

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

Date of order: 20.03.2025

NAME OF THE BUILDER		M/s Aster Infrahome Pvt. Ltd.
PROJECT NAME		"Green Court"
S. No.	Case No.	Case title
1.	CR/1332/2023	Atul Makkar V/S M/s Aster Infrahome Pvt. Ltd.
2.	CR/1333/2023	Kiran Makkar V/S M/s Aster Infrahome Pvt. Ltd.
3.	CR/3957/2023	Vaibhav Agarwal V/S M/s Aster Infrahome Pvt. Ltd.

CORAM:

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Mohit Dua

Shri Shankar Wig

Advocate for complainant

Advocate for respondent

ORDER

1. This order shall dispose of all the complaints titled as above filed before the 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") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations,



responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Green Court**" **Sector-90** being developed by the same respondent/promoter i.e., **M/s Aster Infrahome Pvt. Ltd.** The terms and conditions of the Buyer's Agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and other certain issues.
- The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		Aster Infrahome Pvt. Ltd. "Green Court", Sector-90, Gurugram.			
Occupation Certificate: - 17.11.2022					
Possession Clause: - Clause 8 (a)					
<i>Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environmental clearance whichever is later (hereinafter referred to as the "Commencement Date").</i>					
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Due date of possession	Sale Consideration/Total Amount paid by the complainants in Rs.	Offer of possession
1.	CR/1332 /2023 Atul Makkar V/S	1304, Floor-13 th , Tower-K Area: 526 sq. ft. (carpet area)	12.01.2020 (Calculated from the date of environment	SC: - Rs.21,54,000/- (Page 15 of complaint) *Note: consideration inadvertently mentioned as Rs.16.31.897/- during Sale as	O.P: 24.11.2022 [submitted by respondent during proceedings dated 20.03.2025]

	M/s Aster Infrahome Pvt. Ltd. D.O.F. 21.03.2023 Reply: 25.08.2023	(Page 14 of complaint)	clearance i.e. 12.01.2016)	proceedings dated 20.03.2025	
2.	CR/1333/2023 Kiran Makkar V/S M/s Aster Infrahome Pvt. Ltd. D.O.F. 21.03.2023 Reply: 25.08.2023	511, Floor-5 th , Tower- H Area 336 sq. ft. (carpet area) (Page 12 of complaint)	12.01.2020 (Calculated from the date of environment clearance i.e. 12.01.2016)	SC: - Rs.14,83,000/- (Page 120 of reply) AP: - Rs.13,91,999/- (As mentioned in SOA at page 120 of reply)	O.P: 24.11.2022 (Page 43 of complaint)
3.	CR/3957/2023 Vaibhav Agarwal V/S M/s Aster Infrahome Pvt. Ltd D.O.F. 25.08.2023 Reply: 29.02.2024	305, Floor-3 rd , Tower- B Area 526 sq. ft. (carpet area) (Page 50 of complaint)	12.01.2020 (Calculated from the date of environment clearance i.e. 12.01.2016)	SC: - Rs.25,26,118/- (Page 95 of complaint) AP: - Rs.22,47,796/- (Page 95 of complaint)	O.P: 24.11.2022 (Page 93 of complaint)

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form.

DOF- Date of Filing

SC- Sale consideration

AP- Amount paid

O.P.: Offer of Possession

The complainants in the above complaints have sought the following relief:

1. Direct the Respondent to make the payment on account of delayed possession charges @ 10.40% as per RERA Act, from due date of possession i.e., 12.01.2020 till actual handing over of possession.
2. Direct the respondent not to charge the holding charges or maintenance charges.
3. Direct the respondent to charge delay payment, if required at equitable rate of interest.

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4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the above-mentioned complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1332/2023 titled as Atul Makkar v/s M/s Aster Infrahome Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges.

A. Unit and project related details.

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

S. No.	Particulars	Details
1.	Name of the project	"Green Court", Sector 90, Gurugram, Haryana.
2.	Nature of the project	Affordable Group Housing Colony
3.	RERA registered or not	Registered vide no. 137 of 2017 dated 28.08.2017 valid up to 22.01.2020
4.	Unit no.	1304, 13 th floor, Tower- K (Page no. 14 of the complaint)
5.	Unit area	526 sq. ft. (Page no. 14 of the complaint)
6.	Allotment letter	20.08.2015 (Page no. 123 of the reply)
7.	Date of execution of buyer's agreement	25.02.2016 (Page no. 11 of the complaint)
8.	Possession clause	Clause 8(a) <i>Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof.</i>

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		<i>including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environmental clearance whichever is later (hereinafter referred to as the "Commencement Date")</i> (Page no. 20 of the complaint)
9.	Building Plan	22.10.2014 (Taken from CR/3244/2021 of same project)
10.	Environment Clearance	12.01.2016 (Taken from CR/445/2024 of same project)
11.	Due date of possession	12.01.2020 [calculated from the environment clearance being later]
12.	Basic sale consideration	Rs.16,31,897/- (As per SOA dated 23.11.2022 at page no. 41 of the complaint)
13.	Total amount paid	Rs.21,54,000/- (As per SOA at page no. 120 of the reply)
14.	Occupation certificate	17.11.2022 (As on page 116 of reply)
15.	Offer of possession	24.11.2022 (submitted by respondent during proceedings dated 20.03.2025)

B. Facts of the complaint:

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

- I. That somewhere in Jan-2015, the respondent advertised about its new Affordable Group Housing Colony Project namely "Green Court" in Sector 90, Gurugram, Haryana. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing group housing colony which inter - alia comprises of residential floor space, car parking space, recreational facilities, landscaped gardens.
- II. That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 27.01.2015, the complainant applied for an allotment through draw of a residential unit in the said project through



- application for draw vide receipt no. '003345'. Thereafter, the respondent allotted the unit bearing no. flat no. 1304, situated on 13th floor in tower-K having carpet area of 526 sq. ft. and balcony area of 100 sq. ft. in the said project.
- III. After almost 1 year from the date of application for the unit, finally, on 25.02.2016, the buyer's agreement was executed between the complainant and the respondent of the said unit. The complainant had already made a payment amounting to Rs.8,07,751/- from the date of booking till execution of agreement in accordance with the demands of the respondent.
- IV. That believing on the respondent representation the complainant kept on making payment as and when demanded by the respondent. Till date the complainant has paid a total sum of Rs.25,27,249/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs.25,26,806/-.
- V. As per clause 8(a) of the said buyer's agreement dated 25.02.2016, the respondent proposed to offer the possession of the unit in question to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later, i.e., by 12.01.2020 as the respondent company has received the approval of building plan on 22.10.2014 and environment clearance from the concerned department on 12.01.2016 vide Minutes of the 86th meeting of State Environment Impact Assessment Authority held on. 12.01.2016, under the Chairmanship Sh. Bharat Bhushan IAS (Retd.), Chairman, SEIAA held in the meeting room of office of SEIAA Haryana, Sector-2 Panchkula, regarding Environmental Clearance under EIA Notification dated 14.9.2006.
- VI. Subsequently, the complainant kept making calls, requests and through several meetings kept inquiring as to when will the respondent deliver the project but the respondent's representatives never furnished a concrete answer to the same. The complainant time and again contacted the

respondents expressing his concern over the delay in project and seeking an explanation from the respondent for the same, but to no avail.

- VII. As per clause 8(a) of the agreement, the due date of possession comes out to be 12.01.2020. However, the respondent failed in handing over the same. The complainant approached the project location several times during the said period to see the stage of construction but the project was nowhere near completion. The complainant, subsequently approached the respondent representatives to know about the date of handing over of possession but to the utter shock of the complainant, the respondent refrain from replying to the same.
- VIII. Though the booking of the said unit was made in 2015 and further the builder buyer agreement was executed in 2016 and as per the said builder buyer agreement the unit in question was supposed to be handed over by 12.01.2020, but till the due date of possession the project was nowhere nearing completion. Upon this, the complainant asked the respondent as to the date of handing over, but to no avail as no concrete reply was given by the said respondent. Thereafter, the complainant kept contacting the respondent on several occasions seeking an update on the construction status and if the requisite sanctions and approvals had been obtained, but all in vain.
- IX. After a delay of almost 3 years, on 24.11.2022, the respondent issued the letter of registration of subject unit along with demand letter of Rs. 2,78,322/- wherein the respondent has offered to take the possession of the unit upon which the complainant protested to the respondent that they issued the said letter of possession after 3 years from the due date without any justified reasons and the delay has caused hardship upon her, the wait of 3 years is not a short period.
- X. Upon receipt of said notice, the complainant immediately arranged funds and ready to make the remaining payment in order to avoid imposition of any

delayed payment charges or holding charges and visited the respondent's office to complete necessary documentary formalities and take possession of their unit. However, much to the dismay of the complainant, the respondent sought a time of 2 months in order to furnish the unit. Thereafter, the complainant throughout this period, regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false and vague assurances that the possession of the flat would be delivered soon and kept on prolonging the matter unjustifiably without any convincing reason thereby inflicting great mental agony and hardship upon the complainants in order to impose delayed payment charges or holding charges or maintenance charges as per the clause 8 (b) of the buyer's agreement. However, the complainant vide email dated 03.12.2022 had also requested the respondent to share the copy of occupation certificate as obtained by the complainant from the concerned department but the said request of the complainant remains unheard. It is further to note that no offer of possession can be made to the allottee without obtaining occupation certificate from concerned department. The said act of the respondent is illegal, arbitrary and has been done with malafide intention.

