

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

Complaint no. : 3011 of 2024
Date of filing complaint : 11.07.2024
First date of hearing : 06.11.2024
Date of decision : 16.07.2025

1.Sanjay Chhabra
2.Vanita Chhabra

Both Residents of: - House no. 163-C,
Mianwali Colony, Gurugram- 122001

Complainants

Versus

M/s Shine Buildcon Private Limited
Registered office: H-334, Ground
Floor, New Rajinder Nagar, New Delhi
Corporate office: Plot No. 281, Udyog
Vihar, Phase-II, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Harshit Batra (Advocate)

Complainants

Mr. Akshat Mittal (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant-allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the

provisions of the Act or the rules and regulations made there under or to the allottee 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 complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

| Sr. No. | Particulars | Details |
|---------|--|---|
| 1. | Name of the project | "70 Grandwalk", Sector 70, Gurugram |
| 2. | Project area | 2.893 acres |
| 3. | Nature of the project | Commercial Complex |
| 4. | DTCP license no. and validity status | 34 of 2012 dated 15.04.2012 valid upto 14.04.2020 |
| 5. | Name of licensee | Shine Buildcon |
| 6. | RERA Registered/ not registered | 28 of 2017 dated 28.07.2017 valid upto 30.06.2022 |
| 7. | Date of execution of BBA | 14.08.2015 (Page no. 28 of complaint) |
| 8. | Date of approval of building plans | 03.05.2013 (Taken from another file of same project i.e., 5702 of 2023 titled as "Anisha versus Shine Buildcon Private Limited") |
| | Date of approval of revised building plans | 01.09.2016 (Taken from another file of same project i.e., 5702 of 2023 titled as "Anisha versus Shine Buildcon Private Limited") |
| 9. | Unit no. | B-114, 1 st Floor (Service Apartment) 362 Sq. Ft. (Super Area) (BBA at page no. 30 of complaint) |
| 10. | Possession clause | Clause 13. POSSESSION AND HOLDING CHARGES <i>(ii) Subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the Allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not to the timely payment of all dues and</i> |

| | | |
|-----|---|---|
| | | <p>charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (Six month) ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As per BBA at page no. 50 of complaint)</p> |
| 11. | Due date of possession | 14.08.2019 (Calculated to be 42 months from date of execution of buyer's agreement, being later plus an unqualified grace period of 6 months) |
| 12. | Payment Plan | Possession Linked Plan (As per payment plan annexed to BBA at page no. 72 of complaint) |
| 13. | Sale Consideration | Rs. 34,23,438/- (As per conveyance deed dated 15.04.2024 at page 127 of complaint) |
| 14. | Amount paid by the complainants | Rs. 39,67,239/- (As per conveyance deed dated 15.04.2024 at page 127 of complaint) |
| 15. | No Dues Certificate issued by respondent to complainant | 26.03.2024 (Page no. 95 of complaint) |
| 16. | Occupation Certificate | 10.10.2023 (Page 30 of reply) |
| 17. | Offer of Possession | 15.10.2023 (Page no. 101 of complaint) |
| 18. | Conveyance Deed | 15.04.2024 (Page no. 127 of complaint) |
| 19. | Possession Handover Letter | 11.05.2024 (Page no. 104 of complaint) |

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- a) That the representatives of the respondent in 2015 approached the complainants and told him that the respondent is coming up with a commercial venture in the name of "70 Grandwalk" at Sector 70, Gurugram wherein shops, serviced studios, multiplexes, food court and retail and entertainment area are being constructed. They represented that respondent have all approvals, licenses and permissions in place for the same and that the construction of the said project shall be completed within months.
- b) That relying on the representatives of the respondent, the complainants agreed to purchase a unit in the said project of the respondent. The complainant made towards registration and allotment in the project. The complainants were duly allotted Shop/Unit no. B-114, 1st floor, having super area measuring 362 sq. ft. Thereafter, a one-sided arbitrary buyer's agreement was executed between the parties on 14.08.2015 as per which the total sale consideration of unit is Rs. 34,36,738/- which included the charges of EDC, IDC charges, PLC charges and IFMSD charge as detailed in Annexure III of the builder buyer agreement.
- c) That the complainant in his readiness to own and possess the said unit kept on paying the consideration as and when so demanded by the respondent. The complainants have paid Rs. 39,67,239/- amount as demanded by the respondent and received No Dues Certificate from the respondent on 26.03.2024.
- d) That the complainant diligently kept on paying the sale consideration as and when so demanded. That the complainant has made timely payments. However, the malafide conduct of the respondent is evident since the very beginning.

- e) That the respondent did not give any opportunity to the complainants to make any changes and negotiations in the arbitrary terms of the BBA. The striking example of arbitrariness is the compensation on delayed possession by the consequence of delayed payment. As per the clause 19(i) of the BBA the respondent has the power to directly cancel the unit of the allottee in case there is any default of the payment. On the contrary as per clause 13(ii) of the BBA, in case of delay possession the complainant is awarded meager amount of Rs. 5/- per sq. ft. every month for the delay in delivery of possession. In fact, ironically the respondent has drafted the agreement in such a manner to absolve themselves from any kind of responsibility and penalty. The complainants due to the grave fear of getting their unit cancelled never defaulted in the payment and made any and all payments as and when demanded.
- f) That while the complainants abided by its end of the bargain and made timely payments, however, the respondent failed to complete construction and offer possession within the promised time.
- g) That as per Clause 13(ii) of the said agreement respondent was obligated to complete the development of the said project and deliver the possession of the said unit within 42 months from the date of execution of the Agreement along with grace period of 6 months. Thus, the respondent ought to have delivered a valid possession by 14.08.2019. However, the respondent only offered possession to the complainants on 15.10.2023. It was only after the delay of 4 years and 10 months that the respondent handed over the possession to the complainants on 11.05.2024.
- h) That the complainants time and again requested the respondent deliver the possession and give compensation for the delayed possession as per the rate of interest provided by the RERA Act. Over the course of time the

complainants wrote emails on 30.07.2019, 01.08.2019, 05.08.2019, 21.08.2019, 07.01.2021, 30.10.2023 and 08.12.2023 to the respondents repeatedly asking about the status of the project and to pay the delay possession charges. The requests of the complainants fell on deaf ears and the respondent made no efforts to provide compensation to the complainants. No compensation has been provided to the complainants till date despite being the delay of many years in the project. The respondent merely gave discount of Rs. 68,780/- on the demand of OOP.

- i) That in case of delay in the offer of possession, the complainants have the right under proviso to Section 18 of the Act to seek delay possession charges till the actual handover of possession.
- j) In addition to the abovementioned provision, the respondent is also bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest to be computed while calculating compensation to be given by a Promoter to an allottee in case of a default. Section 15 of the said rules provides that "an allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12."
- k) That the respondent has utterly failed to fulfil its obligation to deliver the possession of the apartment in time and adhere to the contentions of the Agreement which has caused mental agony, harassment, and huge losses to the complainant, hence the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
 - I. Direct the respondent to pay delay possession charges on the entire amount paid by the complainant at the prescribed rate of interest @ MCLR + 2% from the due date of possession to actual date of realization of the amount.

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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 09.05.2025:
- a) That the complainants have concealed in the complaint that they were fully aware that the respondent promoter had received the occupation certificate on 10.10.2023, and the offer of possession dated 15.10.2023 was issued in favour of the complainants.
 - b) That further vide letter dated 08.08.2022, the respondent had duly informed the complainants that only the finishing work is left and the same would be ready for possession within 3 to 4 months, whereafter, the allottees would be receiving the call letter for remittance of payment for last instalment.
 - c) That further, the complainants have concealed the very vital fact that a discount of Rs. 3,98,200/- was granted by the respondent promoter to the complainants while booking the unit in question. This was over and above the discount of Rs. 68,780/- granted during offer of possession dated 15.10.2023.
 - d) That further, the complaint has been filed after already taking over possession of the unit in question, and after execution of the conveyance deed. The bare perusal of the complaint makes it evident that the complainant is trying hard to justify the maintainability of the complaint after execution of the conveyance deed, knowing very well that essentially the contract has been concluded and that the complaint has been filed as an after-thought, with an ill and ulterior motive to extract

illegal gains from the respondent company. The complainant is liable to be dismissed on this score alone.

- e) That it is submitted that the complainant herein is an investor and the property has been purchased for the purpose of real estate investments and financial gains therefrom. The present complaint is a luxury litigation seeking uncalled for gains, which must be curbed by this Ld. Authority, and a genuine promoter making genuine efforts should be protected.
- f) That further, in accordance with the provisions of the agreement entered into voluntarily between the parties, the dispute/differences, if any, which could not be settled amicably, must be settled through the intervention of a sole arbitrator by virtue of Clause 33 of the Agreement.
- g) That the respondent company has ensured completion of the project in question despite several hurdles which crept in the way of completion of the project from time to time, as enumerated above. The respondent has already completed the unit in all respects and the shop stood absolutely ready for possession prior to 07.02.2023. The occupation certificate had been duly applied for vide application dated 07.02.2023 and has also been duly received on 10.10.2023.
- h) That the respondent had on its own accord, offered a discount of Rs. 3,98,200/-, apart from additional discount of Rs. 68,780/- to the complainants herein. The respondent, despite receiving only Rupees 45 Crore from the allottees of the project had invested an amount of Rupees 120 Crore towards completion of the project.
- i) That the respondent has already deposited the External Development Charges (EDC) and Internal Development Charges (IDC) of the entire project in full to the concerned department, despite receiving less amount from the allottees, so as to avoid imposition of any kind of penalty, fine or charges upon its customers, which is the responsibility

and liability on the part of the customers in respect of their individual units. The payments were demanded in accordance with the construction linked payment plan and no loss had been caused to the allottees.

- j) That the due date of possession i.e. 14.08.2019 was tentative and subject to force majeure circumstances, which may kindly be considered as a zero period for calculation of the alleged minor delay, if any. It is hereby submitted that during the intervening period, the development of the project got decelerated owing to the reasons beyond the control of the respondent promoter. The same includes the effect the pandemic (COVID-19), the pauses on construction effected by the Ld. National Green Tribunal from time to time, and directions of other Authorities and Courts.
- k) That a period of approximately 1.4 years during the intervening period of construction, which clearly has impacted/decelerated the construction, may kindly be taken as a Zero period for calculation of the alleged delay, if any, in completion of the unit in question.
- l) That the Hon'ble Authority may kindly take due cognizance of the fact that the respondent had firstly granted a huge discount of Rs. 3,98,200/- in the total sale consideration price. Secondly, the respondent further granted a discount of Rs. 68,780/- on its own for the alleged minor delay in possession which though crept in due to force-majeure circumstances, only to keep amicable relations with the customers in good faith.
- m) Furthermore, it is extremely pertinent to mention that in terms of the conveyance deed dated 07.02.2024 executed inter-se the parties, any claim with respect to delay in handing over of the unit shall be deemed to have been settled. The complaint is non maintainable as the contract inter-se the parties has already concluded with the execution of the conveyance deed.

- n) Admittedly no allegation has been levelled by the complainants that conveyance deed has been executed under coercion or by any unfair means which further substantiates that contract has come to an end. Therefore, already concluded contracts should not be reopened. As such, no complaint shall lie after execution of the conveyance deed because the clauses of the conveyance deed which has already been executed has not been contested and disputed by complainants in any manner whatsoever.

The complaint is thus non maintainable and is liable to be dismissed.

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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority: सत्यमेव जयते

8. 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

9. 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 the entire Gurugram District for all purposes 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

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

Section 11(4)(a)

✓

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

Section 34-Functions of the Authority:

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

11. 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 objections raised by the respondent:

F.I. Objection regarding maintainability of complaint on account of the complainants being the investors.

12. The respondent took a stand that the complainant is an investor and not the consumer and therefore, he is not entitled to protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is a buyer and had paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term "allottee" under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may

✓

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

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be a "promoter" and an "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottee being the investor is not entitled to protection of this Act stands rejected.

F.II Objections regarding force Majeure.

