

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

Complaint no. : 4597 of 2023
Date of complaint : 11.10.2023
Date of order : 09.07.2025

Ambalika Chitkara and Mohini Chitkara,
Both R/o: - B-431, Ground Floor, Sushant Lok,
Phase-I, B-Block, Chatarpur (74), Gurugram-122002.

Complainant

Versus

M/s Landmark Apartments Pvt. Ltd.
Regd. office: A-11, Chittranjan Park,
South Delhi, Delhi-110019.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Geetansh Nagpal (Advocate)
Amarjeet Kumar (Advocate)

**Complainants
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 provisions of the Act or the Rules and regulations made thereunder or to the allottee 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	Landmark Cyber Park, Sector 67, Gurugram
2.	Total project area	8.3125 acres
3.	Nature of the project	Cyber Park
4.	DTCP license no. and validity status	97 of 2008 dated 12.05.2008 valid up to 11.05.2020
5.	Name of licensee	M/s Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019
7.	Unit no.	Not allotted
8.	Unit area admeasuring (Super area)	500 sq.ft., 6 th Floor (Page 46 of complaint)
9.	Builder buyer's agreement	18.10.2019 (Page 45 of complaint)
10.	MoU	10.07.2010 (Page 34 of complaint)
11.	Due date of possession	10.07.2013 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
12.	Total sale consideration	Rs. 27,77,500/- (Page 57 of complaint)
13.	Amount paid by the complainant	Rs. 25,00,000/- (Page 36 of complaint)
14.	Assured return clause	5. That the first party will pay Rs.25,000/- as assured return per month payable quarterly to second party till the date of possession or 3 years.
15.	Assured Return paid by respondent from till	Rs. 8,40,000/- (Page 22 of reply)
	03.10.2010	
	03.07.2013	

16.	Occupation certificate	26.12.2018 (Page 2 of the reply)
17.	Offer of possession	18.10.2019 (as per clause 3(a)(e) of the agreement on page 48 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. The complainant vide an application form, booked a unit in the group housing project of the respondent named "Landmark Cyber Park", Sector-67, Gurugram. The complainant made a payment of Rs.1,11,000/- towards the booking amount vide cheque no. 114633 dated 27.05.2010 drawn on Axis Bank, DLF Galleria, Gurugram.
- II. The complainants and the respondent entered into a memorandum of understanding dated 10.07.2010 in which the respondent assured the complainant to pay a monthly assured return amounting to Rs.25,000/- to be paid till date of possession or 3 years and the total sale consideration of the unit to the complainant shall be Rs.25,00,000/- and the complainant paid an amount of Rs.25,00,000/- in total to the respondent.
- III. That as per booking application form, the respondent promised the complainants to handover the possession of the apartment within 36 months from the date of signing of the agreement to sell, which shall be taken from the MOU, i.e., 10.07.2010 and the due date of possession comes out to be 10.07.2013.
- IV. That vide letter dated 05.04.2016, the complainants wrote a letter to the respondent for resumption of assured return as the respondent was neither giving possession of the said property nor paying the assured returns.

- V. That the complainants through their legal counsel, sent a legal notice to the respondent for payment of assured returns, as well as giving the possession of the unit in question, but to no avail.
- VI. The respondent, after a delay of about 6 years for such confirmation of the booking application, allotted a commercial space on 6th Floor to the complainant admeasuring 500 sq. ft in the said project.
- VII. That a buyer's agreement was executed between the complainant and the respondent on 18.10.2019 for a total consideration of Rs.27,77,500/- as per the payment plan annexed at Annexure-A of the BBA out of which the complainant paid an amount of Rs.25,00,000/-.
- VIII. That the complainants contacted the respondent on several occasions, but the respondent was never able to give any satisfactory response to the complainants regarding the status of the delay compensation. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to how the delay in the project will be compensated, but to no avail.
- IX. That the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under Section 18 & 19(4) of Act. The Complainants are also entitled for any other relief which they are found entitled by this Hon'ble Authority.
- X. That the complainants after losing all the hope from the respondent, having their dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the 'Cyber Park" project and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to handover possession and to pay delay possession charges as per the Act.
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 respondent vide its reply has contested the complaint on the following grounds: -
 - i. That the complainants with a sole motive to invest and for gains signed an MoU dated 10.07.2010 and booked a unit in "Landmark Cyber Park" admeasuring 500 sq. ft. for a total consideration of Rs.25,00,000/-. That the respondent has paid assured returns to the complainants till 03.07.2013 and to the tune to Rs.8,40,000/- as per MoU dated 10.07.2010.
 - ii. That the respondent acting on the assurances given to the complainants, completed the project in time and has received the occupation certificate on 26.12.2018 and also issued allotment letter dated 12.08.2019. It is pertinent to mention here that as the complainants were not coming forward to take possession and to deposit the remaining dues of the respondent, the respondent again issued a reminder for possession letter dated 20.09.2019 however, despite the unit being ready for delivery, the complainants filed the present complaint with an ill-motive to extort monetary benefits.
 - iii. That the complainant on 18.10.2019 had entered into a builder buyer's agreement and took the possession of the unit allotted to the

complainant. Relevant para of the builder buyer's agreement dated 12.08.2019 is reproduced herein for the sake of readiness:

"3. Possession of "the said Unit"

a) That the said unit is ready for handover in all respect as bare shell and the possession of the said unit / IT space shall be deemed handed over to the Allottee after signing of this agreement.

b) That the Allottee shall have an option to give the leasing rights of the said unit to the Company /Developer to lease the said unit individually or along with other unit contiguous or non contiguous after signing the lease arrangement agreement (Annexure - B) separately along with this agreement. That the Allottee shall never get the physical possession of the unit after entering into the lease arrangement agreement and shall keep their unit in the lease pool option only."

Thus, it is evident that the complainants have already taken possession of the unit and the present complaint seeking possession along with other relief is nothing but a tactics of the complainants to illegally enrich themselves.

- iv. That moreover after signing of the builder buyer's agreement and after the complainant taking symbolic possession of the unit allotted to the complainant, as the complainant never cleared its remaining dues, the respondent was constrained to write letters dated 20.10.2021 as well as 21.10.2021, however the complainant despite receiving the letters never cleared their dues and filed the present complainant with ulterior motives.
 - v. That the complainant has wilfully agreed to the terms and conditions of the agreement and is now at this belated stage has raised issues and concerns regarding his contractual obligations.
7. 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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

9. 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) 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.

10. 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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to handover possession and to pay delay possession charges as per the Act.



11. In the present complaint, the complainants intend to continue with the project and are 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."

12. **Due date of handing over possession:** The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that ***when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.***
13. In view of the above-mentioned reasoning, the date of execution of MoU i.e. 10.07.2010 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit/space comes out to be 10.07.2013.
14. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. Rule 15 has been reproduced as under:

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

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

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

17. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. The definition of term 'interest' as defined under Section 2(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;"*

20. Therefore, interest on the delayed payments from the complainants 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 complainants in case of delay possession charges.

21. On consideration of the documents available on record and submissions made by both the parties 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. The possession of the subject unit was to be delivered by 10.07.2013. The respondent has completed the construction and development of the project and got the OC/CC on 26.12.2018. It is observed that vide clause 3(a) and (e) of the buyer's agreement dated 18.10.2019, it was mutually agreed between the parties that the respondent will give possession of the said unit in raw/bare shell condition and the same is ready for handover in all respects and shall deemed to be handed over to the complainants on the date of its execution. Furthermore, vide clause 3(g) of the buyer's agreement, the complainant was obligated take physical possession of the unit within 30 days after signing of the that agreement. Thus, the said BBA which was executed after obtaining OC/CC can be termed as offer of possession in view of the above said terms of the BBA. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.
22. 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 26.12.2018. The respondent offered the possession of the unit in question to the complainants only



on 18.10.2019, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (18.10.2019) which comes out to be 18.12.2019.

23. 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 complainants are entitled to delay possession charges at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 10.07.2013 till the expiry of 2 months from the date of offer of possession (18.10.2019) which comes out to be 18.12.2019 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.

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):

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per





annum for every month of delay from the due date of possession i.e., 10.07.2013 till the expiry of 2 months from the date of offer of possession (18.10.2019) i.e., upto 18.12.2019 only.

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent is directed to handover possession of the unit to the complainant/allottees in terms of the buyer's agreement dated 18.10.2019.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement dated 18.10.2019.
- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.
- vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2025