



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

**Complaint no. :** 3067 of 2023  
**First date of hearing:** 07.12.2023  
**Date of decision :** 04.03.2025

Devender  
R/O: H.no. 248, Harlal Mohalla, Mandi Village,  
South Delhi-110047

**Complainant**

**Versus**

M/S Apex Buildwell Private Limited  
Registered office at: 14A/36, W.E.A Karol  
Bagh, New Delhi-110053  
Also, at: - Plot no. 25-B, Sector-32,  
Institutional Area, NH-8, Gurugram-122003

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)  
Sh. Harshit Batra (Advocate)

**Counsel for Complainant**  
**Counsel for Respondent**

**ORDER**

1. The present complaint dated 10.07.2023 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 under the provisions 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details	
1.	Name of the project	Our homes Sector-37 C, Gurugram.	
2.	Project area	10.144 acres	
3.	DTPC license no. & validity	13 of 2012 dated 22.02.2012	
4.	Nature of project	Affordable Group Housing Colony	
5.	Registration Details	GGM/346/78/2019/40 dated 08.07.2019 valid up to 01.12.2019	
6.	Unit no. / Area admeasuring	510, Tower- Jasmine, 5 <sup>th</sup> floor, (Page no. 92 of complaint)	
7.	Date of builder buyer agreement	06.02.2013 (Page no. 55 of complaint)	
8.	Building Plan Approval	29.08.2012 (Page no. 56 of complaint)	
9.	Environmental Clearance	26.06.2013 (as per the information provided by the respondent at the time of registration)	
10.	Possession clause	<b>3. Possession 3(1) Developer proposes to hand over the possession of the apartment within a period of <i>thirty-six months (36)</i>, with a <i>grace period of 6 month</i>, from the date of commencement of construction of the complex upon the receipt of all projects related approvals including sanction of building plans.</b>	
11.	Due date of possession	26.12.2016 (Note: due date is calculated from the date of environmental clearance being later)	
12.	Basic sale consideration	Rs. 16,00,000/- (Page no 59 of the complaint)	
13.	Amount paid	Rs. 17,99,508/- (as per sum of receipts)	
14.	Occupation certificate	29.11.2019 (Page no. 36 of reply)	24.02.2020 [pg. 33 of reply]

15.	Offer of possession	30.11.2019 (Page no. 47 of complaint)
16.	Conveyance deed	01.06.2023 (Page no. 89 of complaint)

**B. Facts of the complaint**

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

- a. That The respondent advertised about its new project namely "Our Homes" at Sector - 37C, Gurugram. In 2012, The respondent company issued an advertisement announcing an affordable group housing project called "Our Homes" at Sector - 37C, Gurugram was launched by respondent under the license no. 13 of 2012 dated 22.02.2012, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.
- b. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely "Our Homes". The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.
- c. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant, booked a unit in the project by paying an amount of ₹1,64,944/- dated 08.09.2012, towards the booking of the said unit bearing no. 510, 5th Floor, Tower-Jasmine, in Sector 37C, having area measuring 48 sq. mtrs. to the respondent dated 08.09.2012 and the same was acknowledged by the respondent. That the respondent confirms the booking of the unit



to the allottee providing the details of the project, confirming the booking of the unit dated 08.09.2012, allotting a unit no. 510, 5th floor, tower-jasmine (hereinafter referred to as 'unit') measuring 48 sq. mtrs. (super built up area) in the aforesaid project of the developer for total sale consideration of ₹16,00,000/- along with car parking and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

- d. That a buyer's agreement was executed between the allottee and respondent on 06.02.2013. As per annexure of the buyer's agreement the sale price of the said apartment shall be ₹16,00,000/- That would include the basic sale price, EDC, IDC, Preferential location charges and exclusive right to use the dedicated car parking. Further, the complainant having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before 06.02.2016. The complainant was also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondents.
- e. As per clause no.3(a) of the apartment buyer's agreement, the respondent had agreed to deliver the possession of the flat within period 36 months plus 6 months from the date of commencement of construction upon receipt of all project related approval. Due date of possession is calculated from the date of agreement i.e. 06.02.2013. hence due date of possession comes out to be 06.02.2016. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of



₹18,01,093/-, towards the said unit against total sale consideration of ₹16,00,000 /-.