14. The respondent promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by NGT, approach road from Dwarka Expressway yet to be constructed by the Government, lockdown due to outbreak of Covid-19 pandemic. But all the pleas advanced in this regard are devoid of merit. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 14.08.2019, subject to unqualified grace period of 6 months.
15. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s**

Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

16. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 14.08.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.

G. Findings on relief sought by the complainants.

G.I Direct the respondent to pay delay possession charges on the entire amount paid by the complainant at the prescribed rate of interest @ MCLR + 2% from the due date of possession to actual date of realization of the amount.

17. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the provisions of Section 18(1) of the Act which 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."

18. Clause 13 of the apartment buyer agreement provides handing over of possession and is reproduced below:

"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

19. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 months from the date of execution of buyer's agreement and it is further provided in agreement that promoter shall be entitled to a grace period of six months. Therefore, the due date of possession comes out to be 29.07.2019 including grace period of six months being unqualified and unconditional.
20. **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]

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."

21. The legislature in its wisdom in the subordinate legislation under the 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.
22. 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., 15.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. 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;"*

24. 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.
25. 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 the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (14.08.2015) or date of approvals of building plans, whichever is later. Therefore, the date of execution of agreement being later, the due date of possession was calculated from the date of execution of agreement between the parties. Accordingly, the due date of possession comes out to be 14.08.2019. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject unit was offered to the complainants on 15.10.2023. Subsequently, a conveyance deed dated 15.04.2024 had also been executed between the parties and possession of the unit was handed over to the complainants on 11.05.2024. 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 offer 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 14.08.2015 to hand over the possession within the stipulated period.
26. 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 10.10.2023. The respondent offered the

possession of the unit in question to the complainants only on 15.10.2023, 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 month of reasonable time is being given to the complainants 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., 14.08.2019 till the expiry of 2 months from the date of offer of possession (15.10.2023) which comes out to be 15.12.2023.

27. It is pertinent to mention here that the respondent contended that it had provided discounts amounting to Rs.4,66,980/- (Rs.3,98,200/- + Rs. 68,780/-) to the complainants and sought adjustment of this amount against any liability arising from delayed possession interest.
28. Upon perusal of the records and documents annexed with the complaint, it is observed that the discount of Rs.3,98,200/- was extended at the time of booking and forms part of the original payment plan, as seen at page 73 of the complaint. However, neither this discount is shown to have been provided in lieu of delay compensation or as part of any specific agreement between the parties to offset delayed possession. The discount of Rs.68,780/- is against the delayed possession as is evident from page no. 73 of the complaint itself.
29. It is well established under the RERA framework that compensation or interest for delay in possession is a statutory liability imposed on the promoter under Section 18(1)(a) of the Act and is independent of any

commercial discounts offered during booking. The discount granted as part of the purchase negotiation cannot be retrospectively adjusted against the statutory interest payable for delay in possession unless specifically agreed to by the allottees and recorded in writing.

30. Hence, the Authority is of the considered view that the respondent is not entitled to deduct or adjust the said discount amount of Rs.3,98,000/- against the delayed possession interest payable to the complainants and only an amount of Rs.68,780/- is to be adjusted against payment of delay possession charges.
31. However, 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. The respondent is obligated not to charge anything from the complainants which is not the part of the buyer's agreement.

H. Directions issued by the Authority:

32. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- I. The respondent is directed to pay delay possession charges to the complainants 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., 14.08.2019 till the date of offer of possession (15.10.2023) plus two months i.e., 15.12.2023, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears



of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid.

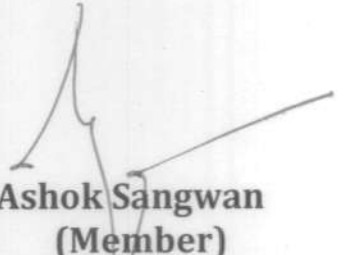
- II. The amount already paid by the respondent to the complainant on account of delay i.e., Rs.68,780/- shall be deducted from the delayed possession charges payable by the respondent to the complainants.
- III. The rate of interest chargeable from the allottees by the promoter, in case of default shall 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

33. Complaint stands disposed of.

34. File be consigned to the Registry.

Dated: 16.07.2025

HARERA
GURUGRAM


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