



**HARERA**  
**GURUGRAM**

Complaint No. 4149 of 2022

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

**Complaint no. : 4149 of 2022**  
**Date of order : 21.05.2025**

M/s. Valco Industries  
(Through its Managing Director)  
**Office At:** Plot No. 184, Industrial Area,  
Phase-1, Chandigarh.

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
**Office at:** - House 28, Kasturba Gandhi Marg,  
New-Delhi-110001.

**Respondent**

**CORAM:**

Shri. Ashok Sangwan

**Member**

**APPEARANCE:**

Gaurav Bhardwaj (Advocate)  
J.K Dang (Advocate)

Complainant  
Respondent



**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Plaza, Sector 65, Gurugram, Haryana
2.	Area of the project	3.963 acres
3.	DTCP Licence	Licence No. 10 of 2009 Dated 21.05.2009
4.	Unit no.	EPO-06-012 [As on page no. page 46 of reply]
5.	Unit area	810.69 sq.ft. (Super-area) (As on page no. 46 of reply)
6.	Provisional allotment letter dated	17.06.2010 [As on page no. 41 of reply]
7.	Date of execution of buyer's agreement	27.07.2010 [As on page no. 45 of reply]
8.	Possession clause	<b>16. POSSESSION</b> <b>(a) Time of handing over the possession</b> <i>i. That the possession of the Retail</i>



		<p>Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s), <u>within thirty (30) months of the execution hereof</u> subject however to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s), offering in writing, to the Allottee to take possession of the Retail Spaces for his occupation and use ("Notice of Possession").</p> <p>ii. The Allottee(s) agrees and understands that the Company shall be entitled to <u>a grace period of one hundred and twenty (120) days over and above the period more particularly specified herein-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the Commercial Complex.</u></p> <p>(Emphasis supplied)</p> <p>(As on page no. 53 of reply)</p>
9.	Due date of possession	<p>27.05.2013</p> <p>[Note: Grace period is allowed]</p>

10.	Total sales consideration	Rs.44,95,252/- (As per S.O.A dated 08.05.2019 on page 52 of complaint)
11.	Total amount paid by the complainant	Rs.49,87,517/- (As per S.O.A dated 08.05.2019 on page 52 of complaint)
12.	Occupation certificate	08.01.2018 [As on page no. 27-28 of reply]
13.	Offer of possession	27.01.2018 [As on page 111 to 116 of reply]
14.	Unit handover letter	29.05.2019 [As on page 117 of reply]
15.	Conveyance deed	03.06.2019 [As on page 118-140 of reply]

### B. Facts of the complaint

3. The complainant has made the following submission: -
  - I. That the complaint has been filed on behalf of M/s Valco Industries Ltd. through it's managing director Sh. Vijay Kumar Gupta and the complainant is a company registered under Companies Act.
  - II. That somewhere around Mid- 2009, the respondent advertised about its project namely "Emerald Plaza Project situated at sector 65 Golf Course Extension Road, Gurgaon. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing a multi stored commercial complex, inter alia confirming to international standard architecture, along with the



- state of the art offices spaces("office spaces") with three level of basement parking space.
- III. Believing the representations of the respondent, the complainant booked a unit in the said project by making a payment of Rs.5,00,000/- on 10.06.2010.
- IV. That on 27.07.2010, the Apartment Buyer Agreement was executed between the complainant and the respondent. Believing on the respondent's representation, the complainant kept on making payment as and when demanded by the respondent. Till date the complainant has paid a total sum of Rs.49,87,517/- against the total sale consideration of Rs.48,47,115/-.
- V. That as per Clause 16(a) of the said Buyer's Agreement, the respondent proposed to handover the possession of the unit in question within a period of 30 months from 27.07.2010 i.e. from the date of execution of buyers agreement along with grace period of 120 days i.e 27.11.2013.
- VI. Subsequently, the complainant kept making calls, requests and kept inquiring as to when will the respondent deliver the unit but the respondent's representatives never furnished a concrete answer to the same. As per clause 16(a) of the agreement, the due date of handing over possession comes out to be 27.11.2013. However, the respondent failed to hand over possession in accordance with the said agreement.
- VII. That after a delay of around 6 years, on 07.05.2019, the respondent issued the letter of offer of possession. That after receiving offer of possession, the complainant approached the project location to take possession of the unit but the same was not in a habitable position, upon which the respondent assured the complainant that finishing work in the unit shall be done within a period of 3 months . The complainant, left



