

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

Complaint no.	3483 of 2023
Date of filing complaint	28.07.2023
Date of first hearing	06.10.2023
Date of decision	02.04.2025

Sunita Arora

R/o: House No. B 806, Trimurti Apartment, Plot
No. 20, Sector 12, Dwarka, Delhi- 110078

Complainant**Versus****M/s Tashee Land Developers Private
Limited and M/s KNS Infracon Pvt. Ltd.**

Both having registered Office at: 517 A Narain
Manzil 23 Barakhamba Road Cannaught Place
New Delhi - 110001

Respondents**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Shri Sushil Yadav (Advocate)

Complainant

Shri Abhay Jain and Shri Rishabh Jain (Advocates)

Respondents**ORDER**

1. The present complaint has been filed by the complainant/allottees 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 under the provisions of the Act or the rules and regulations made thereunder 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:

Sr.No.	Particulars	Details
1.	Name of the project	"Capital Gateway", Sector- 111, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Area of project	10.462 acres
4.	RERA Registered/ not registered	Registered vide registration no. 12 of 2018 dated 10.01.2018 with RERA, Panchkula Extension certificate provided by RERA, Gurugram u/s-6 of Act vide no. RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022 which is valid upto 30.06.2025 for both phase-I and II
5.	License no. and validity	34 of 2011 dated 16.04.2011 Valid upto 15.04.2029
6.	Unit no.	103, 1 st floor, tower- I (as per FBA at page 19 of complaint)
7.	Unit area admeasuring	2675 sq. ft. (as per FBA at page 19 of complaint)
8.	Date of booking	20.01.2011 (As pleaded by complainant at page 8 of complaint)
9.	Date of allotment in favour of original allottee i.e., Mr. Madan Mohan Saxena/Manoj Saxena	20.01.2011 (As pleaded by complainant at page 8 of complaint)
10.	Endorsement made in favour of the complainant	05.04.2013 (page 49 of complaint)
11.	Date of execution of flat buyer's agreement with the complainant	15.04.2013 (Page 15 of complaint)
12.	Possession clause	<u>2. Possession</u> "2.1 ...the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate

		<p><i>period of 36 months from the date of sanction of the building plans and other necessary Government approvals thereon, of the said Colony. The Purchaser agrees and understands the First Party/Confirming Party shall be entitled to a grace period of 180 days (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority..."</i></p> <p style="text-align: right;">(Emphasis Supplied)</p> <p>(FBA at page 23 of complaint)</p>
13.	Environment Clearance	17.06.2013 (As alleged by respondent at page 4 of reply)
14.	Date of sanction of building plan	07.06.2012 (As per information obtained by planning branch, building plan approved on 07.06.2012)
15.	Due date of possession	07.12.2015 (Calculated to be 36 months from the date of approval of building plans being 07.06.2012 plus unqualified grace period of 180 days for applying and obtaining occupation certificate)
16.	Payment Plan	Construction Linked Plan (As specified by respondent at page 9 of reply)
17.	Basic sale consideration	Rs.86,02,800/- (As per FBA at page 19 of complaint)
18.	Total Amount Paid	Rs. 67,93,378/- (As per statement of accounts annexed by complainant at page 50 of complaint)
19.	Reminder cum notice for Cancellation Letter sent by respondent	28.12.2016 (Owing to non-payment for outstanding dues of Rs.29,66,348/-) (Page 14 of reply)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- a) That the respondents gave advertisement in various leading newspapers about their forthcoming project named "Capital Gateway Sector 111",

Gurgaon promising various advantages, like world class amenities and timely completion of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements, the first buyer booked a unit measuring 2675 sq. ft. which later was transferred in the name of complainant on 05.04.2013 after paying transfer charges to builder wherein the complainant also paid Rs.1,000/- per sq. ft. as premium to first buyer. Subsequently, a builder buyer agreement was executed between complainant and respondents on 15.08.2013 for a total sale consideration of Rs 86,02,800/-, out of which complainant paid Rs.67,93,378/- to the respondents.

