

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

Complaint no. : 7687 of 2022
Date of filing : 20.12.2022
Date of Decision : 24.01.2025

Sheenu Malhotra

Address: 1632, SP. Mukherjee Marg,
New Delhi-110006.

Complainant

Versus

1. M/s/ Ansal Housing Limited

Address: - Floor-2nd, Ansal Plaza, Sector-1,
Near Vaishali Metro Station, Ghaziabad,
Uttar Pradesh-201010.

Respondent no.1

2. M/s. IshKripa Properties Private Limited

Address:- Sidhartha House, Floor-5th,
Plot no. 6, Sector-44, Gurugram.

Respondent no.2

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Priyanka Agarwal (Advocate)

Sh. Amandeep Kadyan

None

Complainant
Respondent no.1
Respondent no. 2

ORDER

1. The present complaint dated 20.12.2022 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it

is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S.N.	Particulars	Details
1.	Project name and location	"Estella", Sector 103 Gurugram
2.	Nature of project	Group Housing Project
3.	RERA registered/not registered	Not registered
4.	Transfer of unit in favour of complainant from previous allottee	14.06.2011 (page no. 50 of complaint)
5.	Date of builder buyer agreement	03.10.2012 (page no. 26 of complaint)
6.	Unit no.	K-0803 (page no. 31 of complaint)
7.	Area admeasuring	1330 sq. ft. (page no. 31 of complaint)
8.	Possession clause	30 The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of Agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for



		commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 36 months as above in offering the possession of the Unit. <i>(Emphasis supplied)</i>
9.	Due date of possession	03.04.2016 (36 months from the date of agreement i.e 03.10.2012 as the date of construction is not on record plus 6 months grace period allowed being unqualified)
10.	Total sale consideration	Rs. 43,41,250/- (as per payment plan on page no. 47 of complaint)
11.	Paid up amount	Rs. 30,33,261/- (as stated by the complainant at page 5 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not Offered

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:
 - I. That the previous buyer's booked a 2 BHK flat admeasuring 1330 sq. ft. in the residential project "Ansal Sidharthas Estella", Sector 103, Gurugram, Haryana. As per the transfer letter dated 14.06.2011, the initial booking amount of Rs.6,53,403/-was paid by the previous allottee and the same was endorsed by respondent in the favour of complainant.

A



- II. That the apartment buyer agreement dated 03.10.2012 was executed between M/s Ansal Housing Ltd. & M/s Ish Kripa Properties Pvt. Ltd. and complainant. The respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compounded rate of 24% for any delay in payment.
- III. That as per clause 23 of the apartment buyer agreement, the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement, if buyer failed to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.
- IV. That the total cost of the unit was Rs.43,41,250/- and a sum of Rs.30,33,261/- has been paid by the complainant in time bound manner till date. That the respondent through fraudulent means coerced the complainant to pay Rs.30,33,261/- by 25.05.2017. The respondent declined to complete the project after collecting money and there has been no progress in construction from 2015 onwards.
- V. That the the apartment buyer agreement was executed on 03.10.2012. As per the apartment buyer agreement, the respondent was liable to offer possession on before 03.04.2016.
- VI. That as the delivery of the apartment was due on 03.04.2016 which was prior to the coming into of force of the GST Act, 2016 i.e. before July, 2017, it is submitted that the complainant is not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainant but just reversed builder collected the GST from

complainants and enjoy the input credit as a bonus, this is also matter of investigation.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

- I. Direct the respondent to pay interest for every month of delay @ 24% p.a. from due date of possession till the handing over of the physical possession of the unit.
 - II. Direct the respondent to complete the project immediately and hand over the possession of the flat with all the basic amenities mentioned in the brochure.
 - III. Direct the respondent to quash the one sided clauses from the apartment buyer agreement.
 - IV. Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.
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 to plead guilty or not to plead guilty.

D. Reply filed by the respondent no.1.

6. The respondent no.1 has contended the complaint on the following grounds:
- I. That the complainant approached the respondent for transferring of 2BHK flat admeasuring 1330 sq. ft. in the project "Estella", Sector 103, Gurugram. That the apartment buyer agreement was executed on 03.10.2012.
 - II. That the current dispute cannot be governed by the RERA Act, 2016



because of the fact that the apartment buyer agreement was signed between the complainant and the respondent in the year 2012. The regulation at that concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.

- III. That the respondent had obtained all necessary approvals from the concerned authorities. The environmental clearance for the project was obtained by the respondent on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.
- IV. That the apartment buyer agreement provides for such eventualities and the cause of delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. The complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and Covid-19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- V. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be

A

decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Exparte against respondent no. 2

7. The authority observes that the present complaint was filed on 20.12.2022. The counsel for the respondent no. 2 neither appeared nor filed the reply in the complaint. Despite specific directions, vide proceedings dated 07.04.2023, 01.09.2023, 15.09.2023, 15.12.2023, 29.03.2024, 26.07.2024 it failed to comply with the orders of the authority. It shows that the respondent no.2 was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that it has nothing to say in the present matter and accordingly the authority proceeds with the case exparte against respondent no. 2.

F. Jurisdiction of the authority:

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

F.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject-matter jurisdiction

A

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

Section 11(4)(a)

Section 11

.....

(4) The promoter shall-

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the objections raised by the respondent no. 1:

G.I Objection regarding jurisdiction of the complaint w.r.t the builder buyer agreement executed prior to coming into force of the Act.

12. The respondent no. 1 submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the builder buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

13. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements

would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 and which provides as under:

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

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

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

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into

operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

G.II Objections regarding force majeure circumstances.

16. The respondent -promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. In the present matter the apartment buyer agreement was executed interse parties on 03.10.2012 and as per the possession clause 30 of the agreement the respondent-developer proposes

to handover the possession of the allotted unit within a period of 36 months from the date of execution of agreement or from date of approval of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. In the present case, the date of commencement of construction is not available on records therefore, due date is calculated from the date of execution of agreement i.e., 03.10.2012. Further, as per clause 30, there shall be additional grace period of 6 months which is allowed. Hence, the due date of possession comes out to be 03.04.2016. The events such as various orders by Punjab and Haryana High Court and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than eight years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

H. Findings of the authority on relief sought by complainant.

- i. Direct the respondent to pay interest for every month of delay @ 24% p.a. from due date of possession till the handing over of the physical possession of the unit.**
- ii. Direct the respondent to complete the project immediately and hand over the possession of the flat with all the basic amenities mentioned in the brochure.**

A

17. Since both the reliefs are interconnected, they are being dealt together. In the present complaint, the complainant booked an apartment in the project "Ansal Estella" being developed by the respondent no.1 i.e., M/s Ansal Housing & Construction Ltd. The apartment buyer's agreement was executed between the parties on 03.10.2012 in respect of unit bearing no. K-0803 admeasuring 1330 sq. ft. of sale area. The total sale consideration of the apartment was Rs.43,41,250/-. As per clause 30 of the apartment buyer's agreement dated 03.10.2012, the respondents undertook to offer possession of the unit to the complainant within 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approvals necessary for the commencement of the construction, whichever is earlier. The respondents failed to put on record the documents wherein from the Authority can determine the dates as to when the necessary sanctions were granted in favour of the respondents for necessary construction. The Authority have calculated 36 months from the date of execution of the agreement. The agreement was executed between the complainant and the respondents on 03.10.2012, 36 months from 03.10.2012 expired on 03.10.2015. Further an unqualified grace period is agreed between the parties to be granted to the respondents over and above the period of 36 months in offering possession of the unit. Thus, the due date for handing over of possession of the unit to the complainant comes out to be 03.04.2016. The respondents have failed to obtain the occupation certificate from the competent authorities till date.
18. The complainant is seeking delayed possession charges along with interest on the amount paid. Clause 30 of the apartment buyer agreement (in short,

agreement) provides for handing over of possession and is reproduced below: -

30. The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of this Agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 36 months as above in offering the possession of the Unit.

19. 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.

20. 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.

21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on

date i.e., **24.01.2025** is 9.10%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 11.10%.

22. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

(ii) the interest payable by the promoter to the allottees shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondents which the same is as is being granted to the complainant in case of delayed possession charges.

24. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondents is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the apartment buyer agreement executed between the parties on 03.10.2012. As per the clause 30 of the apartment buyer agreement dated 03.10.2012, the possession of the booked unit was to be delivered within 36 months from the date of execution of the agreement or within 36 months from the date of obtaining

all the required sanctions and approvals necessary for the commencement of the construction, whichever is earlier. The date of commencement of construction is not available on records therefore, due date is calculated from the date of execution of agreement i.e., 03.10.2012. Further, as per clause 30, there shall be additional grace period of 6 months which is allowed. Hence, the due date of possession comes out to be 03.04.2016. Till date no occupation certificate has been obtained by the respondents. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

25. Accordingly, 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 respondents is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainant to the respondents from the due date of possession i.e., 03.04.2016 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
26. The respondents are also directed to handover possession of the subject unit allotted to the complainant after completion of the unit in terms of buyer's agreement within a period of 60 days and after obtaining valid occupation certificate.
- iii. Direct the respondent to quash the one sided clauses from the apartment buyer agreement.**

27. The complainant in the present complaint has raised a plea that the respondent as per clause 23 and 24 is charging interest at the rate of 24% p.a. from the complainant and if the complainant fails to pay within stipulated time it could cancel the agreement and forfeit the earnest money. Therefore, the said clauses are one sided and in the favour of respondent. The Authority observes that Section 2(za) of the Act of 2016 is relevant and reproduced hereunder for ready reference:

(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;

28. The Authority is of the view that the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate by the respondent/promoter which is the same rate of interest which the promoter 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. The respondent is further directed not to charge anything which is not part of apartment buyer's agreement

iv. Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

29. The complainant has sought the relief with regard to input tax credit to the complainant and charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below.

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax

A

credit shall be passed on to the recipient by way of commensurate reduction in prices."

30. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. In the event, the respondents has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondents.

I. Directions of the authority

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

- i. The respondents are 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 the due date of possession i.e., 03.04.2016 till the valid offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondents are directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the

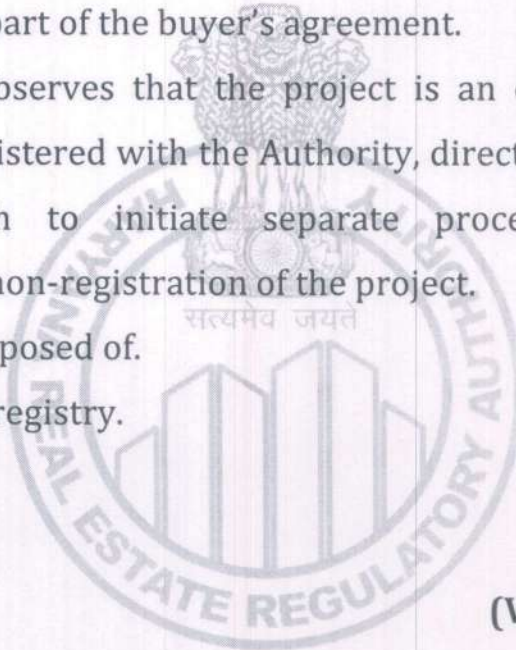


respondents, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.

- iv. The respondents are directed to handover possession of the unit allotted to the complainant after completion of the unit in terms of buyer's agreement and after obtaining occupation certificate.
- v. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement.
- vi. The Authority observes that the project is an ongoing and still the project is not registered with the Authority, directions are issued to the Planning Branch to initiate separate proceedings against the respondents for non-registration of the project.

32. Complaint stands disposed of.

33. File be consigned to registry.



v.l. 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2025

HARERA
GURUGRAM