with no other option agreed to the same. However on 29.05.2019, the unit was handed over to complainant by the respondent.

VIII. That the complainant after taking possession of the unit requested the respondent to make the payment of delay possession charges from due date of possession till actual handing of possession as per the Act, 2016 as the construction of the unit got delayed beyond the period as agreed in Builder Buyer Agreement. But the respondent clearly refused to make the payment on account of delay possession charges as per the Act, 2016.

IX. That it is pertinent to note that while under clause 15(a) of the buyer's agreement, upon delay payment by the allottee, the respondent can charge Rs. 5/- per sq ft per month of the super area till the date of notice of possession, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs. 50/-per sq. ft. of the super area for the period of delay as per clause 14(a) of the said agreement.

X. That the present complaint has been filed in order to seek Delay Possession Charges and other reliefs.

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

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

a) Direct the respondent to pay delayed possession charges from the due date of handing over possession till actual handing over possession at the prescribed rate of interest.

b) Direct the respondent to charge delay payment charges, if any, at equitable rate of interest.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds: -
- I. That the present complaint is not maintainable in law or on facts. It is respectfully submitted that the present complaint has not been filed by the duly authorised person of the complainant company. It is respectfully submitted that no board resolution/authorisation has been annexed authorising the institution of the present complaint or in favour of the Shri Vijay Kumar Gupta, to institute the complaint on behalf of the complainant company.
  - II. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the project in question was made on 26.05.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). The Occupation Certificate has been thereafter issued on 8.01.2018. It is also pertinent to mention that the respondent has applied for part completion certificate for the project where services are complete and hence the project does not fall in the definition of "Ongoing project". The project has not been registered under the provisions of the Act. This Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
  - III. That the complainant is not "Allottee" but an "investor" who has purchased the unit in question as a speculative investment. The complainant is a private limited Company having principal place of business in Chandigarh and the so called Managing Director is also stated to be a resident of Chandigarh.

- IV. That the complaint is barred by limitation. It is submitted that without prejudice to the rights and contentions of the Respondent, the so called cause of action in favour of the Complainant, if any, arose prior to the Act coming into the force i.e. in November, 2013, which according to the Complainant, was the due date of possession under the Buyer's Agreement. The complaint is liable to be dismissed on this ground alone.
- V. That the complainant, through its authorised representative, approached the respondent and expressed its interest in booking office space in the commercial complex developed by the respondent known as "Emerald Plaza" situated at Sector 65, Gurgaon.
- VI. That the complainant had booked the unit in question, bearing no. EPO-06-012, situated in the project developed by the respondent, known as "Emerald Plaza", Sector 65, Gurugram, Haryana. The complainant consciously and willingly opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they would remit every installment on time as per the payment schedule. However, the complainant defaulted in timely payment of installments. Consequently, the respondent was compelled to issue reminders for payment.
- VII. That since the complainant had defaulted in timely remittance of installments to the respondent and became liable for payment of delay payment charges. The complainant, therefore, is not entitled to any compensation/interest in accordance with Clause 18 (c) of the Buyer's Agreement.
- VIII. That as per Clause 16 of the Buyer's Agreement, the time period for delivery of possession was 30 months along with grace period of 120 days from the date of execution of the Buyer's Agreement subject to the allottee(s) having strictly complied with all terms and conditions of the





Buyer's Agreement and not being in default of any provision of the Buyer's Agreement including remittance of all amounts due and payable by the allottee(s) under the buyer's agreement as per the schedule of payment incorporated in the Buyer's Agreement. The complainant has completely misconstrued, misinterpreted and miscalculated the time period as determined in the Buyer's Agreement.

- IX. That Clause 18 of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the Buyer's Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Buyer's Agreement. As delineated hereinabove, the complainant defaulted in payment of installments, are thus not entitled to any compensation or any amount towards interest under the Buyer's Agreement.
- X. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions **of the Act are not retrospective in nature**. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act.
- XI. That the allegations of the complainant that possession was to be given by November, 2013 are wrong, malafide and result of afterthought in view of the fact that the complainant had made several payments to respondent even after November, 2013. It is submitted that by its failure to repudiate the contract even after the so-called due date of possession and continuing to make payment even thereafter, the time lines for delivery of possession are deemed to have been waived by the complainant. Moreover, the respondent was constrained to send



- Payment Reminders Letters to the complainant even after the alleged date of possession as the complainant continued to default in making payments of instalments.
- XII. That the respondent had applied for the occupation certificate in respect of the tower in which the unit in question is located on 26.05.2017 and the same was granted on 08.01.2018. It is reiterated that once an application for issuance of occupation certificate is submitted before the concerned competent authority, the respondent ceases to have any control over the same. Therefore, the time period utilized by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from computation of the time period utilized in the implementation of the project in terms of the Buyer's Agreement.
- XIII. That the complainant was offered possession of the unit in question through letter of offer of possession dated 27.01.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to them.
- XIV. That the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and thus the complainants delayed obtaining possession of the unit in question till 29.05.2019 when the possession of the unit was finally obtained by the complainant. The complainant has preferred the present complaint on wholly extraneous and inherently fallacious grounds.
- XV. That an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The



complainant had consciously and maliciously refrained from obtaining possession of the unit in question till 29.05.2019 whereas the letter of offer of possession was sent to the complainant on 27.01.2018. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the Buyer's Agreement, for not obtaining possession in terms of the letter of offer of possession dated 27.01.2018.

- XVI. Thereafter, the complainant finally obtained possession of the unit in question and a unit Handover Letter dated 29.05.2019 had been executed by the complainant. Prior to execution of the unit handover letter, the complainant had satisfied itself regarding the measurements, location, dimension, and development etc. of the unit in question. The complainant only after satisfying itself with all the aspects including shape, size, location etc. of the unit in question, executed the unit handover letter stating that all the liabilities and obligations of respondent as enumerated in the allotment letter/buyer's agreement stood satisfied. Thereafter, the conveyance deed was also registered in favour of the complainant without any objections whatsoever from the complainant on 03.06.2019. It is pertinent to note, the fee payment for filing of the complaint was done on 8.06.2022(as per the Online payment receipt of the complaint bearing reference no. RERA-GRGC1654681642) which is after 3 years of execution of the Conveyance Deed. The present complaint was filed by the complainants at the end of the limitation period of 3 years and it is nothing but an afterthought to extract monies from the respondent. Thus the present complaint is time barred and deserves to be dismissed at this very threshold with exemplary costs. Therefore, the transaction between the complainant and the respondent has been



concluded in June, 2019 and the complainant is not left with any claim against the respondent.

- XVII. That an amount of Rs.2,52,114/- is outstanding from the complainants towards common area maintenance dues ( CAM dues). Moreover, without prejudice to the rights of the respondent that the complainants are not entitled to any compensation for alleged delay , it is submitted that delayed Interest if any has to calculated only on the amounts deposited by the complainant towards the price of the unit in question and not on any amount credited by respondent, or any payment made by the original allottees towards the purchase price of the unit in question or Delayed Payment Charges (DPC) or any Taxes/Statutory payments etc.
- XVIII. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The Respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated had been completed by the respondent.
- XIX. That the complainant had already obtained possession of the unit in question and a Unit Handover Letter dated 29.05.2019 had been executed by the complainant. The conveyance deed dated 03.06.2019 was also registered in favour of the complainant. Therefore, there is no default or lapse on the part of the respondent and there is no equity in



favour of the complainant. Thus, it is submitted that the present complaint deserves to be dismissed at the very threshold.

