

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

Complaint no. : 6415 of 2024
Complaint received on: 27.12.2024
Order pronounced on: 30.05.2025

Lalita Wadhwa

R/o: Flat No. 402, Sai Prasad Building, Sector 29,
Vashi, Navi Mumbai-400705

Complainant**Versus**

M/s Ats Real Estate Builders Private Limited

Regd. office: 711/92, Deepali, Nehru Place, New Delhi-
110019.

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Mohit Wadhwa
Shri MK Dang (Advocate)

AR for Complainant
Respondent

ORDER

1. The present complaint 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 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 them.

A. Unit and Project-related details:*A*

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

S. N.	Particulars	Details
1.	Name and location of the project	"ATS Marigold" at Sector 89A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	License no	87 of 2013 dated 11.10.2013
4.	RERA registration	55 of 2017 dated 17.08.2017
5.	Unit no.	4082, 8 th floor, in Tower- 4 (Page no. 28 of the complaint) <i>Note: Inadvertently mentioned as 4085 vide proceeding dated 30.05.2025</i>
6.	Unit area admeasuring	1340 sq. ft. (Super built-up area)
7.	Allotment letter dated	29.09.2014 (Page 25 of complaint)
8.	Buyer agreement	20.11.2019 (Page no. 26 of the complaint)
9.	Possession clause	7.1..... <i>The promoter assures to hand over possession of the apartment for residential usage along with car parking (if applicable), on or before 31st December 2021, unless there is delay due to force majeure, court orders, govt policy/ guidelines, decisions affecting the regular development of real estate project.</i> (Page no. 32 of the complaint)
10.	Due date of possession	30.06.2022 (As per possession clause of BBA) Note: A grace period 6 months is allowed being unconditional in lieu of covid.

11.	Sale consideration	Rs.1,02,10,250/- (As per payment plan at pg. 49 of complaint)
12.	Amount paid by the complainant	Rs.1,02,74,009/- (as payment receipts at page 4-19 of complaint)
13.	Occupation certificate	16.06.2023 (Page no. 44 of reply)
14.	Offer of possession	20.06.2023 (Page no. 47 reply)
15.	Settlement letter	23.04.2024 (Page no. 55 of reply)
16.	Certificate of Possession	23.04.2024 (Page no. 56 of reply)
17.	Key Handover letter	23.04.2024 (Page no. 58 of reply)
18.	Possession letter	23.04.2024 (Page no. 59 of reply)
19.	Indemnity cum undertaking	Page no. 68 of reply

B. Facts of the complaint:

3. The complainant has made the following submissions:

- The complainant decided to book a residential unit in the respondent's project namely "ATS Marigold" at Sector 89A, Gurgaon, Haryana and accordingly made the payment of booking charges. Pursuant to booking, a unit of approximately 1340 sq. ft. super area numbered Flat No. 4085, Tower -4, in the respondent's project was allotted to the complainant. A buyer developer agreement was signed in furtherance of the above transaction on 20.11.2019.
- According to the terms and conditions of the buyer agreement the possession of the unit is to be provided on or before 01.01.2022 including grace period and in *bonafide* belief, the complainants had made the timely payment of Rs. 1,02,74,009/- towards the cost of the

unit on various dates and as per the demands raised by the respondent.

- iii. Despite the payment made in regard of the unit, respondent company has not provided the possession of the unit against which the payment has already been received by them. This is in contravention of the provisions of the RERA. The respondent company is also liable to pay delay possession interest to the complainant.
- iv. Several mails have been sent to respondent on various dates but have evoked no response. According to clause 7.6 (ii) buyer's agreement, provides that- "if the allottee does not intend to withdraw from the project, the promoter shall pay the allottee interest at the interest at the rate prescribed in the Rules for every month of delay, till the offer of possession of the apartment for residential usage, which shall be paid by the promoter to the allottee within 90 days of becoming due".
- v. The delayed penalty amounts not being intimated by the respondent. However, in the meeting between Lt. Gen. Mohit Wadhwa (son of the complainant) and Mr. Umesh Arora, sales head of ATS at their Corporate Office in Noida on 30.05.2024, had indicated that it is likely to be in the range of Rs. 10,00,000/-, also stated that the company is not in financial position to give the amount.
- vi. As such there is a delay of approximately more than 2 years, which is continuing due to misrepresentations and deliberate default of the respondent. Aggrieved by the continuous omissions and default committed by respondent company in providing handing over the possession to the complainant as per the agreed date, the present complaint is being preferred.

