

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

Complaint no.: 859 of 2024

Date of decision:- 16.07.2025

1. Sushil Kumar
2. Meena Kumar

Both R/o: - Flat no. 7041, ATS, Triumph
Society, Sector-104, Gurugram.

Complainants

Versus

M/s. Citra Properties Limited
Regd. office: M-62 & 63, First Floor,
Connaught Place, New Delhi-110001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sajal Dhawan (Advocate)

Complainants

Rahul Yadav (Advocate)

Respondent

ORDER

1. The present complaint dated 18.03.2024 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the

Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"Indiabulls One 09"
2.	Nature of the project	Commercial shop
3.	Location of the project	Sector-109, Gurugram.
4.	HRERA Registered	Registered Vide registration no. 298 of 2017 Dated 13.10.2017
5.	DTCP License	License no. 43 of 2012 Dated-05.05.2012
6.	Allotment letter	04.04.2018 (As on page no. 19 of complaint)
7.	Shop no.	Shop-12-A, Type-Shop (Commercial), Floor-Ground, Tower-1-A (As on page no. 19 of complaint)

8.	Shop area	445.15 sq.ft. [Carpet Area] (As on page no. 19 of complaint)
9.	Agreement For Sale	11.05.2018 (As on page no. 22 of complaint)
10.	Possession clause	Not available
11.	Due date of possession	04.10.2021 [Calculated 36 months from date of allotment + 6 months on account of Covid-19]
12.	Payment plan [Possession linked]	On Offer of possession -60% of sale price + 100% Maintenance Security + Applicable Taxes
13.	Total sale consideration	Rs.1,00,19,760/- (As on page no. 24 of complaint)
14.	Amount paid	Rs.40,07,904/- (As per applicant ledger on page no. 41-42 of complaint)
15.	Occupation certificate	19.07.2024 [As per DTCP site]
16.	Offer of possession	Not on record

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That the respondent, M/s Citra Properties Limited is a company incorporated under the Companies Act, 1956 having Registered office at Office no 202, 2nd Floor, A-18, Rama House, Middle Circle, Connaught

Place, New Delhi-110001 and local address at Sector 109, Village Pawala, Khusrupur, Gurugram-122002.

II. That the project in question is known as "Indiabulls One 09" situated at Sector 109, Gurugram, Haryana. On 02.02.2018, the complainants applied for a shop under the Possession linked payment plan. That the Possession Linked Payment Plan (PLP) as part of Builder Buyer Agreement SCHEDULE 'C' dated 11.05.2018 is being reproduced hereunder:

1. *Booking amount-Rs.2,00,000/-*
2. *Within 30 days from booking-10% of sale price + Applicable taxes.*
3. *Within 90 days from date of booking-30% of sale price + applicable taxes.*
4. *On offer of possession-60% of sale price + applicable taxes.*

III. That subsequently on 04.04.2018, the respondent allotted Shop No. 12 A, Ground Floor, in Tower 1A admeasuring 445.15 sq ft (Approx 41 sq meters) vide a provisional allotment letter. That on 11.05.2018, a pre-printed one-sided, arbitrary, and unilateral Builder Buyer Agreement for the shop was executed between the respondent and the complainants. That as Clause 7.1 of the BBA is silent on the possession to be offered to the complainants.

IV. That is pertinent to note that the possession became due on 11.05.2021. Till date, the complainant had paid Rs.40,07,904/- i.e 100% of money called up by the respondent, but when complainant observed that there had been no progress in construction was slow for a long time, he raised their grievance to the respondent. The Payment Schedule is being reproduced hereunder:

<i>S.No.</i>	<i>Date of payment</i>	<i>Mode of payment</i>	<i>Receipt no.</i>	<i>Amount</i>

1.	02.02.2018	Cheque no. 134712	1805	Rs.2,00,000
2.	12.03.2018	Cheque no. 033415	1822	Rs.8,01,976
3.	22.05.2018	RTGS SBIN7181 42240346	2040	Rs.1,90,000
4.	23.05.2018	TDS Challan 0149	2037	Rs.17,10,000
5.	23.05.2018	RTGS SBINR520 18052300 016788	2041	Rs.35,951
6.	23.05.2018	RTGS SBINR520 18052300 016788	2038	Rs.10,66,022
7.	31.05.2018	Cheque No. 033425	2061	Rs.3,955
		Total		Rs.40,07,904

- V. That the complainants have always paid the instalments on time, there is a slow progress in the construction of the shop and it is expected to take around 2-3 years more for the completion of the project.
- VI. That the main grievance of the complainants in the present complaint is that despite the complainants having paid 100% of the called up amount, the respondent failed to deliver possession till date.
- VII. That the respondent, upon receiving payment for the shop, committed to deliver possession of a fully constructed shop, within a reasonable

timeframe. It is crucial to note that the complainants have duly fulfilled their instalment payments as per the Builder Buyer Agreement. The remaining 60% of the cost is intended to be paid upon the offer of possession, contingent on obtaining necessary clearances from relevant authorities/departments. The respondent was obligated to complete and deliver the project promptly.

VIII. That there is a deficiency of service on the part of the respondent and they are liable to be penalised and provide interest to the complainants. That for the first time cause of action for the present complaint arose when the complainants applied for the project by submitting an application form dated 02.02.2018 with a booking amount of Rs.2,00,000/- and on 04.04.2018 when a Provisional Allotment letter was issued by the respondent and further on 11.05.2018 when a one sided, arbitrary, and unilateral shop buyer agreement was executed between the parties. Further, the cause of action arose on 11.05.2021, when the respondent failed to hand over the possession of the shop in a reasonable time.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):-
 - i. Direct the respondent to pay interest @ prescribed rate on delayed possession from the due date of possession i.e., 11.05.2021 till date of actual possession.
 - ii. Direct the respondent to provide legal, physical, vacant possession after obtaining Occupation Certificate from the concerned department.
5. Vide proceedings dated 22.05.2024, the respondent filed a Memo of Appearance and requested for an adjournment for filing reply. The said

request for adjournment was accepted and the respondent was directed to file reply within a period of three weeks of the order, in the registry, failing which cost of Rs.5,000/- would be paid to the complainant. Thereafter, on 17.07.2024, neither reply was filed nor the cost of Rs.5,000/- was paid and the respondent's counsel further requested for adjournment. The respondent was again granted an opportunity to file reply within a period of three weeks with an advance copy to the complainant alongwith a cost of Rs.10,000/-. Vide proceedings dated 09.10.2024, it was observed that the respondent failed to file the reply and also pay the cost. Vide proceedings dated 26.03.2025, the defence of the respondent was struck off, however, in the interest of justice, the parties were granted an opportunity to file written submissions within a period of two weeks.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

D. Jurisdiction of the authority:

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

D. 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.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

9. 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.

E. Findings on reliefs sought by the complainants:

- E.I Direct the respondent to pay interest @ prescribed rate on delayed possession from the due date of possession i.e., 11.05.2021 till date of actual possession.**
- E.II Direct the respondent to provide legal, physical, vacant possession after obtaining Occupation Certificate from the concerned department.**

10. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainants booked a shop bearing no. 12-A, Type-Shop on ground floor in tower-1-A, in the project "Indiabulls One09" situated in Sector 109 of the respondent for a sale consideration of Rs.1,00,19,760/- and have paid a sum of Rs.40,07,904/- till date. The Agreement For Sale was executed between the complainants and respondent on 11.05.2018. The Agreement For Sale dated 11.05.2018, fails to mention any timeline during which the possession of the shop would be handed over to the complainant. Clause 7 of the Agreement dated 11.05.2018 deals with possession and 7.1 deals with the Schedule for possession of the unit, but fails to mention any timeline for delivery of the possession.
11. 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 /2019** observed that "a person cannot be mode 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.
12. In view of the above-mentioned reasoning, the date of allotment of the unit i.e., 04.04.2018, is to be taken into consideration for calculating the due

date of possession. Therefore, the period of 36 months from the date of allotment i.e., 04.04.2018 comes out to be 04.04.2021. The Authority vide notification no. **9/3-2020** dated **26.05.2020** have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic and the same is also allowed to the respondent in lieu of the notification of the Authority. Thus, the due date of possession comes out to be 04.10.2021.

13. The complainants intend to continue with the project and are seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules:

"Section 18: - Return of amount and compensation

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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. Payment of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges at the 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.

15. 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.

16. 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., 16.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

18. Therefore, interest on the delay 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 them in case of delayed possession charges.

19. 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 respondents are 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 ***Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2019***, the due date is calculated 36 months from the date of allotment. The Authority vide notification no. **9/3-2020** dated **26.05.2020** have provided an

extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic and the same is also allowed to the respondent in lieu of the notification of the Authority. Thus, the due date of possession comes out to be 04.10.2021

20. The Authority is of considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 11.05.2018. The respondent have obtained the Occupation Certificate from the concerned authorities on 19.07.2024. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
21. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 04.10.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F. Directions of the authority

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 04.10.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - 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 allottees, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
 - iii. The complainants are directed to pay outstanding dues, after adjustment of interest for the delayed period and the respondent is directed to handover actual, physical possession of the shop to the complainants within 30 days , after the payments are being made.
 - iv. The respondent is directed to execute Conveyance Deed in favour of the complainant within a period of three months after obtaining the Occupation Certificate, on the payment of the requisite stamp duty, charges etc.
 - v. The respondent shall not charge anything from the complainant which is not the part of the agreement.



HARERA
GURUGRAM

Complaint No. 859 of 2024

23. Complaint stands disposed of.
24. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.07.2025



HARERA
GURUGRAM