- b) That unit no. 103, on 1st floor, tower I, having super area of 2675 sq. ft. was allotted to the complainant. As per para 2.1 of the buyer's agreement, the respondents had agreed to deliver the possession of the unit within 36 from the date of sanction of building plans i.e., from 07.06.2012 with an extended grace period of 180 days.
- c) That the complainant telephonically asked the respondent about the progress of the project however the respondents always gave false impression that the work is going in full swing and accordingly asked for the payments. The complainant made timely payments but was shocked to see that construction work was not in progress and no one was present at the site to address the queries of the complainant. The only intention of the respondents was to take payments for the unit without completing the work.
- d) That despite receiving more than approximately 50% of the timely payments for all the demands raised and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondents have failed to deliver the possession of the allotted unit to the complainant within the stipulated time period.

- e) That the construction of the block in which the complainant's unit was allotted was not completed within time promised for handover i.e., till 07.06.2015 for the reasons best known to the respondents. The complainant has been suffering from disruption on his living arrangement, mental torture, and agony and is therefore incurring severe financial losses. This could have been avoided if the respondents had given timely possession of the unit.
- f) That as per clause 2.3 of the agreement it was agreed by the respondents that in case of any delay, the respondents shall pay to the complainant compensation Rs.5/- per sq. ft. per month of the super area of the unit. However, a clause of compensation at such a nominal rate of Rs.5/- per sq. ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit even after a considerable delay. The respondents cannot escape the liability merely by mentioning a compensation clause in the agreement, the same being one sided buyer's agreement. The respondents are giving compensation @ 2% per annum rate of interest whereas interest on delayed payment is charged @24% per annum. On the ground of parity and equity the respondents must also be subjected to pay the same rate of interest on the amount paid by the complainant from the promise date of possession till the unit is actually delivered to the complainant.
- g) That the complainant has requested the respondents several times by making telephonic calls and by personally visiting the respondents to deliver possession of the unit in question along with prescribed interest on the amount deposited by the complainants but respondents flatly refused to do so. Thus, the respondent defrauded the complainant and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to pay delayed possession changes as per prescribed rate of interest.
 - II. Direct the respondent to handover physical possession of the allotted unit to the complainant.
5. On the date of hearing, the authority explained to the respondents about the contraventions 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 by respondent:

6. The respondents made the following submissions in its reply:
- a) That the respondents had been developing and marketing a residential group housing colony 'Capital Gateway' situated at Sector 110A and 111, Gurugram, in two phases, i.e., Phase I consisting of towers A to G and Phase II consisting of towers H to J. The said project also consisted of two towers for economically weaker sections (EWS), two commercial buildings, one community building and a nursery school. There are a total of 551 units in the said project. (538 residential units and 13 commercial units)
 - b) That the respondents had applied for environment clearance on 20.10.2011. The decision and issuance of certificate to the promoter remained in abeyance for a long time due to sudden demise of the Chairman of Environmental Impact Assessment (EIA) Committee in an unfortunate road accident. The developer finally got the environment clearance on 17.06.2013. Further, the respondents applied for revision of building plans of the said project before the appropriate authority. However, the said plans were approved by the department after a delay of 2 years.
 - c) That the complainant is a subsequent allottee and has purchased the subject unit from the market not from the respondents. The respondents as confirming parties, only transferred the subject unit in their name and subsequently due to non-payment of outstanding dues the allotment was cancelled in December, 2016.

- d) That the complainant approached the respondents for booking a unit in the project of the respondent by looking into the financial viability of the project and its future monetary benefits. Thus, the complainant in the present case is not a consumer, rather an investor who falls outside the purview of the preamble of the Act of 2016.
- e) That, a flat buyer's agreement was executed between the parties on 15.04.2013, wherein unit no. 103, 1st floor, tower I was allotted to the complainant. But the complainant failed to pay the due amount as a result of which their allotment was cancelled on 28th December 2016. Thus, at present she is not the allottee. It is an admitted fact as per cancellation letter, that there was a huge outstanding amount payable by the complainant to the respondents.
- f) That it is an admitted fact that the complainant has failed to pay her dues in timely manner and hence her unit was cancelled, now as the prices of the units in the project have increased, the complainant wishes to get her unit by misusing the process of law. There is a huge amount of contributory negligence on the part of complainant due to which the construction activities were impeded and financial burden increased on the respondents.
- g) That it is admitted to the extent that the complainant has made payment of around 80% of the cost of the subject unit. The complainant opted for construction linked payment plan. The respondents applied for occupation certificate as the construction activities are complete but the complainant has paid only 80% of the sale consideration.
- h) That the present complaint is barred under the law of limitation as the unit of the complainant was cancelled in December, 2016 and she is raising her claims only after appreciation of the cost of the units in the area. The present complaint is devoid of any merits and has been preferred with the sole motive to harass the respondents.

- i) That the complainant miserably failed to make a case against the respondents. The complainant concealed the fact about cancellation of their unit, whereas the complainant has admittedly failed to pay their dues in timely manner.
 - j) That the provisions of the Act, 2016 and Rules, 2017 have been misinterpreted and misconstrued by the complainant. Moreover, the complaint under reply cannot be decided in summary proceedings and requires leading extensive evidence particularly because the complainant has relied on documents which have no standing in the eyes of law and their admissibility and contents of the same require thorough questioning as to form the basis of the claims of the complainant. Thus, 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 basis of these undisputed documents and submission made by the parties.
- E. Written submissions filed by the complainant:**
8. The complainant made the following additional submissions vide written submissions dated 04.10.2024 and 11.02.2025:
- a) That the respondents have raised exorbitant demands, increasing the total cost of the unit from Rs.86,02,800/- to Rs.2,47,74,130/-, a hike of approximately Rs. 1.6 crores.
 - b) That the complainant's home loan was sanctioned on 01.03.2013 but the respondents withheld the demand letter due to delays in the project. When the demand was finally sent on 10.11.2021, the cost had drastically increased.
 - c) That the respondents falsely claim to have cancelled the unit on 28.12.2016 but have failed to provide any documentary evidence of this cancellation. Further, any proof of refund has also not been produced.

- d) That the respondents continued sending demands and correspondence via email and postal correspondence, even after the alleged cancellation, clearly indicating that the unit was not genuinely cancelled. Further, the project is still incomplete and the respondents have yet to apply and obtain the occupation certificate for this phase.
- e) That the complainant is willing to pay the outstanding balance upon receiving possession and a demand letter correcting the erroneous demands. Also, as per allottee list submitted to TCP, Government of Haryana, the complainant is still listed as allottee no. 453 of the list. The respondents however are attempting to sell the complainant's unit at a higher price following the alleged cancellation which raises concerns about third party rights being created in the property.
- f) That the complainant paid 83% of the total cost till 2014, whereas the project completion was only 35% as per the QPR filed by the builder with HRERA, Gurugram and Hon'ble Punjab and Haryana High Court. Thus, according to construction linked payment plan, only 35% was payable at that stage. Further, as per QPR filed with the authority, a total of Rs.357.15 crores has been collected from the allottees, with Rs. 71.43 crores as receivables, yet other units were not cancelled. The project was stalled for 8 years and now being completed with SWAMIH funds.
- g) That as per agreement with M/s Catalyst Trusteeship Limited (SWAMIH Fund) in September, 2022, 75 units remain unsold. Further, 10 units were auctioned by D.C., Gurugram and proceeds were paid to homebuyers. The Director of M/s KNS Private Limited has offered security of 6 units out of 75 units for DPC payable to homebuyers.
- h) That the builder has revoked cancellation orders (09.12.2024 and 13.12.2024) for similar cases. The same should apply to complainant. The respondents are constructing more units in G, H, I towers by increasing FAR.

The complainant's unit is in tower I, meaning inventory is available. The builder is actively advertising the unsold units through hoardings and social media.

- i) That there are certain defects in affidavit submitted to create third party rights as the same is unsigned, not notarized and further, the stamp paper does not mention the buyer's name. The second party is marked as "Not Applicable" despite the ATS executive listing the allottee clearly states the name of the allottee as Sunita Arora. The complainant paid 83% of the cost in 2014 whereas the new allottee was assigned the unit for only Rs.38,69,264/-. Also, two payments were made 20 days apart, with consecutive receipt no.'s 37 and 38, making the transaction suspicious. The last payment was received from new allottee on 17.09.2020, yet the unit was not cancelled, whereas allotment of complainant was cancelled within 6 months of non-payment as alleged by the builder. No customer ID has been assigned to the new allottee, while all the homebuyers have one.

F. Written submissions filed by the respondents:

9. The respondents made the following additional submissions vide written submissions dated 11.10.2024 and 26.03.2025:
- a) That the complainant failed to pay demands despite various reminder letters sent by the respondents, as under:

Date	Demand/Reminder Letter	Amount of Demand
31.12.2015	Demand Letter	16,17,361/-
18.04.2016	Demand Letter	26,16,232/-
28.12.2016	Demand Letter	29,66,348/-

- b) That the respondent called the complainant many times to provide the bank details for refund of amount paid by her. However, the complainant deliberately failed to provide the bank account details. Also, the complainant did not respond during the last 7 years and when the prices of the units increased, the complainant filed the present complaint for wrongful gain.

- c) That the respondent is ready to give refund after deducting earnest money @15% of the basic sale consideration as per the terms and conditions of the application-cum-booking form and in terms of clause 1.15 of the agreement.
- d) That the statement of account at page 50 of the complaint was issued to the complainants upon their request for restoration of their unit with escalated prices and interest(including restoration charges). Having knowledge of the cancellation and escalated prices in March, 2017 the complainants did not take any steps until July 2023 for restoration of their allotment.
- e) That the respondent has allocated the unit to another party and all the rights have been transferred to the new allottee Ms. Jyoti vide allotment letter dated 21.10.2020 followed by execution of buyer's agreement dated 18.01.2021.
- f) That the complainant was aware about the progress at the project site as Shri Mohan Lal Arora (husband of the complainant) was aware about the cancellation notice as he had received the copy which is appended as Annexure C at page 17 of the written submissions filed by the complainant on 11.10.2024. It is duly signed by the Mohan Lal Arora on 28.11.2015 and it is stated on the demand letter about how much amount was refundable.

G. Jurisdiction of the authority:

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

G. I Territorial jurisdiction

11. 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.

G. II Subject matter jurisdiction

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

13. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation, which is to be decided by the Adjudicating Officer, if pursued by the complainant at a later stage.

H. Findings on objections raised by the respondents:

H.I Objection regarding complainant being an investor.

14. The respondents have taken a stand that the complainant is the investor and not a consumer, therefore, he is not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that a preamble is an introduction of a statute and states the main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any

provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is a buyer, and he has paid a price of Rs. 67,93,378/- to the promoter towards the purchase of an apartment in its project, at this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" about a real estate project, means the person to whom a plot, apartment, or building, as the case may be, has been allotted, sold (whether as freehold or leasehold), or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having the status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in **Appeal no. 0006000000010557 titled as "M/s Srushti Sangam Developers Pvt Ltd. Vs. Sarvapriya Leasing (P) Ltd. Anr."** has also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of a promoter that the allottee being an investor is not entitled to protection of this act also stands rejected.

H.II Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.

16. The respondent contended that the present complaint is not maintainable being barred by the law of limitation. It is pertinent to note that in the present case, the issue of limitation does not arise at all. Though the unit allotted to the complainant was cancelled by the respondents vide "Reminder cum



Notice for Cancellation" dated 28.12.2016, the cause of action was continuing as the respondents still kept on sending demand letters to the complainant post the said cancellation. Secondly, post cancellation of the unit, the respondent has failed to refund the refundable amount to the complainant so far, which clearly shows a subsisting liability.

Thus, the objection of the respondent w.r.t. the complaint being barred by limitation stands rejected.

I. Findings on the relief sought by the complainant:

LI Direct the respondent to pay delayed possession changes as per prescribed rate of interest.

LII Direct the respondent to handover physical possession of the allotted unit to the complainant.

17. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief, the same being interconnected.
18. In the present case, the complainant booked a unit in the project of the respondent namely "Capital Gateway" situated at Sector- 111, Gurugram. The unit was originally purchased by Mr. Madan Mohan Saxena/Manoj Saxena on 20.01.2011 and later endorsed in the name of complainant on 05.04.2013. A builder buyer agreement was executed between the complainant and the respondents on 15.04.2013, wherein unit no. 103, 1st floor, tower I, admeasuring 2675 sq. ft. was allotted to her.
19. Further, perusal of case file reveals that the possession of the unit was to be offered within a period of 3 years from the date of sanction of building plans being 07.06.2012 subject to further grace period of 180 days for applying and obtaining occupation certificate. Therefore, the due date of handing over possession comes out to be 07.12.2015. The complainant has paid an amount of Rs.67,93,378/- against the basic sale consideration of Rs.86,02,800/- and is ready and willing to retain the allotted unit in question. However, the unit

allotted to the complainant was cancelled on 28.12.2016 on account of failure to pay the outstanding dues despite several reminders and demand notices. Now, the question before the authority is whether the cancellation is valid or not, in the eyes of law?

20. Firstly, though the unit allotted to the complainant was cancelled by the respondents vide "Reminder cum Notice for Cancellation" dated 28.12.2016, the respondents still kept on sending demand letters to the complainant post the said cancellation. Vide e-mail dated 28.10.2022, the respondent sent request letter for registration of the residential unit allotted to the complainant. A letter dated 01.12.2021 was sent by the respondents to the complainant giving the project updates. A demand letter dated 17.11.2022 has also been sent to the complainant regarding deposit of all payments/amount in future with respect to unit allotted to her in a new bank account of the respondents. An e-mail dated 27.07.2023 was sent giving quarterly updates of the project to the complainant. Further, e-mails dated 26.02.2024 and 27.02.2024 were sent to the complainant regarding additional club charges. An e-mail was also sent to the complainant on 14.11.2024 informing her that occupation certificate for phase I has been obtained on 24.10.2024.
21. Secondly, the complainant opted for construction linked payment plan reiterated as under:

With Application	10% of BSP Booking Amount
Within 45 days of the Application	15% of BSP
On commencement of excavation	10% of BSP + 50% of IDC/EDC
On the casting of Plinth Beam	10% of BSP + 50% of PLC
On the casting of ground floor slab	10% of BSP + 50% of IDC/EDC
On the casting of 3rd floor slab	10% of BSP + 50% of PLC
On the casting of 6th floor slab	10% of BSP
On the casting of 12th floor slab	10% of BSP
On completion of internal brick work and plaster	5% of BSP + Car Parking
On completion of external plaster	5% of BSP + Club membership fee
N offer of possession	5% of BSP + IFMS

Perusal of quarterly progress report (QPR) submitted by the respondents in the projects branch of the authority reveals that only 28% of the work was completed in tower I, situated in Phase II of the project till 31.12.2018. Thus, it is manifest that the respondents were at the stage "On commencement of excavation" on 31.12.2018 and were entitled to raise demand upto 35% of the basic sale consideration i.e., upto Rs.30,10,980/- only from the complainant till December 2018. However, the complainant has already paid an amount of Rs.67,93,378/- to the respondents i.e., approximately 79% of the basic sale consideration of the unit till 2014 itself. This casts a doubt on the credibility of the respondents as demand letters dated 31.12.2015 and 18.04.2016 to clear the outstanding dues amounting to Rs.16,17,361/- and Rs.26,16,232/- respectively were issued in favour of the complainant, without following the payment plan agreed between the parties.