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

**E. Jurisdiction of the authority**

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 entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

10. 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 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;*

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.

**F. Findings on the objections raised by the respondent.**

**F.I Whether the complainants can claim delayed possession charges after execution of the conveyance deed?**

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainant on 03.06.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.
13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration,



typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. 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 the title perfected by executing the conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. 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 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers 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.*

17. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainant/allottee retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

**F.II. Whether the complaint is barred by limitation or not?**

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand

excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

21. In the present matter the cause of action arose on 27.01.2018 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 29.06.2022 which is 4 years 5 months and 2 days from the date of cause of action. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

**F.III. Objection regarding the allottee being an Investor not Consumer.**

22. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, it is not entitled to the protection of the Act and also not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter 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 apartment buyer's agreement,



it is revealed that the complainant is a buyer and paid total price of **Rs.49,87,517 /-** to the promoter towards purchase of an 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;"*

23. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**G. Findings regarding relief sought by the complainants:**

**G. I Direct the respondent to pay delayed possession charges from the due date of handing over possession till actual handing over possession at the prescribed rate of interest.**





24. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

**"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."

(Emphasis supplied)

25. Clause 16(a) of the Buyer's Agreement (in short, the agreement) dated 27.07.2010 provides for handing over possession and the same is reproduced below:

**16(a) Time of handing over the Possession**

- i. That the possession of the Retail Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s), within thirty (30) months of the execution hereof, subject however to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s), offering in writing, to the Allottee to take possession of the Retail Spaces for his occupation and use ("Notice of Possession")
- ii. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of one hundred and twenty (120) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the Commercial Complex.

[Emphasis supplied]

26. The Buyer's agreement was executed on 27.07.2010. As per clause 16 (a) of the agreement, the respondent was to offer the possession of the unit to the allottees within 30 months from the date of execution of the agreement. The date of execution of the agreement is 27.07.2010. Thus, the Authority have calculated 30 months from the date of execution of the agreement, also the grace period of 120 days is allowed to the respondent/promoter being unqualified. Therefore, the due date comes out to be 27.05.2013.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.*
28. 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.
29. 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., 21.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
30. 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."*

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Authority has observed that the Buyer's Agreement was executed on 27.07.2010 between the complainant and the respondent. The possession of the subject unit was to be offered within a period of 30 months plus 120 days from date of execution of the Agreement. The Authority calculated due date of possession from the date of execution of the agreement along with a grace period of 120 days which comes out to be 27.05.2013. The respondent has failed to handover possession of the subject unit on the due date.
32. 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. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the Buyer's Agreement dated 27.07.2010 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 08.01.2018 and offered possession to the complainant on 27.01.2018 and the conveyance deed was executed on 03.06.2019.
33. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is



established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 27.05.2013 till the date of offer of possession plus two months after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules after deducting the amount already paid by the respondent to the complainant on account of delayed possession charges, if any.

**G.II. Direct the respondent to charge delay payment charges, if any, at the equitable rate of interest.**

34. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainant could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

**H. Directions of the authority: -**

35. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainant from the due date of possession i.e., 27.05.2013 till the date of offer of possession plus 2 months or actual handover after obtaining the occupation Certificate, whichever is earlier, after adjustment/deduction of the amount already paid if any towards delay



**HARERA**  
**GURUGRAM**

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in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act,

36. Complaint stands disposed of.

37. File be consigned to the registry

Dated: 21.05.2025



**HARERA**  
**GURUGRAM**

(Ashok Sangwan)

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram