

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

**Complaint no.:** 6772 of 2022  
**Date of filing:** 18.10.2022  
**Date of first hearing:** 14.02.2023  
**Order pronounced on:** 02.07.2025

**Mamni**

**R/o:** - Villa no. 62, GF, Block no.5, Eros  
Garden, Suraj Kund Road, Faridabad-  
121009

**Complainants**

Versus

**TS Realtech Private Limited**

**Regd. Office at:** - 11<sup>th</sup> floor, Paras Twin  
Towers, Sector-54, Gurugram

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Ayush Gupta and Mr. Khushwant Saini, Advocates  
Mr. Shubho Jana, Advocate

Complainant  
Respondent

**ORDER**

1. The present complaint 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 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Iris Broadway", Sector-85-86, Gurgaon, Haryana
2.	Project Area	2.8 acres
3.	Nature of project	Commercial Complex
4.	DTCP License no. and Validity status	40 of 2012 dated 22.04.2016 Valid up to- 21.04.2016
5.	Name of Licensee	T.S. Realtech
6.	Registered/not registered	<b>Registered</b> Registration no. 168 of 2017 dated 29.08.2017 valid till 31.12.2021
7.	Unit no.	F-150, 1 <sup>st</sup> floor, Block-A (BBA as on page 17 of complaint)
8.	Unit area	426.64 sq. ft. (Super Area) (BBA as on page 17 of complaint)
9.	Date of booking	03.03.2013 (As on page 12 of complaint)
10.	Date of execution of builder buyer agreement	22.07.2013 (As on page 13 of complaint)
11.	Possession clause	<p><b>"12. ....</b>  <i>If for any reasons other than those given in clause 11.1, the company is unable to or fails to deliver possession of the said unit to the allottees <b>within forty two months from the date of application or within extended period or periods under this agreement</b>, then in such case, the allottees shall be entitled to give notice to the company, <b>within ninety days from the expiry of said period of forty two months</b> or such extended periods, as the case may be, for terminating this agreement."</i>  <b>(Emphasis supplied)</b>            (BBA at page 25 of complaint)</p>



12.	Due date of possession	22.04.2017 (Calculated to be 42 months from the date of buyer's agreement + 90 days unqualified grace period) <i>(Inadvertently mentioned to be 22.07.2016 in proceedings of the day dated 23.04.2025)</i>
13.	Basic sales price	Rs. 33,01,500/- (426 sq. ft. X Rs.7750/-) (Page no. 18 of complaint)
14.	Amount paid by the complainant	Fully Paid No dues as per no dues certificate dated 14.10.2019
15.	No dues certificate	14.10.2019 (As on page 43 of complaint)
16.	Occupation certificate	29.03.2019 (As on page 41 of reply)
17.	Offer of possession	12.04.2019 (As on page 38 of complaint)
18.	Possession Letter	20.08.2019 <i>(Issued by respondent but not signed by the complainant)</i> (As on page 43 of reply)

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That in the year 2013, the respondent through its marketing executives, advertisement and through various mediums and means approached the complainant with an offer to invest and buy a unit in the proposed project of respondent, which the respondent was going to launch by the name "Iris Broadway" in Sector-85, 86, Gurugram. The respondent assured the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of the said project on time with the promised quality and specifications.
- b) That relying upon assurances of the respondent and believing them to be true, the complainant booked a commercial unit having a super area of

426.64 sq. ft. on 03.03.2013 at the proposed project. Accordingly, the complainant had paid Rs.10,00,000/- as the booking amount.

- c) That the respondent assured the complainant that it would execute the buyer's agreement at the earliest and maximum within one week. However, the respondent had not executed the agreement as promised and same was executed on 22.07.2013.
- d) That as per the agreement executed between the parties the complainant has paid the full amount of the said commercial shop towards the sale consideration to the respondent as demanded by it, from time to time.
- e) That the respondent made the offer of possession vide its letter of offer of possession letter dated 12.04.2019 for the said commercial shop.
- f) That thereafter, an MOU was signed between the parties on 07.10.2019 where the complainant and respondent made the full and final settlement towards the said commercial shop, and the complaint also agreed to withdraw complaint no. HRR-GGM-CRN-2400-2019 filed in HRERA, Gurugram for the possession and delay compensation charges.
- g) That after the MOU dated 07.10.2019, the respondent issued a no dues certificate dated 14.10.2019 which mentions that the respondent has no further claims against the said unit from the complainant and everything has been fully and finally settled.
- h) That the respondent miserably failed to fulfill the said commitment even after the delay of 2 years and 10 months. The respondent had criminally misappropriated the entire amount as paid by the complainant for the said unit and never had the intention to deliver any unit to the complainant.
- i) That the complainant is paying the maintenance charges of the said commercial units from time to time even without getting physical



possession of the said commercial unit. Further, the respondent had falsely represented in its advertisements the area, price, quality, delivery date of possession and resorted to all kinds of unfair trade practices while transacting with the complainant.

- j) That the cause of action accrued in favor of the complainant and against the respondent on 22.07.2013, when the complainant had booked the said commercial unit and it further arose when respondent failed to deliver the said commercial unit and the cause of action is continuing and is still subsisting on a day-to-day basis as the respondent has neither delivered the possession of said commercial shop even after various repeated requests made by the complainant to the respondent in this regard.
- k) That the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

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

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

- I. Direct the respondent to pay the interest at the prescribed rate on the amount paid so far amounting to Rs.8,89,988/- which was paid by the complainants for the said apartment on account of delay in delivering possession from the date of payment till delivery of physical possession of the apartment.
- II. Direct the respondent to give possession of the said commercial space to the complainant as per the buyer's agreement and waive off the illegal and hypothetical maintenance charges against the complainant's unit which has not been delivered to her till today.

5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by the complainant.



**D. Reply by the respondent.**

6. The respondent contested the complaint on the following grounds:-

- a) That respondent is one of the most reputed and sought-after builders in the vicinity of the NCR has been primarily dealing in commercial projects in the said region. The respondent incorporated in the year 2007 and has been delivering exceptional service in the field of real estate business in the said region. The present complaint has been filed by the complainant to eschew its liability to pay the outstanding maintenance charges of Rs. 3,29,581/- for the period from February, 2020 to February, 2023.
- b) That the complainant has approached this Authority with unclean hands as material information with respect to the offer of possession and payment of dues are not divulged in the present complaint and the same has been concealed with the ulterior motive to cheat and defraud the respondent and waste the precious time of Authority.
- c) The complainant had booked a unit bearing no. F-150 in block A having a super area of 426.64 sq. ft. in a commercial project being developed by the respondent namely 'IRIS BROADWAY' situated at Sector 85-86, Gurgaon Manesar Urban Complex, Gurgaon, Haryana on March 03, 2013.
- d) Thereafter, a buyer's agreement was entered into between the parties on 22.07.2013 wherein the respondent had agreed to sell the unit to the complainant at a basic sale price of Rs. 7,750/- per sq. ft. of the super area along with other charges as mentioned in detail in paragraph 1.1 of the agreement. The payment schedule of the unit was mentioned in Annexure III of the said agreement.
- e) That the respondent while following all statutory and legal guidelines and adhering to all the deadlines, obtained all the requisite permissions and certificates with respect to the project in the shortest possible time.



- f) Pursuant to the completion of the project, the respondent vide its letter bearing reference no. TS/IRIS-BW/114 dated 12.04.2019 informed the complainant that the respondent has obtained the completion certificate on 29.03.2019 and further offered possession of the unit subject to payment of all dues by the complainant and completion of documentation, other procedures and formalities.
- g) That the respondent again vide its letters dated 20.08.2019 and 28.08.2019 requested the complainant to make the payment of the pending dues and take the possession of the unit. However, the complainant failed to make the payment of the dues and take the possession of the unit. Thus, the intention of the respondent was never to retain the possession of the unit but to handover the possession of the unit to the complainant.
- h) Thereafter, in order to settle some disputes which arose between the Parties, the complainant paid a sum of Rs. 1,72,612/- and entered a MOU dated 07.10.2019 wherein the complainant further undertook to pay a sum of Rs. 1,50,000/- aggregating to a sum of Rs. 3,22,612/- on account of pending dues, interest on non-payment of dues etc., following which the respondent issued a No Dues Certificate ('NDC') in favour of the complainant on 14.10.2019 certifying that the complainant had pending dues to pay to the respondent towards basic sales price, 1 (one) car parking space, preferred location charge, EDC, IDC, ECC, Interest Free Maintenance Security etc. against the unit. However, it is important to mention here that the NDC was not granted by the respondent regarding the maintenance charges. Without prejudice to the above, it is submitted that the said settlement was done on account of request made by the complainant.

- i) That the respondent has been duly sending the bill/invoice towards maintenance of the unit to the complainant regularly. However, the complainant has only made the payments towards the maintenance charges at the rate of Rs. 12/- per sq. ft. on the super area of the unit amounting to Rs. 24,168/- till the month of January, 2020 while the maintenance charges for the period from February, 2020 till February, 2023 amounting to Rs. 3,29,581/- are still outstanding to be paid. It is worth mentioning here that till the institution of the complaint the complainant had never made any objections and/or raised any dispute regarding the levy of the maintenance charges by the respondent.
- j) That the complainant has tried to mislead this Hon'ble Authority by making wrong and incorrect submissions in the paragraph no. 14 of the complaint that the complainant has been paying the maintenance charges of the unit from time to time while the truth is that the complainant has paid the maintenance charges only once till now.
- k) That as per the provisions of section 19(6) of Real Estate (Regulation and Development) Act, 2016, the complainant is responsible to make necessary payments as enumerated therein on time.
- l) Further as per the provision of clause 14.1 of the agreement, the complainant is liable to pay promptly all the demands, bills, and charges as may be demanded by the respondent or the maintenance agency as may be appointed by the respondent for the maintenance of the project.
- m) That over a period of almost 4 years since the date of first offer of possession by the respondent, the respondent has repeatedly reminded and requested the complainant to take the possession of the unit and complete the formalities with respect to the same. The same is evident from the email dated 04.03.2022, sent by the complainant to the



respondent wherein the complainant has admitted that the complainant had received a communication from the respondent to visit the office of the respondent to complete the formalities with respect to transferring the possession of the unit in complainant's favour. However, the complainant vide the said email refused to visit the office of the respondent citing some flimsy excuse and rather requested the respondent to send the documents required for obtaining possession of the unit to the complainant through courier or post.

- n) That the respondent, on the very next day i.e. on 05.03.2022, sent an email informing the complainant that since the documents with respect to the unit are originals, the said documents cannot be couriered to the complainant. The respondent further requested the complainant to visit the office of the respondent to collect the documents personally for acknowledgement and assured the complainant that the documents pertaining to the unit shall be handed over to the complainant.
- o) That the complainant is liable to pay a sum of Rs. Rs. 3,29,581/- to the respondent towards outstanding maintenance charges at the rate of 12% per annum for the period from February, 2020 till February, 2023. It is important to note here that as per the provision of Section 19(7) of the Real Estate (Regulation and Development) Act, 2016, the respondent is entitled to charge the interest for delay in payment towards any amount or charges to be paid under section 19(6) of the Real Estate (Regulation and Development) Act, 2016 and the complainant is liable to pay the interest for delay in any such payment.
- p) It is further submitted that the only Maintenance Bill being the invoice bearing no. 2019-20/IB/066 dated 21.01.2020 for the period from 01.10.2019 to 31.01.2020 for Rs. 24,651/- against which the complainant



has made payment, clearly mentions that if the payment of maintenance charges are not made within due date an interest at the rate of 24% will be charged by the respondent. It is clear from the above that the Complainant always had the knowledge of levy of interest on late payment of maintenance charges and therefore, the complainant is hereby estopped from denying the knowledge of the same.