- f. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications.
- g. That in terms of clause 3(a) of the said buyer's agreement (as already referred above), respondent was under dutiful obligation to complete the construction and to offer the possession on or before 06.02.2016.
- h. The complainant after many requests and emails; received the demand on account of offer of possession on 30.11.2019. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession.
- i. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to





pay is illegal and unjustified and therefore not a valid offer of possession.

- j. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- k. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for residential purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the Compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
- l. That the Respondent asking for electric meter charges of and electrification charges from the complainant is absolutely illegal as the cost of the electric meter in the market is not more than Rs. 2,500.00 hence asking for such a huge amount, when the same is not a part of the Builder Buyer Agreement is unjustified and illegal and therefore needs to be withdrawn immediately.
- m. That the respondent asked the complainant to sign the indemnity bond as perquisite condition for handing over of the possession. Complainant raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainant but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainant do not sign the



aforesaid indemnity bond. Further, the complainant left with no option instead of signing the same.

- n. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the Respondent but even the Settlement-cum-Amendment Agreement is also heavily loaded in favour of the Respondent. Needless to mention that such one-sided Agreements have been held to be unconstitutional and hence in valid by the Honourable Supreme Court and the Honourable High Courts in number of cases. In **Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer Case no. 351 of 2015**, it was held that the execution of indemnity cum undertaking would defeat the provisions of section 23 and 28 if the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice.
- o. That the complainant after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent issued the physical handover advice letter of the unit on account of handing over the physical possession of the unit. That the complainant after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 01.06.2023. The Complainant were not given any opportunity to negotiate the terms of the said sale deed. It is pertinent to note that no negotiations were permitted in relation to the buyer's agreement. The Complainant was told that the sale deed will encompass all the relevant issues at hand.



- p. The Buyer's Agreement issued to the Complainant by the Respondent stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The so called compensation payable as per the said agreement is Rs. 5/- per sq. ft. per month. It is respectfully submitted that the said amount is atrociously low and unfair. No compensation was provided to the Complainant till date. It is respectfully submitted that the Hon'ble National Consumer Disputes Redressal Commission, in a similar case, **Shri. Satish Kumar Pandey &Anr. v. M/s. Unitech Ltd.**, Consumer Case No. 427 of 2014, has noted that the payment of the aforesaid Rs. 5/- as compensation is very less because the penalty payable by a home buyer in the event of default in making payments to the Builder is much more.
- q. Moreover, the said clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 itself which has clarified the position that the interest payable by the Promoter in case of default shall be the same as the interest payable by the Allottees in case of any default made by them. It is also pertinent to mention here that the Respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft. The Complainant are actually entitled to interest @ 9.80% per annum on the total sum paid by them.
- r. That the Respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The Complainant has suffered on account of deficiency in service by the Respondents and as





such the Respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. Thus, the Complainant(s) being an aggrieved person filing the present complaint under section 31 with the Authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph.

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

4. The complainant has sought following relief(s).
  - a. Direct the Respondent to pay the interest on the total amount paid by the Complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
  - b. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016.
  - c. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to refund the amount collected under different heads along with offer of possession which complainant was not liable to pay as per the payment plan.
  - d. Pass an order to direct the Respondent to return unreasonably charged by Respondent by increasing sale price after execution of the Buyer's Agreement between Respondent and Complainants.
  - e. It is most respectfully prayed that this Hon'ble Authority be pleased to order to set aside the one-sided indemnity bond get signed by the Respondent from the complainant under undue influence.
5. On the date of hearing, the authority explained to the respondent/promoter 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 the respondent:**

6. The respondents have contested the complaint on the following grounds.
  - a. That the complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this



Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply. That the complainant is vehemently and most humbly stated that bring out the true and correct facts and circumstances is subject to the contention of the respondent that the Hon'ble Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable for reasons stated in the present reply.

- b. That the complainant, namely, Devender approached the respondent and expressed his interest in booking of an apartment in the low cost/affordable group housing project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana (hereinafter referred to as the "**Project**"). Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- c. That thereafter, the complainant, vide an application form dated 07.09.2012 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 510, located on the 5<sup>th</sup> floor, tower- Jasmine admeasuring 516.67 sq. ft. (tentative area) along with one car parking was allotted to the complainant. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favour. Thereafter, a buyer's agreement dated 06.02.2013 was executed between the complainant and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the



- parties and the terms and conditions of the same are binding on both the parties.
- d. That after signing of the buyer's agreement, the parties entered into a contractual relationship and being in a contractual relationship, reciprocal promises are bound to be maintained by the parties. It is respectfully submitted that the rights and obligations of complainant as well as the respondent are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That as per clause 3(a) of the buyer's agreement dated 06.02.2013, the due date of possession of the unit in question was 36 months from date of commencement of construction upon the receipts of all project related approvals along with a grace period of 6 months.
- e. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Hon'ble Appellate Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022** that if the grace period is mentioned in the clause, the benefit of the same is allowed. However, it is pertinent to mention here that the due date/possession clause provided under clause 3 of the builder buyer agreement was subjective in nature and hence shall depend on the allottee/complainant complying all the terms and conditions of the agreement. Thus, the due date of offer of possession was subjected to the terms of Clause 3 (Force Majeure) and the complainant having complied with all the terms and conditions of the builder buyer agreement.
- f. That as noted above, the due date of the unit was subjected to the complainant having complied with all the terms and conditions of the



builder buyer agreement. However, the complainant failed to fulfilled his obligation and had defaulted in making the outstanding payments. Moreover, it is to be noted that the development and implementation of the said project has 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.

- g. it is comprehensively established that a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 Pandemic, as noted above. It is well recognized that one day of hindrance in the construction industry leads to a gigantic delay and has a deep effect on the overall construction process of a real estate project. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. However, despite all odds, the Respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions and has ensured compliance under the Agreement, laws, and, rules and regulations. In a similar case where such orders were brought before the Hon'ble Authority in the **complaint no. 3890 of 2021 titled Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP decided on 17.05.2022**, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 467 days over and above the grace period of 6 months need to be rightly given to the respondent builder.
- h. That the respondent, despite such delay, earnestly fulfilled its obligation under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The





various circumstances beyond the control of the respondent are the factors responsible for the delayed development of the project. The respondent cannot be penalized and held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- i. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainant but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application before the concerned Authority and successfully attained the occupation certificate dated 29.11.2019 and 24.02.2020. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority, the Respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the Respondent does not exercise any influence in any manner whatsoever over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for the implementation of the project.
- j. That it is pertinent to mention here that after receiving of the Occupation Certificate, the possession of the said unit was lawfully offered to the Complainant vide Offer of Possession dated 30.11.2019 already annexed with the Complaint.





- k. That thereafter the physical possession was taken by the Complainant without any demur and hence a possession certificate was thereby issued in favour of the Complainant by the Respondent. It is now, after over 4 years of the offer of possession that the Complainant has approached the Ld. Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the Respondent. Without prejudice to the contents of the Respondent, it is submitted that the present Complaint is **barred by limitation** as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter. The present complaint having been filed after over years of receipt of occupancy certificate, the complaint is not maintainable and should be dismissed. In a case titled as **Manasi Narasimhan and Ors. Vs. Larsen and Turbo Limited (MANU/RR/0095/2020; decided on 18.08.2021; MahaRERA)**, where the complaint was filed after 9 months of taking possession, the complaint was noted to be barred by limitation.
- l. That after giving the lawful possession of the unit to the Complainant, the Conveyance Deed dated 01.06.2023 was also executed between the Complainant and the Respondent. It is submitted that after execution of the Conveyance Deed, the contractual relationship between the Parties stands fully satisfied and comes to an end. That there remains no claim/grievance of the Complainant with respect to the Agreement or any obligation of the parties thereunder.
- m. That after the execution of the Conveyance Deed, the contractual relationship between the Parties stands fully satisfied and comes to an end. This Hon'ble Authority has noted in **Renu Garg v Pioneer Urban Land & Infrastructure Ltd. Complaint No. 3189 of 2019, dated**