In light of these findings, the cancellation of the allotment of the complainant on 26.12.2016 is deemed invalid and hereby quashed.

22. In view of the above findings, the Authority observes that the respondents have failed to complete the unit in terms of the buyer's agreement dated 15.04.2013 and cancelled the unit allotted to the complainant on account of its own fault/omission. Thus, the Authority is of the view that the respondent is obligated to reinstate the allotment of the complainant.
23. However, the respondent by way of written submissions dated 11.10.2024 apprised the authority that *"the respondents have allocated the unit to another party, and all rights have been transferred to the new allottee"* and an affidavit to this has also been submitted by the respondent on 11.12.2024. Therefore, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the

complainant after obtaining of occupation certificate from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. The rationale behind the same is that the allottee purchased the subject plot way back in 2013 and paid the demanded amount in hope to get possession of the allotted unit.

24. Herein, the complainant intend, 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, —
in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason.***

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."

25. The flat buyer's agreement was executed between the parties on 15.04.2013. As per clause 2.1 of the agreement, the possession was to be handed over within 36 months from the date of sanction of building plans along with a grace period of 180 days. The clause 2.1 of the buyer's agreement is reproduced below:

2. Possession

"2.1the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of 36 months from the date of sanction of the building plans and other necessary Government approvals thereon, of the said Colony. The Purchaser agrees and understands the First Party/Confirming Party shall be entitled to a grace period of 180 days (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the

occupation certificate in respect of the Colony from the concerned authority..."

(Emphasis Supplied)

26. **Due date of possession and admissibility of grace period:** The respondents proposed to hand over the possession of the said unit within a period of 36 months from the date of sanction of building plans. The building plans were approved on 07.06.2012. Therefore, the due date of handing over possession comes out to be 07.06.2015. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as "Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari"*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a)

of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

27. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 07.12.2015, including a grace period of 180 days.
28. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee(s) 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%.:
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.
29. 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.
30. 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., 02.04.2025 is 9.10% per annum. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

31. 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:

"(z) '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;***

32. 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 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from date of sanction of building plans. Date of sanction of building plan is taken from complaint as submitted by complainant in their complaint i.e., 07.06.2012. As such the due date of handing over of possession comes out to be 07.12.2015 in as detailed in para no. 27 of the order.
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 these complaints, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 07.12.2015 till the expiry of 2

months from the date of offer of possession plus two months, after obtaining OC or actual handover of possession, whichever is earlier.

34. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Proviso to Section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 07.12.2015 till offer of possession plus two months after obtaining OC or actual handover of possession, whichever is earlier, at the prescribed rate i.e., 11.10 % per annum as per Proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

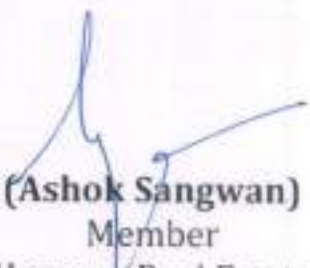
J. Directions of the Authority:

35. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- I. Cancellation letter dated 28.12.2016 issued to the complainant is set aside. Since third party rights have already been created on the unit, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant after obtaining of occupation certificate from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016.
 - II. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on

the amount paid by the complainant to the respondent from the due date of possession (i.e., 07.12.2015) till offer of possession plus 2 months after obtaining OC or actual handover of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- III. The respondent shall convey the updated Statement of Account after adjusting DPC to the complainant and the complainant shall pay the balance amount due, if any as per the payment plan. It is made clear that the demand shall be made by the respondents at the original price.
 - IV. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents which is the same rate of interest which the promoters 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 respondents shall not charge anything from the complainant which is not the part of the buyer's agreement.
36. Complaint stands disposed of.
 37. File be consigned to the registry.

Dated: 02.04.2025


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram