

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

Complaint no.: 4951 of 2023
Date of decision:- 26.03.2025

Surinder Kumar Goyal
R/o: - Flat no. 15B, Block-G & JU Pitampura,
Near District Park, Delhi-110008.

Complainant

Versus

1. M/s. Countrywide Promoters Private Limited
Regd. office: OT-14, Floor-3rd,
Next Door Parklands, Sector-76,
Faridabad, 121004.

2. M/s. Anjali Promoters and Developers Pvt. Ltd.
Regd. Office: M-11, Middle Circle,
Connaught Circus, New Delhi-110001.

3. M/s. Sai Expo Overseas Pvt Ltd.
Regd. Office: OT-15, Floor-3rd, Next Door,
Parklands, Sector-76, Faridabad,
Haryana-121004.

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Priyanka Agarwal (Advocate)

Complainant

Harshit Batra (Advocate)

Respondents

ORDER

1. The present complaint dated 25.10.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| S. No. | Particulars | Details |
|--------|---|---|
| 1. | Name and location of the project | "CENTRA ONE", Sector-61, Gurugram, Haryana. |
| 2. | Project area | 3.675 acres |
| 3. | Nature of Project | Commercial colony |
| 4. | DTCP license no. and validity status | 277 of 2007 dated 17.12.2007 Valid upto 16.12.2019 |
| 5. | Name of Licensee | M/s Sai Expo Overseas Pvt. Ltd. |
| 6. | Rera registered/ not registered and validity status | Registered 28 of 223 dated 30.01.2023 Valid upto 31.10.2023 |
| 7. | Unit No. | S-36, 2 nd Floor (As per page no.31 of complaint) |
| 8. | Unit area admeasuring | 532 sq. ft. (super area) (As per page no.31 of complaint) |

| | | |
|-----|--|---|
| 9. | Allotment letter | 21.10.2010 (As per page no.31 of complaint) |
| 10. | Date of execution of buyer's agreement | 29.11.2011 (As per page no.43 of complaint) |
| 11. | Addendum to buyer's agreement | 03.04.2014 (As per page no.72 of complaint) |
| 12. | Possession clause | 2 Possession. 2.1 The possession of the said premises shall be endeavored to be delivered to the intending purchaser by 31.12.2011 , however, subject to clause 9 herein and strict adherence to the terms and conditions of this Agreement by the Intending Purchaser. The Intending Seller shall give Notice of possession to the Intending purchaser with regard to the date of handing over of possession, and in the event the Intending Purchaser fails to accept and take the possession of the said Premises on such Date specified in the notice the Intending Purchaser shall be deemed to be custodian of the said Premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of Intending Purchaser. (As per page no.49 of complaint) |
| 13. | Due date of possession | 31.12.2011 (As mentioned in possession clause at page no.49 of complaint.) |
| 14. | Total Sale Consideration | Rs.26,86,600/- (As per page no.46 of complaint) |
| 15. | Amount paid by complainant | Rs.26,73,052/- (As per SOA dated 27.08.2018 at page no.75 of complaint) |
| 16. | Assured return paid by respondent | Rs.7,84,512/- (As per SOA dated 27.08.2018 at page no. 75 of complaint) |
| 17. | Occupation Certificate | 09.10.2018 (As per page no.98 of reply) |
| 18. | Offer of possession | 04.12.2018 (As per page no.100 of reply) |

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- I. That the respondent no.1 is the promoter /collaborator on whose name the project in question "Centra One" is registered vide registration no. 28 of 2023 dated 30.01.2023. The respondent no. 3 is the promoter no.1 of the project. The respondent no.2 is a sister concern company of respondent no.3 with whom the complainant had entered into the agreement for sale.
 - II. That the respondent companies under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to cheat and defraud the unsuspecting, innocent and gullible public at large. The respondents advertised their project extensively through advertisements.
 - III. The complainants were allured by an enamoured advertisement of the respondents and believing the respondents in utter good faith, the complainant was duped of his hard-earned monies which they saved from bonafide resources.
 - IV. That in the year 2005-2006, the complainant, approached the respondents to buy a commercial unit in one of the ongoing projects of the respondents located in Faridabad and the same was allotted to the complainant after paying Rs.10,06,250/- to the respondents. However, the respondents abandoned the said faridabad project before completion for the reasons best known to himself and offered a new unit in the present project i.e., "Centra One" situated at Sector-61, Gurgaon. The respondents further assured that the advance payment made by the complainant would be duly adjusted.

- V. That vide its Allotment cum Demand Letter dated 21.10.2010, the respondents allotted a commercial unit bearing no. S-36, second floor, admeasuring 532 sq.ft. and further raised a demand of Rs.9,64,523/-
- VI. The respondents kept on raising demands for advance payments without duly executing any agreement and the complainant paid a total sum of Rs.15,83,416/-.
- VII. That to dupe the complainant in their nefarious net, the respondent even executed a Space Buyer Agreement between M/s Anjali Promoters & Developers Pvt Limited and the complainant dated 29.11.2011 after extracting 85% of the consideration amount from the complainant. The respondents created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands, due to which they were able to extract huge amount of money from the complainant.
- VIII. That the respondents were liable to hand over possession of the unit before 31.12.2011. As per Clause-2.1 of the Space Buyer Agreement.
- "The possession of the said premises shall be endeavoured to be delivered to the intending Purchaser by 31" December 2011, however, subject to clause 9 herein and strict adherence to the term and conditions of the Agreement by the Intending Purchaser.*
- IX. That in the meantime, an Addendum to the Space Buyer's Agreement was executed between the complainant and the respondents wherein it was mutually agreed between the parties that after completion of the project, the respondents shall either directly or through a property consultant arrange for the unit to be leased out to a third party.
- X. As per Clause 5 of the said Addendum, the respondents were liable to to arrange for leasing out the said unit at the then prevailing market

conditions, but not at a rate less than Rs.50/- per sq. ft., subject to Force Majeure.

- XI. Thereafter, on 27.08.2018 the respondents sent the statement of Account to the complainant, showing that the total cost of the unit is Rs.32,27,426.76/- and a sum of Rs.26,73,052.00/- has already been paid by the complainant. However, the complainant was shocked and to find that the respondents changed the unit from SF-36, to SF-37, without any prior intimation or consent of the complainant.
- XII. Furthermore, it is submitted that from 03.04.2014 till 27.08.2018, the builder was liable to pay assured returns to the tune of Rs.18,73,441/- out of which the builder had paid only a sum of Rs.7,84,512/- and the sum of Rs.10,88,929/- is still due, as per the said Statement of Account. It is submitted that the assured returns are still accruing as the builder has not yet handed over the possession of the unit to the complainant.
- XIII. That after a delay of 7 years, on 04.12.2018, the respondents sent an offer of possession letter to the complainant for unit no. SF-37 on second floor admeasuring 556 sq.ft. The respondents had arbitrarily not only changed the unit and its dimensions but had also levied several additional costs & charges without giving any justified reasons or acquiring the consent of the complainant, which is completely arbitrary in nature and against the provisions of the Real Estate (Regulation & Development) Act 2016.
- XIV. That the respondents extracted more than 85% amount which is unilateral, arbitrary and illegal before the execution of the Buyer's Agreement. That respondents with an intention to extract money from allottees, devised a payment plan under which it linked 90% amount for raising the super structure only.

- XV. That the complainant had visited the project site several times and found that the respondents/builder had not carried out the development work as per the planned schedule, even after 13 years since its commencement. The project appeared to be abandoned and no development work is being carried out.
- XVI. It is further submitted that the respondents have been continuously sending invoices of maintenance services charges to the complainant, however, the complainant's unit is still incomplete and the respondents have not yet offered the possession to the complainant's. Thus, imposing maintenance charges on the complainant is absolutely illegal, arbitrary and unilateral.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-

- i. Direct the respondents to complete the project and handover the physical possession of the unit with all the basic amenities as mentioned in the brochure.
- ii. Direct the respondents to pay delay possession charges on the amount paid with interest @18% per annum from 31.12.2011 till the handing over of possession.
- iii. Direct the respondents to pay the outstanding assured returns.
- iv. Direct the respondents to provide legal offer of possession of the unit allotted bearing no. S-36 as per the Space Buyer's Agreement because the respondents have sent offer of possession of unit S-37.
- v. Direct the respondents to quash the illegal charges of electrification, STP, fire fighting, power back upcharges etc.

- vi. Direct the respondent to quash the illegal demand of increased super area without increasing the carpet area of the or in the building plan.
 - vii. Direct the respondents to quash the enhanced EDC charges Rs,80,693/- without justification and out of the scope of the Space Buyer Agreement.
 - viii. Restrain the respondents from raising any demand on account of advance maintenance without handing over the physical possession of the unit and maintenance charges shall be charged as the addendum agreement signed between the parties.
5. Vide the proceedings dated 01.02.2024, 28.02.2024, and 10.04.2024, the counsel for respondent no. 2 appeared, whereas none appeared on behalf of respondent no. 1 i.e., M/s. Countrywide Promoters & Developers Pvt. Ltd., and respondent no. 3 i.e., M/s. Sai Expo Overseas Pvt. Ltd. On 22.05.2024, the counsel for respondent no. 2 submitted a reply, and a cost of Rs. 15,000/- was imposed on respondent no. 2. The reply was taken on record subject to the condition that it shall not be considered unless the said cost is paid. On 29.05.2024, the counsel for respondent no. 2 paid the cost of Rs. 15,000/-. Despite due notice, respondents no. 1 and no. 3 failed to appear or file a reply to the complaint. Consequently, respondents no. 1 and no. 3 are proceeded against ex-parte.
- D. Reply by respondent no. 2 i.e., M/s. Anjali Promoters & Developers Pvt. Ltd. :**
6. The respondent no.2 by way of written reply made following submissions.
- I. That the complainant being interested in the group housing project of the respondent known under the name and style of "CENTRA ONE" located at Sector 61, Gurugram, Haryana applied for the allotment of the unit vide an application form dated 25.12.2008.

✓

- II. That pursuant to booking in the said project, a tentative unit bearing number S-36 located on second floor, tentatively admeasuring 532 sq. ft. was allotted to the complainant vide Allotment Letter dated 21.10.2010. That the complainant consciously and wilfully opted for "Construction Linked Payment Plan" as per his choice for remittance of the sale consideration for the old unit in question.
- III. That after the allotment of the old unit in favour of the complainant, a Flat Buyer's Agreement dated 29.11.2011 was duly executed between the complainant and the respondent. It is imperative to note at this stage that the old unit allotted to the complainant was tentative in nature and was subject to change and the said fact was acknowledged by the complainant during the execution of the Agreement dated 29.11.2011. The relevant Clause I of the Agreement is reiterated hereunder for the ready reference:

"The Intending Purchaser is aware of the fact that the Intending Seller is in the process of developing the said Complex on the said Land, and in pursuance thereof it is understood, and agreed by the Intending Purchaser that the Floor Plans, location of the said Premises and its Super Area are tentative and subject to change"

- IV. Moreover, the complainant vide letter requested the respondent to change the old unit from Ground Floor to Second Floor due to financial burden and failure of the complainant to pay the outstanding dues. The relevant para is reiterated hereunder:

"I have applied for a retail space in Centra One on Ground Floor, due to financial burden I am not in position to continue the same, since rate of second floor is less then the ground floor kindly change my allotment from Ground Floor to Second Floor.

The agreed sale price be reduced accordingly for Second Floor."

- V. That the complainant had tried to misled this Authority by concealing true and actual facts of the present matter. It is most humbly submitted

that although the respondent was not under any obligation to pay any assured returns to the complainant, he had paid the same to the complainant from the date of booking of the old unit. That till date, the respondent had paid an amount of Rs.18,58,649/- by way of assured returns. The details of the assured returns paid by the respondent are reproduced hereunder:

| S. NO. | ASSIGNMENT | DOCUMENT DATE | AMOUNT |
|-------------------|------------|---------------|------------------------|
| 1. | 604124 | 06.01.2021 | Rs. 58,825/- |
| 2. | 501077 | 18.09.2012 | Rs. 72,133/- |
| 3. | 501075 | 18.09.2012 | Rs. 72,133/- |
| 4. | 501287 | 21.12.2012 | Rs. 72,925/- |
| 5. | 599925 | 07.02.2013 | Rs. 72,925/- |
| 6. | 600031 | 10.05.2013 | Rs. 71,536/- |
| 7. | 899727 | 13.08.2013 | Rs. 72,330/- |
| 8. | 783236 | 23.07.2015 | Rs. 73,125/- |
| 9. | 033044 | 28.10.2015 | Rs. 73,125/- |
| 10. | 872947 | 03.02.2016 | Rs. 1,43,689/- |
| 11. | DEMAND AD | 26.03.2019 | Rs. 10,75,903 |
| TOTAL PAID | | | Rs. 18,58,649/- |

VI. That the due date of offer of possession of the old unit, as per clause 2.1 of the Agreement was 31.12.2011 subject however, to the *force majeure* circumstances, intervention of statutory authorities and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.

- VII. That the due date of delivery of the old unit was subjective in nature and was dependent on the Force Majeure circumstances and the Purchaser/allottee complying with all the terms and conditions of the Agreement along with timely payments of instalments of sale consideration.
- VIII. That it is most humbly submitted that the construction of the old unit was hampered due to and was subject to the happening of the *force majeure* and other circumstances beyond the control of the company, the benefit of which is bound to be given to the Respondent in accordance with clause 9 of the Agreement, which is reiterated hereunder:

"The Intending Seller shall not be held responsible or liable for failure or delay in performing any of its obligations or undertakings as provided for in this Agreement, if such performance is prevented, delayed or hindered by an act of God, fire, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy, labour, equipment, facilities, material or supplies, failure of transportation, strike, lock-outs, action of labour union, change of Law, action/change of policies of Government, delay on part of or intervention of Statutory Authorities like DTCP or the local authorities or any other cause not within the reasonable control of the Intending Seller. In such cases, the period in question shall automatically stand extended for the period of disruption caused by such operation, occurrence or continuance of Force Majeure circumstance (s)"

- IX. At this stage, it is categorical to note that respondent faced certain *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is to be noted that the development and implementation of the said Project have been

hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- X. That a period of 166 days were consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time-period indicated above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the Agreement.
- XI. That all these circumstances come within the purview of the *force majeure* clause and hence allow a reasonable time to the respondent-builder. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per Clause 9 of the Agreement. However, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.
- XII. That the due date of offer of possession was also dependent on the timely payment by the complainant, which, the complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainant has delayed the payment against the old unit. That the total sale consideration of the old unit was Rs.37,48,954.52/- out of which the complainant had only made payment of Rs.26.73,052/-.

XIII. It is submitted that various demand letters were raised as per the agreed payment plan however, the complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainant from time to time. That the *bonafide* of the respondent is also essential to be highlighted at this instance, who had served request letters at every stage in case of non-payment.

| S. No. | Demands/Reminders | Date |
|--------|-------------------|------------|
| 1. | Payment Receipt | 31.05.2010 |
| 2. | Payment Receipt | 17.08.2011 |
| 3. | Payment Receipt | 08.10.2011 |
| 4. | Payment Receipt | 17.10.2011 |
| 5. | Payment Receipt | 22.05.2013 |
| 6. | Demand Letter | 30.08.2012 |

XIV. That even after various difficulties faced by the respondent due to the Force Majeure circumstances and delay in payments by the allottees like the complainant, the respondent was able to complete the construction of the unit and obtained the Occupation Certificate for the project on 09.10.2018. That after obtaining the Occupation Certificate from the concerned authorities, the respondent had lawfully offered the possession of the unit to the complainant on 04.12.2018.

XV. That the old unit was tentative in nature as per the Agreement executed between the Parties, and hence, with the completion in the construction of the Project, the Unit was finalised and the final unit stood to be S - 37

admeasuring Super Area 556 sq. ft.. That the increase in area is not only within the permissible limits of increase as agreed between the parties under Clause I and Clause 1.2 but also as per Model RERA Agreement. The relevant Clause 1.2 is reiterated hereunder:

"The Site Plan, Building Plan & Floor Plan of the said Premises and it's super area mentioned in this agreement are tentative and subject to change during completion of construction of the said Complex and confirmation by the Intending Seller after accounting for changes, if any, on the date of possession, The final and confirmed areas shall be incorporated in the Sale Deed that shall be executed upon fulfilment of the terms and conditions of this Agreement."

- XVI. That it is imperative to note that the complainant, during the execution of the Agreement dated 29.11.2011, agreed to pay the following charges including but not limited to Development Charges, Interest Free Maintenance Charges, Electric connection charges, Administrative charges and any other charges which the respondent and Maintenance Service Provider may demand for any additional services in addition to the Basic Sales Price of the unit.
- XVII. Hence, all the charges charged by the respondent in the Offer Of possession dated 04.12.2018 were valid charges which the complainant is under an obligation to remit in favour of the respondent as per the Agreement dated 29.11.2011.
- XVIII. That all the claims put forth by the complainant in the present complaint are wrong and frivolous. Hence, the present complaint is liable to be dismissed.
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.

E. Jurisdiction of the authority:

8. 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

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.

E. II Subject matter jurisdiction

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)

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;

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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.1 Objection regarding delay due to force majeure circumstances

12. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the allotment letter was issued by the respondent to the complainant on 21.10.2010. The Space buyer's agreement was executed between the parties on 29.11.2011. As per clause 2 of the agreement dated 29.11.2011, the due date for completion of project was 31.12.2011. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project. Thus, the Authority is of the view that no relief with respect to this can be granted to the respondent.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to handover physical possession of the unit.

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

13. The two reliefs mentioned above are considered together. In the present complaint, the complainant had booked a unit in the project "Centra One," located at Sector-61, Gurugram, Haryana. The allotment of the unit was made in favor of the complainant on 21.10.2010, and subsequently, a Space Buyer Agreement was executed between the complainant and the respondents on 29.11.2011. As per Clause 2 of the said agreement, the respondents agreed to hand over possession of the unit to the complainant by 31.12.2011, thereby the due date for possession was 31.12.2011. Thereafter, an Addendum to the Buyer's Agreement was executed between the parties on 03.04.2011, wherein certain terms concerning possession and leasing of the unit were agreed to.
14. In the present complaint, the complainant intend to continue with the project and is seeking possession and delay possession charges along with interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

***.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every***

month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. Clause 2 of the Space Buyer Agreement provides for handing over of possession and is reproduced below:

Clause 2 Possession

The possession of the said Premises shall be endeavored to be delivered to the Intending Purchaser by 31st December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this Agreement by the Intending Purchaser. The Intending Seller shall give notice of possession to the Intending Purchaser with regard to the date of handing over of possession, and in the event the Intending Purchaser fails to accept and take the possession of the said Premises on such Date specified in the notice the Intending Purchaser shall be deemed to be custodian of the said Premises from the date indicated in the notice of possession and the said Premises shall remain at the risk and cost of the Intending Purchaser.

16. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of

interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.03.2025 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 complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the

agreement. By virtue of clause 2 of the agreement executed between the parties on 29.11.2011, the possession of the subject apartment was to be delivered by 31.12.2011. Therefore, the due date of handing over possession was 31.12.2011. The respondent has offered the possession of the unit bearing no. SF-37 on second floor admeasuring approximately 556 sq. ft. to the complainant on 04.12.2018, after obtaining the Occupation Certificate from the concerned authorities on 09.10.2018.

22. The Authority observes that the respondent offered possession of a unit that was neither booked, allotted, nor agreed upon under the terms of the agreement. The respondents/promoter unilaterally changed the unit allocated to the complainant without any prior intimation or consent from the complainant. However, the complainant failed to raise any objection to this change, as there is no document on record indicating any such objection. Consequently, it is concluded that the objection, if any, is an afterthought. Furthermore, as per Clauses 2 and 3 of the Addendum Agreement dated 03.04.2011, executed between the complainant and the respondents, the complainant voluntarily relinquished his right to physical possession and granted the rights to lease the unit to the respondents/promoter. The same is reiterated below:-

*" 2) That the Intending Purchaser confirms that the Intending Seller is free to lease out the said Premises individually or the Premises may form part of a larger leasable area without any physical demarcation. The Intending Purchaser agrees that **Intending Purchaser shall not claim physical/actual demarcation of his premises at any point of time.** In case of expiry of the Lease or vacation of the said premises for any reason at any time, the Intending Purchaser undertakes to again lease the premises in accordance with decision of majority of Premises holders whose Premises forms part of the larger leasable area."*

"3) That the Intending Purchaser understands and agrees that Intending Seller would offer only constructive/legal possession; and actual physical possession would remain with the Intending Seller, who shall hand it over

directly to such Lessee. The Intending Purchaser is aware that the number, size and location of the allotted premises is tentative and may change during the completion and authorizes the Intending Seller to change the location, size, increase or decrease the number of the Premises allotted to him or in general. The Intending Purchaser shall not have any objection in this regards.

23. In view of the foregoing, no directions can be issued regarding the handing.

over of physical possession of the unit in favor of the complainant. The respondents have paid an amount of Rs. 7,84,512/- towards assured returns, as reflected in the Statement of Account dated 27.08.2018, annexed at page no. 75 of the complaint. The complainant is seeking assured returns for the period subsequent to the due date of possession. The Authority is of the view that the purpose of assured returns is to compensate the allottee for the upfront payment made, which continues to be utilized by the promoter during the period specified in the agreement. In this context, granting both assured returns and the prescribed interest on the amount paid would result in a double benefit to the complainant, thereby disrupting the balance of equities between the parties. Thus, the interest on the delayed possession is granted after deducting the amount paid by the respondent on account of assured return. Accordingly, the respondents are directed to issue a fresh Statement of Accounts within 30 days from the date of this order.

24. The non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 31.12.2011 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act,

after deducting the amount paid by the respondent on account of assured return.

G.III Direct the respondents to pay the outstanding assured returns.

25. The Authority observes that there is no document on record delineating the terms and conditions related to the Assured Returns, from which the Authority can ascertain the duration for payment and the specific amount to be paid. Consequently, no directions regarding the Assured Returns can be issued in favor of the complainant.

G.IV Direct the respondents to provide legal offer of possession of the unit allotted bearing no. S-36 as per the Space Buyer's Agreement because the respondents have sent offer of possession of unit S-37.

26. The complainant has stated in the complaint that the unit initially allotted to them was S-36, but subsequently, a different unit, bearing no. S-37, was offered. In response, the respondents have submitted that as per Clause I of the agreement dated 29.11.2011, the allotment of the unit was tentative in nature, and the final unit allotted to the complainant is in fact, S-37.
27. Upon perusal of the documents available on record, the Authority is of the view that the complainant was allotted a shop/office/unit no. 36 on the SF Floor, having a super area of 532 sq. ft., in bare shell condition. The Space Buyer's Agreement was executed between the complainant and the respondents on 29.11.2011. The respondents obtained the Occupation Certificate for the unit on 09.10.2018, and the offer of possession was made to the complainant on 04.12.2018, albeit in respect of unit i.e., SF-37.
28. The Authority holds that the offer of possession was made concerning a different unit. The agreement executed between the parties predates the

enactment of the Act, 2016. As per Clause 1.2 of the agreement dated 29.11.2011, the site plan, building plan, floor plan, and the super area mentioned therein were tentative and subject to change, of which the complainant was well aware. Furthermore, there is no document on record indicating any objection raised by the complainant regarding the change in the unit.

29. The offer of possession was made on 04.12.2018, while the present complaint was filed on 25.10.2023—nearly five years later. During this period, the complainant did not raise any objection, implying implied consent to the changed unit, SF-37. This belated objection appears to be an afterthought. The respondents cannot now be burdened with the undue obligation of providing a different unit at such a late stage. The complainant ought to have raised the objection when the cause of action was fresh. Accordingly, no directions in this regard can be issued.

G.V. Direct the respondents to quash the illegal charges of electrification, STP, fire fighting, power back up charges etc.

29. The complainant has raised issues regarding the legality of charges for 'Electrification,' 'STP,' 'Fire Fighting,' and 'Power Backup.' The complainant submitted that on 04.12.2018, the respondents issued a letter of possession and raised a demand of Rs. 13,10,902.52/-, which included the following charges: Electrification and STP Charges (Rs. 1,19,367/-), Fire Fighting Charges (Rs. 43,924/-), Power Backup Charges (Rs. 42,256/-), among others. The complainant contended that these charges were illegally imposed and amounted to an attempt by the respondents to obtain unjust enrichment. In contrast, the respondent submitted that all the dues were legal, valid, and duly incorporated as part of the Buyer's Agreement.

✓

30. The Authority observes that it is the responsibility of the colonizer to arrange for the electric connection from an external source for the electrification of the colony through Haryana Vidyut Prasaran Nigam or Dakshin Haryana Bijli Vitran Nigam Limited, Haryana. The colonizer is also responsible for the installation of internal electricity distribution infrastructure, designed to meet the peak load requirements of the colony. For this purpose, the colonizer is required to obtain approval for the "electric (distribution) services plan/estimates" from the agency responsible for installing external electrical services, namely Haryana Vidyut Prasaran Nigam or Dakshin Haryana Bijli Vitran Nigam Limited, Haryana, and to complete the installation before securing the completion certificate for the colony.
31. With regard to electricity connection charges, water connection charges, and sewerage connection charges, it is evident that these charges are payable to the respective departments for obtaining service connections, including the security deposit required for the sanction and release of such connections in the name of the allottee. These payments are to be made by the allottee directly to the concerned departments. Where the builder has made a composite payment for such connections, including security deposits, on behalf of the allottee, the promoters are entitled to recover the actual charges paid to the concerned departments from the allottee on a pro-rata basis. This recovery shall be based on the ratio of the area of the allottee's unit to the total area of the respective project. The allottee is entitled to receive proof of all such payments made to the concerned departments, along with a proportionate breakdown relevant to their unit, prior to making any payment under the respective heads. In the case of bulk electricity supply, the concerned department or agency

releases the connection subject to specific terms and conditions applicable to bulk supply, which the allottee is required to comply with. The allottee is also obligated to provide an undertaking not to apply directly to any other electricity supply company for an additional load of electricity beyond what is provided under the bulk supply arrangement. In addition to bearing the proportionate charges for the bulk electricity supply to the project, the allottee is also responsible for bearing the cost of the individual meter connection from the bulk supply point to their unit.

32. Accordingly, the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head. Also, all these charges are part of the Buyer's agreement and was expressly agreed by the complainant to pay to the respondent.

G.VI. Direct the respondent to quash the illegal demand of increased super area without increasing the carpet area of the or in the building plan.

33. The complainant has submitted that the unit allotted to the complainant was admeasuring 532sq.ft. of super area and at the time of offer of possession the size was 556 sq.ft and thus the demand raised on account of increase in the super area be quashed.
34. The Authority observes that the unit initially allotted to the complainant had a super area of 532 sq. ft., whereas at the time of the offer of

possession, the unit's size was 556 sq. ft., reflecting an increase of 4.5% in the area. As per Clause 1.2 (I) of the agreement dated 29.11.2011, if the variation in area exceeds 20% of the agreed super area and the allottee is unwilling to accept the changed area, the allotment shall be deemed terminated, and the amount paid by the allottee shall be refunded according. The same is reiterated below:

"Clause 1.2 The Site Plan,

*1) Any increase or decrease in the super area of the said premises shall be payable or refunded as the case may be @ Rs. Market Price towards Consideration but without any interest thereon. Applicable PLC/EDC/IDC charges or any other charges as payment plan shall also be payable and refunded in proportion to increase or decrease in area. No other claim, whatsoever, monetary or otherwise shall lie against the Intending Seller or be made by the Intending Purchaser. In case, there is a variation **greater than 20% in the agreed super area as contained in Para 1.1 above and the Intending Purchaser is un-willing to accept the changed area, then the allotment/this agreement shall be treated as terminated and the payments received against the Consideration of the said Premises will be refunded without any interest.**"*

[Emphasis supplied]

35. The Authority is of the view that the increase in the area in the present case is 4.5%, which is less than 5% of the super area. Therefore, no directions in this regard are warranted.

G.VII. Direct the respondents to quash the enhanced EDC charges Rs,80,693/- without justification and out of the scope of the Space Buyer Agreement.

36. Almost for every purchase of units in a real estate project, the consideration amount for units includes:

- Basic sale price
- The amount paid towards parking space, electricity and other
- Infrastructure Development Charges (IDC),
- External Development Charges (EDC) and

- Interest Free Maintenance Security (IFMS) (which is security not consideration)

37. As per clause 1.1 of the agreement dated 29.11.2011, the allottee agreed to pay the same to the promoter. The same is reiterated below:

Clause 1.1

"The Intending Purchaser has been informed by the Intending Seller and understands that any fresh incidence of tax/demand/charges including but not limited to Vat, Infrastructure Development Charges (IDC)/External Development Charges (EDC)/Security Tax/Service Tax or any other statutory demand/charges even if it is retrospective in effect or increase on such account shall be borne by the Intending Purchaser in proportion to its super area. The Intending purchaser undertakes to pay such proportionate amount, if any, promptly on demand by the Intending Seller. "

[Emphasis supplied]

38. The Authority is of the view that the matter has been agreed upon by both parties. The respondents are directed to furnish the details justifying the enhancement of EDC charges to the complainant within 30 days from the date of this order.

G.VIII. Restrain the respondents from raising any demand on account of advance maintenance without handing over the physical possession of the unit and maintenance charges shall be charged as the addendum agreement signed between the parties.

39. The complainant and the respondents have executed an addendum to the Buyer's agreement dated 29.11.2011 on 03.04.2014. As per clause 8 of the said addendum agreement, the respondent undertook to provide certain waivers on the maintenance charges. The same is reiterated below:

"Clause 8

That in case of non-leasing of the said Premise prior to offer of possession, the intending Seller, as a gesture of goodwill, hereby agrees to provide a 100% waiver of the maintenance charges for the first 6 months of offer of possession. However, in case the Premises cannot be leased even after lapse of 6 months, the Intending Purchaser shall further provide a waiver of 50% maintenance charges for the next 6 months. Thereafter, maintenance charges at the then prevailing rates shall be

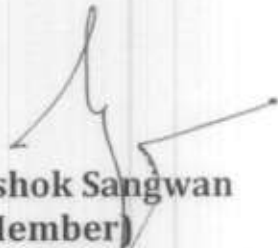
payable, even if the said Premises is not leased. It is clarified that the said waiver is only applicable to the Intending Purchaser and the charges would be applicable in case the said Premises is leased or occupied by or on behalf of Intending Purchaser."
[Emphasis supplied]

40. The respondents are directed to comply with the above and levy maintenance charges strictly in accordance with the terms specified. Further, the respondents are directed to make adjustments to the outstanding dues on account of the complainant, after ensuring compliance with the same.

H. Directions of the authority

41. 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):
- The respondents are directed to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 31.12.2011 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act, after deducting the amount paid by the respondents on account of assured return.
 - The respondents are entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection, sewerage connection and fire fighting, power backup charges etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project.

- iii. The respondent is directed to demand maintenance charges in terms of clause 8 of the Addendum Agreement dated 03.04.2014.
- 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. No interest shall be payable by the respondent and complainant from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.
- v. The respondents are directed to issue fresh, updated statement of accounts within 30 days of this order.
- vi. The respondents are directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one month of the order.
- vii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
42. Complaint stands disposed of.
43. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 26.03.2025