- 12.03.2020**, that after the execution of conveyance deed and after having taken the vacant and peaceful possession of the unit, the parties have entered into a settlement and thereafter, no claim persists.
- n. That after the execution of the Conveyance Deed, the Parties are estopped from making any claims at this instance. It is a settled matter of law that: *The necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right.* (**Provash Chandra Dalui and Ors. vs. Biswanath Banerjee and Ors. (03.04.1989 - SC): MANU/SC/0422/1989 = [1989] 2 SCR 401, [Para 23]**). That after having executed the Conveyance Deed and having taken the unit after due inspections, no claim exists at this stage.
- o. That similarly, the Uttar Pradesh RERA (AO), Lucknow in **G. Narayan Swami v. Shauryapuram STPL Complaint No. ADJ/NCR145/07/76878/2021** and **Anil Kumar v. Shauryapuram STPL Complaint No. ADJ/NCR145/02/90626/2022** has dismissed the cases where reliefs were sought after years of execution of the conveyance deed.
- p. That it is categorical to note that no reliance can be placed to **Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors. MANU/SC/0607/2020 dated 24.08.2020** where the judgment was pronounced in the backdrop of the peculiar facts and circumstances of the case where protests had been made by the allottees before taking the possession or executing the conveyance deed, however, no such protest was made in the present case and hence, the claim of the Complainant deserves to be dismissed at the outset.



- q. It is imperative to mention here that the issue with respect to the granting of delay possession interest after the execution of conveyance deed is already pending adjudication in the **Haryana Real Estate Appellate Tribunal** in the case titled as **Emaar India Limited vs Ruchika Ahuja** bearing **Appeal No. 94 of 2022** and the next date of hearing in the same is 20.09.2023. That in light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainant, non-existence of cause of action and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondent.

**E. Findings on objection raised by the respondent that the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges.**

7. The respondent submitted that the complainant had executed the conveyance deed on 01.06.2023 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case.
8. In the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Therefore, this authority holds that even after execution of the conveyance deed, the complainant cannot be



precluded from his right to seek delay possession charges from the respondent-promoter.

**F. Findings on the relief sought by the complainant.**

**F.I. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.**

**F.II. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016.**

9. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

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

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

10. Clause 3 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

***"3. Possession 3(1) Developer proposes to hand over the possession of the apartment within a period of thirty-six months (36), with a grace period of 6 month, from the date of commencement of construction of the complex upon the receipt of all projects related approvals including sanction of building plans."***

11. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction. The due date of possession is calculated from the date of environment clearance i.e., 26.12.2013 as date of start of construction is not known but it can commence only after environment clearance. The period of 36 months expired on 26.12.2016.



12. **Admissibility of delay possession charges at prescribed rate of interest:**

The 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.

13. The legislature in its wisdom in the subordinate legislation under the 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.

14. 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., 04.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

15. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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.

16. 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.

17. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 11(a) of the buyer's agreement executed between the parties, the possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction. Therefore, the due date of handing over possession comes out to be 26.12.2016. In the present case, the complainant was offered possession by the respondent on 30.11.2019 after obtaining occupation certificate dated 29.11.2019 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.

18. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 29.11.2019. However, the respondent offered the possession of the unit in question to the complainant only on 30.11.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e.

26.12.2016 till the expiry of 2 months from the date of offer of possession (30.11.2019) which comes out to be 30.01.2020.

19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 26.12.2016 till 30.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**F.III. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to refund the amount collected under different heads along with offer of possession which complainant was not liable to pay as per the payment plan.**

**F.IV. Pass an order to direct the respondent to return unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainants.**

20. In the above-mentioned reliefs sought by the complainants, the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties.
21. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

**F.V. It is most respectfully prayed that this Hon'ble Authority be pleased to order to set aside the one-sided indemnity bond get signed by the respondent from the complainant under undue influence**

22. In the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that the unit handover letter and indemnity cum undertaking executed at the time of taking possession, does not preclude the allottees

from exercising their right to claim delay possession charges as per the provisions of the Act.

23. In light of the aforesaid order, the complainant is entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.

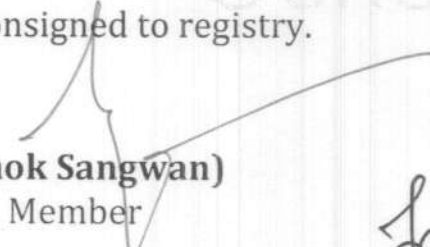
**G. Directions of the authority**

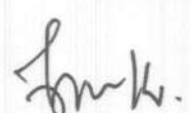
24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 26.12.2016 till 30.01.2020 i.e., expiry of 2 months from the date of offer of possession (30.11.2019). 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.
- b. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

25. Complaint stands disposed of.

26. File be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairperson

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2025