- q) That as per the agreement, in case there is a delay in handing over the possession of the unit by the respondent herein, the respondent shall pay a compensation of Rs. 5/- per sq. ft. of the super area per month. Applying the same formula, for over a period of around 2 years 4 months, the respondent is entitled to receive a compensation at the rate of Rs. 5 per sq. ft. of the super area of the unit for a period commencing from the date on which the NDC was granted by the respondent i.e. 14.10.2019 till the date on which the complainant takes the possession of the unit.
- r) That the complainant has failed to bring on record anything contradictory or in violation of the provisions of RERA Act, 2016. Moreover, nowhere in the complaint any violation of the provisions of RERA Act, 2016 by the respondent has been mentioned. Thus, the complaint is liable to be dismissed solely on this ground.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the 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**

9. 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**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

11. 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) The promoter shall-*

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

***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."*

12. 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 relief sought by the complainants.**

**F.I Direct the respondent to pay the interest at the prescribed rate on the amount paid so far amounting to Rs.8,89,988/- which was paid by the complainant for the said unit on account of delay in delivering**



**possession from the date of payment till delivery of physical possession of the apartment.**

13. The complainant booked a unit 150, tower-F, 1<sup>st</sup> floor, block A in the project of the respondent namely, "Iris Broadway" admeasuring super area of 426.64 sq. ft. for an agreed basic sale consideration of Rs.33,01,500/-. 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**

(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."**

**(Emphasis supplied)**

14. Clause IV and 12 of the buyer's agreement dated 22.07.2013 provides for handing over of possession and is reproduced below:

**"Clause IV. The Company intends to commence the development of the said commercial colony consisting of commercial spaces, once spaces and such other amenities, facilities as may be permissible under law in accordance with the building plans and utmost endeavour will be made to complete the same by the end of 42 (Forty-two) Months from the date of receipt of all permissions and commencement of construction."**

**"12. ....**

**If for any reasons other than those given in clause 11.1, the company is unable to or fails to deliver possession of the said unit to the allottees within forty two months from the date of application or within extended period or periods under this agreement, then in such case, the allottees shall be entitled to give notice to the company, within ninety days from the expiry of said period of forty two months or such extended periods, as the case may be, for terminating this agreement."**

**(Emphasis supplied)**

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms



and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**16. Admissibility of grace period:** As per clause 12 of buyer's agreement dated 22.07.2013, the respondent-promoter proposed to handover the possession of the said unit within a period of 42 months along with grace period 90 days as grace period. The said clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 42 months, then a grace period of 90 days shall be allowed to the respondent. The authority is of view that the said grace period of 90 days shall be allowed to the respondent being unconditional. Therefore, as per clause 12 of the buyer's agreement dated 22.07.2013, the due date of possession comes out to be 22.04.2017.

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

The complainants are seeking delay possession charges. Proviso to Section 18



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

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

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

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

18. 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.
19. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month of the super area as per clause 12 of the buyer's agreement for the period of such delay; whereas, as per clause 1.9 of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyer. The authority



is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

20. 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., 02.07.2025 is @ 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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:

***"(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;"***



22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent which is the same as is being granted to them in case of delayed possession charges.
23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of Section 11(4)(a) of the Act by not handing over the possession by the due date. By virtue of clause IV and 12 of the buyer's agreement executed between the parties on 22.07.2013, the possession of the booked unit was to be delivered within a period of 42 months. The due date of possession calculated from the date of buyer's agreement i.e., 22.07.2013 plus 90 days grace period comes out to be 22.04.2017. The Occupation certificate for the project was granted by the concerned authority on 29.03.2019 and thereafter, the possession of the subject unit was offered to the complainant on 12.04.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to handover physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 22.07.2013 to hand over the possession within the stipulated period.
24. Section 19(10) of the Act obligates the allottees 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 29.03.2019. The respondent offered the possession of the unit in question to the complainants only on 28.04.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of



possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have 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., 22.04.2017 till the expiry of 2 months from the date of offer of possession (12.04.2019) which comes out to be 12.06.2019.

25. Accordingly, the non-compliance of mandate contained in Section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 22.04.2017 till the expiry of 2 months from the date of offer of possession (12.04.2019) which comes out to be 12.06.2019 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

**F.II Direct the respondent to give possession of the said commercial space to the complainant as per the buyer's agreement and waive off the illegal and hypothetical maintenance charges against the complainant's unit which has not been delivered to her till today.**

26. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant.
27. The authority observes that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 29.03.2019. Subsequently, the respondent offered possession of the subject unit to the complainant-allottee on 12.04.2019. Further, a possession letter dated 20.08.2019 (Annexure R3 at page 43 of reply) has also been placed on record by the respondent, but it neither bears the complainant's signatures nor is there any evidence of its delivery to the complainant.



28. Pursuant to Section 17(1) of the Real Estate (Regulation and Development) Act, 2016, the respondent-promoter is mandated to deliver physical possession of the subject unit to the complainant, complete in all respects, in accordance with the specifications set out in the buyer's agreement. Thereafter, under Section 19(10) of the Act, the complainant-allottee is required to accept possession within a period of two months.
29. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
30. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.
31. Another grievance of the complainant is with respect to waiving off maintenance charges as no dues certificate dated 14.10.2019 was already issued by the respondent to the complainant which mentions that the respondent has no further claims against the said unit from the complainant and everything has been fully and finally settled. The plea of the respondent is otherwise that the said certificate was not granted by the respondent



regarding the maintenance charges. The relevant part of no dues certificate dated 14.10.2019 is reiterated herein for ready reference:

*"This is to certify that you, the above-mentioned addressee/addressees is/are the owner/owners of Unit no.- F-150 at our project at Iris Broadway, Block-A, Sec-85 & 86, Gurugram Haryana. On demand of final payment to issue the letter for possession by us against the above-mentioned unit, **you have cleared all the dues towards BSP, One Car Parking Space value, PLC, EDC & IDC, ECC, IFMS and Sinking Fund upto that date.** The Company has also scrutinized its accounts and found suitable to issue the letter for possession of the said unit to your favor.*

*It is hereby confirmed that **we have no further claims, demands or dues upto that date towards BSP, One Car Parking Space, PLC, EDC, ECC, IFMS and Sinking Fund against the said unit from you, all of which have been fully and finally settled.**"*

32. The Authority observes that "No Dues Certificate" issued by the respondent on 14.10.2019 acknowledges that the complainant-allottee has cleared all dues towards BSP, parking, PLC, EDC, ECC, IFMS, and Sinking Fund. It omits any reference to maintenance charges, and the respondent has clarified that those charges were not waived. Hence, the no dues certificate extinguishes only the dues specifically listed and does not absolve the complainant from any maintenance obligations post issuance of occupation certificate (12.04.2019). Further, once occupation certificate is received, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 14,



that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee.

33. Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding maintenance charges from the complainant.

**G. Directions of the Authority**

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

- I. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the due date of possession, i.e., 22.04.2017 till the date of offer of possession (12.04.2019) plus two months i.e., 12.06.2019, 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 complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- III. The respondent is directed to charge maintenance charges from the complainant-allottee in terms of the buyer's agreement executed between the parties.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is

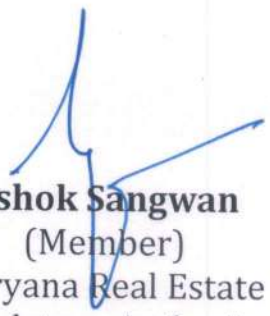


directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- V. The respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
- VI. The respondent is directed to execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.
- VII. The respondent shall not charge anything from the complainant which is not part of the agreement.
35. Complaint stands disposed of.
36. File be consigned to registry.

**Dated: 02.07.2025**

**HARERA**  
GURUGRAM



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