C. Relief sought by the complainant:

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

- i. Direct the respondent to provide the possession of the unit at the earliest and the adjust the delay interest accrued upon the unit because of the delay by the respondent company.
 - ii. Direct the respondent to refund the amount of Rs. 1,19,454/- erroneously paid by the complainant into ICICI account of respondent.
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:

- i. The complainant, after checking the veracity of the project namely, 'ATS Marigold', Sector 89A, Gurugram had applied for allotment of an apartment vide booking application form dated 19.11.2019. The complainant had agreed to be bound by the terms and conditions of the booking application form.
- ii. Based on the said application, respondent allotted to the complainant an apartment no. 4082 on the 8th floor of tower no. 4 having super built-up area of 2150 sq. ft. for a sale consideration of Rs. 1,02,10,250/- exclusive of service tax, stamp duty, registration and other applicable charges etc. It is submitted that the complainant signed and executed the Agreement for sale on 20.11.2019 and the complainant agreed to be bound by the terms and conditions contained therein.
- iii. The respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan.
- iv. After completing the construction, the respondent vide its letter dated 11.10.2022, intimated the complainant that their unit is ready for carrying fit-out works and requested them to complete the interior/fit-out work within 3 months.

- v. The possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the agreement for sale. From clause 7.1 of the agreement for sale it is evident that the construction was to be completed on or before 31.12.2021 and the same was subject to the occurrence of force majeure conditions. The respondent has already completed the construction of the tower in which the unit allotted to the complainant is located.
- vi. After the completion of the construction, the respondent had applied for the grant of the occupation certificate vide application dated 26.08.2022. After scrutiny, the concerned authorities granted the occupation certificate for the tower in question only on 16.06.2023 and the respondent offered the possession to the complainant on 20.06.2023.
- vii. The implementation of the said project was hampered and most of the work was stalled due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project.
- viii. Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- ix. The outbreak of the deadly Covid-19 virus w.e.f. March, 2020 i.e. almost immediately after the execution of the agreement to sell has resulted in significant delay in completion of the construction of the projects in India including the project in question. Due to the said pandemic, the real estate industry in NCR region has suffered tremendously. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labour at the construction sites as several labourers

have migrated to their respective hometowns. The Covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same is thus beyond the reasonable apprehension of the respondent. The pandemic continued till 2022 and during the said period, development of the project in question was stalled.

- x. The time period covered by the above-mentioned force majeure events is required to be added to the time frame mentioned above. The respondent cannot be held responsible for the circumstances which were beyond its control.
- xi. Despite the force majeure events, the respondent has already obtained the occupation certificate and offered the possession of the unit in question to the complainant. There has been no delay whatsoever on the part of the respondent. The respondent has strictly abided by the terms and conditions of the duly executed Agreement for sale. On the other hand, even though the complainant had been called upon to take the possession of her unit after payment of the amount due to the respondent and fulfilment of the requisite formalities, the complainant is intentionally not coming forward to fulfil the requisite formalities and take over the physical possession of the unit and have been raising absolutely baseless and frivolous disputes with the respondent. The complainant has stated that she would not take over the physical possession of the unit in question till the time the respondent pays delay possession charges to the complainant.
- xii. That being a customer-oriented company, the respondent vide its letter dated 06.11.2023, granted credit on account of early payment discount scheme to the complainant and the same was credited along with GST in the sum of Rs. 39,799/- to the property account of the complainant.

- xiii. That since there was a huge delay on the part of the complainant in obtaining possession of her unit and completion of the requisite formalities, she approached the respondent and requested the respondent to settle her account and handover the possession of the unit to her after giving her concessions. Being a customer-oriented company, the respondent agreed to the same and a discharge cum no dues certificate along with a settlement letter dated 23.04.2024 were signed by the complainant.
- xiv. That upon signing of the said discharge cum no dues certificate and settlement letter dated 23.04.2024 towards full and final settlement by the complainant, the respondent issued possession letter dated 23.04.2024, certificate of possession and key handover letter of even date. Moreover, the complainant also executed indemnity-cum-undertaking.
- xv. A bare perusal of the settlement letter dated 23.04.2024 reveals that the complainant is totally bound by the said settlement letter. After executing the said documents including settlement letter dated 23.04.2024, the son of the complainant with totally mala fide motives started sending absolutely baseless emails in order to create false evidence and with a view to harass and blackmail the respondent. The complainant is very well aware that all her claims stood completely satisfied and nothing whatsoever remained payable by the respondent on any account including delay possession charges. The complainant is an educated person who after reading and carefully going through the documents signed the same in token of their correctness out of her own free will, without any pressure or undue influence. The complainant is absolutely bound by the said documents. The filing of the present complaint subsequently by the complainant is nothing but an act of sheer dishonesty, greed, ill will and

aimed at pressurizing and blackmailing the respondent so as to illegally extort money from the respondent.

- xvi. That the complainant is a mischievous person who has filed a totally misconceived, highly frivolous, vexatious, meritless complaint. The complainant is a very shrewd, clever and unfair type of person who wants to somehow obtain wrongful gain and cause wrongful loss to the respondent. Moreover, the complainant has no right whatsoever to file the present complaint and the complainant is somehow trying to misuse the provisions of RERA Act. The complainant cannot be allowed to get away with such malafide tactics. The complainant is not entitled to any delay possession charges and the complaint is liable to be dismissed.

E. Jurisdiction of the Authority:

6. 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

7. 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

8. 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

9. Hence, given 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 Objections regarding delay in payment.

10. The respondent-promoter raised the contention regarding delay in payment by many allottees is totally invalid because the allottees have already paid the amount of Rs. 1,02,74,009/- against the total sale consideration of Rs. 1,02,10,250/- to the respondent. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainant in the instant case. As per the payment plan approximately 99% of the sale consideration has already been paid by the complainant till date. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainant in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainant has paid all the instalments as per payment plan duly agreed upon by the complainant while signing the agreement. Moreover, the stake of all the allottees cannot put on

stake on account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

F.II Objections regarding Force Majeure

11. Another objection raised by the respondent for delay in construction due to outbreak of Covid-19. The respondent-promoter pleaded that though the due date for completion of the project and offer of possession of the allotted unit was fixed as 31.12.2021 as per buyer's agreement dated 24.04.2018 but due to outbreak of Covid-19 there was complete lockdown during the period March 2020 to different periods causing slowdown of all the activities within the state even though the authority granted six months general extension with effect from 25.03.2020 to 24.09.2020 considering it as force majeure event. That decision was taken pursuant to the advisory issued by the State Government as well as The Government of India due to Covid-19, it took some time to mobilize the labour as well as the construction material. Despite all that the construction of the project was completed and its occupation certificate was received on 16.06.2023. So, the respondent-builder be allowed extension in offer of possession of the project. So, keeping in view the above-mentioned facts, the due date for completion of the project and offer of possession of the allotted unit comes to be 30.06.2022 including 6 months grace period on account of covid. No extension beyond 6 months period can be granted.

G. Findings on relief sought by the complainant:

G.1 Direct the respondent to provide the possession of the unit at the earliest and the adjust the delay interest accrued upon the unit because of the delay by the respondent company.