- XI. The complainant requested the respondent officials to make the payment of delay possession charges from due date of possession till actual handing over of possession as per buyer's agreement as the construction of the unit got delayed beyond the period as agreed in buyer's agreement. But the respondent clearly refused to make the payment on account of delay possession charges as per buyer's agreement.
- XII. Under clause 4 (b) of the buyer's agreement, upon delay payment by the allottee, the respondent can charge @15% per annum from the due date, applicable for the period of delay, however, on account of delay in handing

over of possession by the respondent is liable to pay delayed possession charges for every month of delay at the same interest rate at which he charged interest on account of delayed payment by the complainant as held by the Hon'ble NCDRC in the case titled as *Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)* as also in the judgment of Hon'ble Supreme Court in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*.

- XIII. That the respondent had made representations and tall claims that the project will be completed on time. On the contrary, the respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the complainant for so many years thereby causing wrongful loss to the complainant and wrongful gain to the respondent.
- XIV. That the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the said unit, the respondent had failed in providing the same.
- XV. Accordingly, the complainant(s) are entitled to get interest on the paid amount along with interest at the rate as prescribed by the Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession.

C. Relief sought by the complainant:

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

- i. Direct the respondent to make the payment on account of delayed possession charges @ 10.40% as per RERA Act, from due date of possession i.e., 12.01.2020 till actual handing over of possession.
- ii. Direct the respondent not to charge the holding charges or maintenance charges.
- iii. Direct the respondent to charge delay payment, if required at equitable rate of interest.

D. Reply by respondent:

9. The respondent has made following submissions:

- I. That the complaint filed by the complainant is a misuse of process of law and is misconceived one, hence it is liable to be dismissed out rightly. The complainant has suppressed true and material facts from this Hon'ble Forum and has not placed exact version and material facts before this Hon'ble Forum. The present complaint is based on false, frivolous and baseless facts and is devoid of any valid cause of action or true grievance qua the opposite party.
- II. That the complainant is estopped from filing the present complaint by his own acts, conduct, admissions, commissions, omissions, acquiescence and latches.
- III. That the complainant has not approached this forum with clean hands. complainant is not ready to understand the ongoing situation of pandemic as well as economic slowdown which resulted in delay in completion of project. The matter in dispute does not fall within the purview of Consumer Protection Act. The complainant had booked the flats for speculative purposes and to gain premium over the same, hence the present complaint is not maintainable before this Hon'ble Forum and is liable to be dismissed.
- IV. Due to reasons beyond the controls of respondent company, the delay occurred and still in hard stuck situation after covid- 19, is standing in all respect to complete the project soon as possible. There is no negligence or any unfair trade practice in order to dupe the hard-earned money of the complainant on the part of respondent company.
- V. That the complainant was informed about the terms and conditions of Buyer's agreement at the time of booking of the said unit and that said agreement was signed by the complainant after understanding each and every clause, no harassment caused to complainant.
- VI. Due to reasons beyond the controls of respondent company, the delay occurred and still in hard stuck situation after covid-19, is standing in all respect to complete the project soon as possible.

VII. That the Hon'ble court of Smt. Sakshi Saini, Learned Civil Judge, Gurugram was pleased to grant date of offer of possession as July 2021. Copy of the order is attached herein with. The contention of the date of possession taken by Learned Civil Judge, Gurugram on the basis of certain documents & figures after obtaining the confirmation from the said department. The Learned Civil Judge has taken the date of establishment as date of commencement of project after having going through the order of this Authority, Gurugram vide complaint No. 3244 of 2021 wherein it has been confirmed by Learned Authority that start date of construction of the project as 06.05.2016 (Consent to Establishment) & after that 13 months grace period was given by the Learned Court of Civil Judge on the basis of certain notification by Govt. of Haryana considering it as moratorium period of 11 months and it is not out of point to mention that Learned Civil Judge has given 94 days grace period also on the basis of judgement of Apex Court and NGT.

VIII. In the above aforesaid premises and in the interests of Justice, it is therefore most respectfully prayed that the complaint filed by the complainant may kindly be dismissed with heavy costs holding the same as devoid of merit and abuse of the process of law and the complaint may be directed to withdraw the complaint. It is prayed accordingly.

10. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

13. 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

14. 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;

15. 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 objections raised by the respondent.

F.I Objection regarding delay due to covid-19 circumstances.

16. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions lockdown due to outbreak of Covid-19 pandemic. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 (four) years from the date of approval of building plans or grant of environmental clearance whichever is later. In the present case, the date of approval of building plan is 22.10.2014 and date of environment clearance is 12.01.2016 as taken from the other matters of same project. The due date is calculated from the date of

environment clearance being later, so, the due date of subject unit comes out to be 12.01.2020.

17. As, observed by Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020:*

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The 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."

18. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 12.01.2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was 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 before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.
19. In view of the above, the objection raised by the respondent to extend the due date of handing over of possession due to force majeure circumstances due to covid-19 is declined.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to make the payment on account of delayed possession charges @ 10.40% as per RERA Act, from due date of possession i.e., 12.01.2020 till actual handing over of possession.

20. The complainant booked a unit in the project "Green Court" located in Sector-90, Gurugram, being developed by the respondent. The complainant was allotted unit number 1304 on the 13th floor of Tower-K. The buyer's agreement was executed between the parties on 25.02.2016. The complainant has paid Rs. 21,54,000/- against the sale consideration of Rs. 16,31,897/-. The respondent

obtained the occupation certificate on 17.11.2022, and the offer of possession was made on 24.11.2022.

21. 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. Section 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."

22. Clause 8 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

Clause 8(a)

Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environmental clearance whichever is later (hereinafter referred to as the "Commencement Date"

23. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

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24. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.
25. **Due date of handing over possession and admissibility of grace period:**
The counsel for the respondent brought into the notice of the Authority, that the authority has already considered the due date of possession as 06.11.2020 by calculating 4 years from the date of consent to establish i.e. 06.05.2016 plus 6 months grace period in lieu of covid-19. However, aggrieved by this order by not allowing the delay on account of ban on construction etc. as already allowed by the Ld. Civil Judge in suit no. CS-3317-2022, the respondent preferred an appeal against the said order of authority for not allowing extra grace period on account of delays due to reason beyond the control of the promoter.
26. Moreover, on the documents and submissions made by both the parties, the Authority is of the considered view that the buyer's agreement and the Affordable Group Housing Policy, 2013 the promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (22.10.2014) or grant of environment clearance, (12.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in

relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said plea raised by the respondent is disallowed in the present case.

27. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the prescribed rate. However, 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, *ibid*. 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."*

28. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, 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.

29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **20.03.2025** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

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

(2a) "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."*

31. 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 them in case of delayed possession charges.
32. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 25.02.2016, the possession of the booked unit was to be delivered within 4 years from the date of environment clearance (12.01.2016) being later, which comes out to be 12.01.2020. Occupation certificate was granted by the concerned authority on 17.11.2022 and thereafter, the possession of the subject unit was offered to the complainant on 24.11.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 25.02.2016 to hand over the possession within the stipulated period.
33. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.11.2022. The respondent offered the possession of the unit in question to the complainant only on 24.11.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the

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complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (24.11.2022) which comes out to be 24.01.2023.

34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 12.01.2020 till the expiry of 2 months from the date of offer of possession (24.11.2022) which comes out to be 24.01.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
35. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant is entitled to DPC
1.	CR/1332/2023	12.01.2020	24.11.2022	w.e.f. 12.01.2020 till 24.01.2023
2.	CR/1979/2023	12.01.2020	24.11.2022	W.e.f. 12.01.2020 till 24.01.2023
3.	CR/3957/2023	12.01.2020	24.11.2022	w.e.f. 12.01.2020 till 24.01.2023

G.II Direct the respondent not to charge the holding charges or maintenance charges.

36. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being

part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

G.III Direct the respondent to charge delay payment, if required at equitable rate of interest.

37. The respondent is directed to charge delay payment interest from the allottee, in case of default at the prescribed rate i.e., 11.10% 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.

H. Directions of the Authority.

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

- I. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 11.10% per annum from the due date of possession i.e., 12.01.2020 till offer of possession i.e., 24.11.2022 plus two months (24.01.2023) as per section 18(1) of the Act of 2016 read with rule 15 of the rules. The due date of possession and the date of entitlement are detailed in table given in para 33 of this order. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- II. The respondent is also directed to issue revised account statement after adjustment of delay possession charges and the complainant is directed to pay the remaining amount, if any, within 60 days.
- III. The respondent is further directed to handover the possession of the allotted unit within 30 days of payment of outstanding amount, if any.
- IV. The rate of interest chargeable from the allottee 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, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*
- VI. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
41. File be consigned to registry.

Dated: 20.03.2025

HARERA
GURUGRAM


Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram