11.2021, the respondent was liable to deliver possession of the said unit along with car parking within a period of 18 months from the date of booking. As the date of booking/ allotment was 15.12.2020, therefore the due date of delivery of possession is calculated as 15.06.2022.
  - d. The respondent company failed to offer lawful and legal



possession of the booked unit along with occupation certificate till date. The respondent company has also failed to pay accrued delayed possession charges in respect of booked unit.

- e. The respondent company has issued Show Cause Notice dated 05.01.2024 which is illegal, unlawful and void as the said Show Cause Notice wrongly mentions about Construction Linked Payment Plan. As per schedule IV of builder buyer agreement dated 12.11.2021 time linked payment plan was agreed inter se parties.
- f. The respondent company had failed to incorporate respondent liability for payment of accrued delayed possession charges for the period of delay in delivery of possession counted from 15.06.2022 continuing till date in Demand Letter attached with the said Show Cause Notice.
- g. The complainants sent the Protest Reply dated 03.02.2024 to Show Cause Notice dated 05.01.2024 vide Courier dated 03.02.2024 bearing Consignment Number Z34850686 through DTDC Express Limited and also vide Indian Speed Post dated 05.02.2024 bearing Consignment Number as EH338100956IN. However, respondent company failed to reply to same till date. The complainants are ready and willing to make complete balance sale consideration on issuance of Lawful and Legal Possession Offer Letter along with Occupation Certificate and Corrected Legal Demand Letter.
- h. That the complainants have invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent. However, the respondent

has failed to abide by all the obligations stated orally and under the Builder Buyer Agreement duly executed between both the parties.

- i. Therefore, the present complainants are forced to file present complaint before this Authority under Section 31 of Act, 2016 read with Rule 28 of Rules, 2017 to seek redressal of the grievances against the respondent company.

**C. Relief sought by the complainants:**

4. The complainants have filed the present complaint<sup>ain</sup> for seeking following reliefs:

- i. Direct the respondent to pay delayed possession charges at the prescribed rate accrued from due date of possession of 15.06.2022 till date of issuance of offer of possession along with occupation certificate.
- ii. Direct the respondent to deliver possession of the booked unit along with occupation certificate.
- iii. Direct the respondent to execute and register the conveyance deed of the booked unit.

5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by respondent:**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:-
  - a. That the complaint merit no response from the respondent as the same does not pertain to the 'facts-in-issue' of the instant case,



however, the same is wrong, baseless and misconceived in so far as any reliance is placed on the same to allege any violation by the respondent under the Act, to warrant the grant of reliefs as prayed in the instant complaint.

- b. That the due date for delivery of possession under clause 7.1 of the BBA was to be computed w.e.f.15.06.2022 18 months from the date of booking with a further 6 months grace period. Hence, the due date was 15.12.2022.
- c. That the complainants have defaulted on their payment and accordingly as per clause 9.3(i) of the BBA, the complainants have defaulted in their obligations, a consequence whereof is the cancellation of allotment under clause 9.3(ii) of the BBA. That the complainants have committed default under clause 9(3)(i) of the BBA, and accordingly their allotment is liable to be cancelled. Hence, no question of possession or delay possession charges arises in favour of the complainants.
- d. Even as per the admitted position of the complainants, they were liable to pay Rs. 44,65,625/- as on 14.01.2021, i.e., within 30 days of booking, yet an amount of Rs. 4,53,500/- stood pending for payment on the part of the Complainants. Further, as per the admitted position of the Complainants, they were liable to pay Rs. 74,41,875/- as on 13.02.2021, i.e., within 60 days of booking, yet the entire due amount of Rs. 74,41,875/- stood pending for payment on the part of Complainants. That as has been explained in the foregoing paragraphs, any default in payment of the amounts due and payable as per the payment plan opted for by the Complainants (as provided under Schedule-IV of the BBA) would amount to an event of default

under clause 9(3)(i) of the BBA and consequences as provided under clause 9(3)(ii) of the BBA would follow.

- e. That the complainants have approached this authority with unclean hands and the instant complainant deserves to be dismissed with exemplary costs.
7. 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.
8. 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.

**E. Jurisdiction of the authority:**

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

10. 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**

11. 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;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

12. 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 relief sought by the complainant**

- F.I Direct the respondent to pay delayed possession charges at the prescribed rate accrued from due date of possession i.e., 15.06.2022 till date of issuance of offer of possession along with occupation certificate.
- F.II Direct the respondent to deliver possession of the booked unit along with occupation certificate.

F.III Direct the respondent to execute and register the conveyance deed of the booked unit.

13. In the present complaint, the complainants intend to continue with the project and are 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."***

14. Clause 7 of the buyer's agreement provides for handing over of possession and is reproduced below:

**Clause 7. POSSESSION OF THE APARTMENT/PLOT**

***7.1 Schedule for possession of the said-*** The promoter agrees and understand that timely delivery of possession of the apartment to the allottee and the common areas to the association of allottees or the competent authority is the essence of agreement. The promoter assures to handover possession of the apartment along with parking in **18 months from the date of booking with 6 months of grace period as per agreed terms and condition**, however it has been informed to the allottee that the promoter have declared before RERA the date of completion of entire project is December 2023 unless there is a delay or failure due to war flood road fire earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

15. **Due date of possession and admissibility of grace period:** As per clause 7 of buyer's agreement dated 12.11.2021, the respondent-promoter proposed to handover the possession of the said unit within a period of 18 months from the date of booking i.e. 15.12.2020 within 6 months of grace period as per agreed terms and condition. Therefore, the due date shall be calculated from the date of booking i.e., 15.12.2020.



The due date of possession comes out to be 15.12.2022 including grace period.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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., 14.02.2025 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 complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which the same is as is being granted to them 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 buyer's agreement executed between the parties on 15.12.2020, the possession of the subject apartment was to be delivered within a period of period of 18 months from the date of booking i.e., 15.12.2020. The due date of possession is calculated from the date of booking i.e., 15.12.2020 plus 6 months grace period which comes out to be 15.12.2022. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Also, it is pertinent to mention here that offer of possession vide letter dated 01.02.2022 is not valid in the eyes of law as the respondent has not obtained OC from the competent authority till date.



22. Accordingly, it is the failure of the respondent 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.
23. 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 complainants/allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.12.2022 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.
- F.III Direct the respondent to execute and register the conveyance deed of the booked unit.**
24. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
25. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

***"Section 17: - Transfer of title***

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of*



*the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.*

The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The respondent is directed to get the conveyance deed executed within 3 months from the date of issuance of OC on payment of stamp duty and registration charges if not paid.

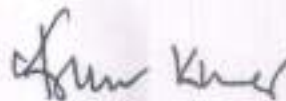
**G. Directions of the Authority:**

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent 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., 15.12.2022 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 15.12.2022 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.



- iii. Further, the respondent is directed to handover the physical possession of the subject unit complete in all respects as per specifications mentioned in BBA and after receipt of OC/CC as per provisions of section 17 of the Act on making due payment by the allottee, if any, and thereafter, the complainants are obligated to take the possession of the subject unit within 2 months as per section 19 (10) of the Act, 2016.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to not to charge anything which is not part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
27. Complaint stands disposed of.
28. File be consigned to the registry.

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2025