12. The complainant was allotted a unit in project of the respondent i.e., "ATS Marigold" located in sector-89A, Gurugram being developed by the respondent i.e., ATS Real Estate Builders Private Limited. The respondent issued an allotment letter dated 29.09.2014 in favor of the complainant and thereby intimated to the complainant about the allotment of unit no. 4082,

8th floor, tower-4 in the project of the respondent at the sale consideration of Rs.1,02,10,250/-. The complainant has paid a sum of Rs.1,02,74,009/- towards the subject unit.

13. As per documents available on record, the respondent has offered the possession of the allotted unit on 20.06.2023 after obtaining of occupation certificate from competent authority on 16.06.2023. The complainant took a plea that offer of possession was to be made in made in 2022, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

"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."

15. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is continuing with the project and seeking delay possession charges. However, 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.

16. 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.
17. 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., 30.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
18. 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;"*

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which the same as is being granted in case of delayed possession charges.

20. 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 16.06.2023. The respondent offered the possession of the unit in question to the complainant only on 20.06.2023, 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 she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
21. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of the BBA dated 20.11.2019, and the due date comes out as 30.06.2022 including 6 months grace period on account of covid. Occupation certificate was granted by the concerned authority on 16.06.2023. 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 it is failure on part of the promoter to fulfil its obligations and responsibilities as per the agreement dated 20.11.2019 to hand over the physical possession within the stipulated period.

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22. Also, it is matter of record that when the possession cum demand letter dated 20.06.2023 an amount of Rs.59,117/- was outstanding on part of the complainant. The complainant was required to remit the abovesaid amount in order to take physical possession and thereafter execute conveyance deed. However, as per email dated 19.10.2023, the complainant confirmed to the respondent that the outstanding amount has been paid on 24.08.2023 vide internet transaction reference number CHS8551038. Also, the complainant requested to the respondent to tell tentative date of taking possession. The authority is of view that despite the complainant has paid full amount towards the unit, the respondent failed to handover the physical possession of the unit to the complainant.
23. It is a matter of record that as per the possession-cum-demand letter dated 20.06.2023, an amount of ₹59,117/- was outstanding against the complainant. The complainant was required to remit the said amount in order to take physical possession of the unit and subsequently execute the conveyance deed. It is further noted that, as per the email dated 19.10.2023, the complainant informed the respondent that the outstanding amount had been paid on 24.08.2023 through internet banking, bearing transaction reference number CHS8551038. The complainant also requested the respondent to communicate a tentative date for handing over possession of the unit. The Authority is of the considered view that despite full payment having been made by the complainant towards the total consideration of the unit, the respondent has failed to handover possession of the said unit to the complainant, thereby being in breach of its obligations under the agreement.
24. The respondent through written submissions took a contention that after signing the settlement letter dated 23.04.2024 and other documents, the intentions of the complainant became totally *malafide*. That after signing the settlement letter, the complainant is absolutely bound by the said

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documents. However, the complainant stated that in lieu of taking possession the complainant was asked to sign several documents.

25. The allottee has invested its hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottee. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

34. xxxx... The developer does not state that it was willing to offer the flat purchaser's possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

26. In light of the above the Authority observes that various documents of possession including the said settlement letter submitted by respondent was primarily a condition precedent to taking possession of the unit. The Hon'ble Supreme Court, in the case of *Wg. Cdr. Arifur Rahman Khan & Ors. v. DLF*

Southern Homes Pvt. Ltd. (Civil Appeal No. 6239 of 2019), has categorically held that flat purchasers cannot be forced to forgo their rightful claims in lieu of conveyance or possession, and any such imposition by the promoter is manifestly unreasonable and untenable in law.

27. Applying the law laid down in the aforementioned judgment, the settlement letter dated 23.04.2024 signed by the complainant under such circumstances cannot be relied upon and thus the complainant cannot be deprived of the statutory right to seek delayed possession charges as a precondition to perfecting title or taking possession. It is also noted that although the respondent claimed to have offered the unit on 20.06.2023, actual possession has not been handed over for reasons solely attributable to the respondent. Therefore, the complainant's statutory and contractual rights remain intact and unaffected by the purported settlement.
28. It is to be note that upon perusal of the email dated 18.04.2024, the respondent commuted to the complainant intimating the unit is ready for handover. The relevant portion the above-said email dated 18.04.2024 is reproduced below for ready reference:

"xxxx.....We are pleased to inform you that your unit is now ready for handover. Our team has worked diligently to ensure that every detail meets our high standards of quality and we are confident that you will be delighted with your new home.....xxxx"

29. Upon perusal of the material available on record, the Authority finds that the contentions raised by the respondent are devoid of merit and not legally sustainable for the following reasons:

Firstly, it stands established that the complainant has paid a total sum of ₹1,02,74,009/- towards the sale consideration of the subject unit, which payment has been duly acknowledged by the respondent in its written reply. **Secondly**, despite having received the entire sale consideration and having obtained the Occupation Certificate, the respondent has failed to hand over

possession of the unit to the complainant. No justifiable or cogent reason has been provided by the respondent for its failure to deliver possession, particularly when the complainant has remitted the full and final amount on 24.08.2023. **Thirdly**, the respondent has not furnished any explanation for the inordinate delay of approximately eight months in offering physical possession, which was eventually communicated as 18.04.2024.

Accordingly, 18.04.2024 is being taken as a valid offer of possession in the present case.

30. However, the complainant in person during proceedings dated 30.05.2025 stated that the physical possession has not been handed over to the complainant till date. The respondent has placed on record several documents including certificate of possession, key handover letter and possession letter dated 23.04.2024. All the above-mentioned documents are duly acknowledged by the complainant as they bear signature of the complainant on them. In the view of foregoing the Authority has to rely on duly signed documents. However, as submitted by the complainant that actual physical possession of the unit has not been handed over by the respondent and hence the respondent is under obligation to immediately handover the physical possession to the complainant.
31. In view of the above, the complainant is entitled for delayed possession charges at the prescribed rate of interest @ 11.10% per annum from the due date of possession till valid offer of possession (18.04.2024) after obtaining occupation certificate plus two months or actual handing over of possession (23.04.2024) whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Reimbursement of money mistakenly transferred to the escrow account of the builder.

32. The complainant has averred that on 21.05.2024, an amount of Rs.1,19,454/- was inadvertently and erroneously transferred to the escrow

account of the respondent. In order to rectify the said error, the complainant addressed multiple written communications to the respondent on 23.05.2024, 31.05.2024, 10.06.2024, 08.09.2024, and 02.04.2025, requesting refund of the aforementioned amount. However, despite the said representations, the respondent failed to respond to any of the emails and has not refunded the amount in question till date.

33. The Authority is of view that the amount of Rs.1,19,454/- was erroneously transferred by the complainant to the escrow account of the respondent on 21.05.2024, which was not due under the terms of the buyer's agreement. Despite repeated written communications by the complainant dated 23.05.2024, 31.05.2024, 10.06.2024, 08.09.2024, and 02.04.2025 requesting refund of the said amount, the respondent failed to either respond or return the money. The continued retention of this amount by the respondent, without any lawful justification or contractual obligation, amounts to wrongful withholding of the complainant's funds. Such conduct not only causes undue financial hardship but also results in loss of use of money for the complainant. Hence, the respondent is liable to refund the abovesaid amount along with interest at the rate of 9.10% p.a.

H. Directions issued by the Authority:

34. 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 at the prescribed rate of interest @ 11.10% per annum from the due date of possession i.e., 31.06.2022 till valid offer of possession (after obtaining occupation certificate) made on 18.04.2024 plus two months or actual handing over of possession whichever is earlier i.e., upto 23.04.2024 only

being earlier as per section 18(1) of the Act of 2016 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act, if any.
 - III. The respondent is directed to handover the physical possession of the allotted unit and execute the conveyance deed thereafter in terms of section 17 of the Act, 2016.
 - IV. The respondent is directed to refund Rs. 1,19,454/- along with interest at the rate of 9.10% per annum from the date of erroneous transfer (21.05.2024) till the date of actual refund.
 - V. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
35. Complaint stands disposed of.
36. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.05.2025