

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

**Date of decision : 09.05.2025**

<b>Name of the Builder</b>		<b>Shine Buildcon Private Limited</b>	
<b>Project Name</b>		<b>70 Grandwalk</b>	
<b>S.no.</b>	<b>Complaint No.</b>	<b>Complaint title</b>	<b>Appearance</b>
1.	CR/2834/2024	Prateek Sachdeva (Through SPA Holder, Satish Kumar Sharma) Vs. M/s Shine Buildcon Pvt. Ltd.	Rahul Yadav, Adv. (Complainant) Akshat Mittal, Adv. (Respondent)
2.	CR/2835/2024	Prateek Sachdeva and Anr. (Through SPA Holder, Satish Kumar Sharma) Vs. M/s Shine Buildcon Pvt. Ltd.	Rahul Yadav, Adv. (Complainant) Akshat Mittal, Adv. (Respondent)

**CORAM:**

Shri Arun Kumar

**Chairman**

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "70 Grandwalk" at Sector 70, Gurugram being developed by the respondent/promoter i.e., M/s Shine Buildcon Pvt. Ltd. The terms and conditions of the builder buyer's agreements, fulcrum of the issue involved in all these cases pertain to failure on the



part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and others.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

<b>Project Name and Location</b>	"70 Grandwalk", Sector 70, Gurugram, Haryana.
<b>Project area</b>	2.893 acres
<b>Nature of the project</b>	Commercial Complex
<b>DTCP license no. and other details</b>	34 of 2012 dated 15.04.2012 Valid up to 14.04.2020
<b>RERA Registered/ not registered</b>	Registered vide no. 28 of 2017 dated 28.07.2017 Valid up to 30.06.2022
<b>Revised building plan approval</b>	01.09.2016
<b>Occupation certificate</b>	10.10.2023
<b>Possession clause as per clause 15 of BBA</b>	<b>Clause 13. POSSESSION AND HOLDING CHARGES</b> (ii) <i>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 <b>within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later.</b> The Allottee further agrees and understands that the Company <b>shall additionally be entitled to a period of 6 (six month) ("Grace period")</b>, after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.</i>

S.No.	Particulars	Details CR/2834/2023 w.r.t	Details CR/2835/2023 w.r.t.
1.	Complaint filed on	12.06.2024	12.06.2024
2.	Reply filed on	18.09.2024	18.09.2024
3.	Allotment letter	24.04.2015 [Page 19 of the complaint]	23.05.2015 [Page 28 of complaint]
4.	Unit no.	B-017, Ground Floor [Page 19 of complaint]	B-009, Ground Floor [Page 28 of complaint]
5.	Super area	548 Sq. Ft. [Page 19 of complaint]	386 Sq. Ft. [Page 28 of complaint]
6.	Builder buyer agreement executed on	20.01.2016 [Page 24 of complaint]	01.09.2015 [Page 33 of complaint]
7.	Endorsement in favour of the complainant	12.07.2018 [Page 96 and 97 of complaint]	Not Applicable
8.	Due date of possession	20.01.2020 [Calculated to be 42 months from the date of execution of BBA, as date of approval of building plans is not on record + Grace period of 6 months being unqualified and unconditional]	01.09.2019 [Calculated to be 42 months from the date of execution of BBA, as date of approval of building plans is not on record + Grace period of 6 months being unqualified and unconditional]
9.	Total sale price of the flat	Rs. 70,07,550/- [Page 69 of complaint]	Rs. 46,32,000/- [Page 77 of complaint]
10.	Amount paid by the	Rs. 83,43,109/-	Rs. 48,24,466/-

	complainant	[As alleged on page 12 of complaint]	[As alleged on page 13 of the complaint]
11.	Occupation certificate	10.10.2023 [Page 62 of reply]	10.10.2023 [Page 62 of reply]
12.	Offer of possession	15.10.2023 [Page 128 of complaint]	15.10.2023 [Page 123 of complaint]
13.	Letter of possession	18.03.2024 [Page 141 of complaint]	18.03.2024 [Page 134 of complaint]
14.	Conveyance deed	08.04.2024 [Page 148 of complaint]	08.04.2024 [Page 26 of reply]
15.	Relief sought	1. DPC 2. Refund on account of specifications improvement charges amounting to Rs. 64,664/- and glass door charges amounting to Rs. 48,380/-.	1. DPC 2. Refund on account of specifications improvement charges amounting to Rs. 45,548/- and glass door charges amounting to Rs. 48,380/-.

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of delayed possession charges and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.



6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2834/2024 titled as Prateek Sachdeva (Through SPA Holder, Satish Kumar Sharma) Vs. M/s Shine Buildcon Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges.

**A. Unit and project related details**

7. 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	"70 Grandwalk", Sector 70, Gurugram, Haryana
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 up to 14.04.2020
5.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 Valid up to 30.06.2022
6.	Revised building plans approved on	01.09.2016 [Page 68 of reply]
7.	Allotment letter	24.04.2015 [Page 19 of the complaint]
8.	Unit no.	B-017, Ground Floor [Page 19 of complaint]
9.	Unit area admeasuring	548 Sq. Ft. (Super Area) [Page 19 of complaint]





10.	Date of execution of BBA b/w original allottees and the respondent	20.01.2016 [Page 24 of complaint]
11.	Possession clause	<p><b>Clause 13. POSSESSION AND HOLDING CHARGES</b></p> <p><i>"(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 <b>within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later.</b> The Allottee further agrees and understands that the Company <b>shall additionally be entitled to a period of 6 (six month) ("Grace period")</b>, after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</i></p> <p><b>(Emphasis supplied)</b></p> <p>[As per BBA on page 46 of complaint]</p>
12.	Due date of possession	20.01.2020  [Calculated to be 42 months from the date of execution of BBA, as date of approval of building plans is not on record + Grace period of 6 months being unqualified and unconditional]
13.	Sale Consideration	₹ 70,07,550/-  [As per BBA on page 69 of complaint]



14.	Amount paid by the complainant	₹ 83,43,109/- [As alleged by the complainant on page 12 of complaint]
15.	Agreement to sell b/w the complainant and the original allottees	18.06.2018 [Page 90 of complaint]
16.	Transfer certificate / endorsement in favour of the complainant	12.07.2018 [Page 96 and 97 of complaint]
17.	Occupation certificate	10.10.2023 [Page 62 of reply]
18.	Offer of possession	15.10.2023 [Page 128 of complaint]
19.	Letter of possession	18.03.2024 [Page 141 of complaint]
20.	Conveyance deed	08.04.2024 [Page 148 of complaint]

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint:

- i. That the present complaint is being filed by Sh. Satish Kumar Sharma being empowered by the complainant vide his Special Power of Attorney dated 28.11.2023. The respondent gave advertisement in various leading Newspapers about their forthcoming project named "70 Grandwalk" by Tapasya at Sector-70, Gurugram, Haryana by the respondent whereby promising various advantages and being lured by the false commitments of the respondent company, the complainant booked a shop shop in the said project.



- ii. That the original allottee (Sanjana Mangla) paid a booking amount of Rs. 4,00,000/- on 03.09.2014 to the respondent and a Shop no. B-017, Ground Floor, 70 GRANDWALK having super area of 548 sq. ft. for a total cost of the unit of Rs. 70,07,550/- was allotted vide an Allotment Letter dated 24.04.2015. Thereafter, a Buyer's Agreement was duly executed between the original allottee and the respondent on 20.01.2016. As per clause 13(ii) of the Buyers Agreement, the respondent had agreed to deliver the possession of the subject unit within 42 months from the date of signing of the buyer's agreement or approval of building plans, whichever is later with an extended grace period of 6 months. The buyer's agreement was executed on 20.01.2016 and the respondent had to deliver the possession of the subject unit by 19.07.2019. That despite receiving substantial payments from the original allottee/complainant as per the demands raised by the respondent for the said shop, the respondent failed to deliver the possession of the shop within stipulated time as per the buyer's agreement.
- iii. That the complainant vide Agreement to Sell dated 18.06.2018 purchased the subject unit from the Original Allottee and as per the terms and conditions of the Agreement to sell dated 18.06.2018, the complainant applied for Transfer/Assignment vide letter dated 05.07.2018 of the Shop in favour of the complainant to the builder.
- iv. That being satisfied by the Agreement to sell, and the letter dated 05.07.2018, the subject unit was transferred in the name of the complainant by the respondent and a Transfer Certificate and





Endorsement/Nomination letter dated 12.07.2018 was issued by the respondent in the name of the complainant. The complainant was asked by the respondent to submit an Affidavit and Indemnity Bond-cum-undertaking dated 12.07.2018.

- v. That as the shop was transferred in the name of the complainant, the complainant paid a sum of Rs. 2,46,185/- and Rs. 15,30,710/- on the date of transfer itself i.e., 12.07.2018 on the asking of the builder/respondent.
- vi. That after making the payments as demanded by the respondent, the complainant had written numerous emails to the respondent requesting the builder to provide the status of the project and possession of the same but the respondent failed to reply the emails of the complainant. When the project was launched by the builder, the complainant was shown brochure whereby a Multiplex was there in the project and later without the consent of the allottees, the multiplex was converted into a Banquet Hall and no consent whatsoever was taken by the respondent from the allottees regarding the same and as such the respondent is in clear violation of the provisions of the RERA Act.
- vii. That the delivery of possession of the shop allotted to the complainant had been delayed due to the non-completion of the said project by the respondent on time due to illegal misappropriation of funds and malafide intentions of the builder.
- viii. After regular follow-up, the respondent issued Offer of Possession letter in respect of the subject unit on 15.10.2023 i.e., after a delay of about 51 months and raised a demand to the tune of Rs. 32,46,288/-. On receiving the demand, the complainant vide email



dated 28.10.2023, 02.11.2023, 03.11.2023 and 13.11.2023 raised their objections to the demand and possession letter as certain charges which were not part of Buyers Agreement were also charged in the demand i.e. Specifications Improvement Charges to the tune of Rs. 64,664/- and Glass door charges amounting Rs. 48,380/- in addition to interest amount of Rs. 3,89,669/- along with GST calculated @ 20%. The complainant also requested the respondent to adjust the Delay Possession Charges from the Demand as per the RERA Act and to handover the physical possession of the subject unit after taking the balance payment from the complainant but to no effect.

- ix. That left with no options as the builder was not responding to the communications of the complainant regarding the discrepancies in the Possession letter and Demand Letter dated 15.10.2023, the complainant took the physical possession of the subject unit on 18.03.2024 under protest after making payment of the amount as demanded by the respondent reserving their right of DPC as per the RERA Act and finally, the conveyance deed of the shop was also executed on 08.04.2024 in favour of the complainant and the said fact was also communicated by the complainant to the builder vide emails dated 09.03.2024 and 18.03.2024.

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

9. The complainant has sought following relief(s):
- i. Direct the respondent to pay Delay Possession charges on the total amount of ₹ 83,43,109/- paid by the complainant for the delayed period at the prescribed rate of interest from due date of possession till the actual date of handover.



- ii. Direct the respondent to refund the amount taken from the complainant on account of Specifications Improvement Charges to the tune of ₹ 64,664/- and Glass door charges amounting ₹ 48,380/- and also direct the respondent to refund the Interest amount charged @ 20% on the delayed payments amount to ₹ 4,27,223/-.
  - iii. Direct the respondent to pay ₹ One Lakh as litigation cost.
  - iv. Any other relief that this Authority deems fit in the facts and circumstances.
10. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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**

11. The respondent contested the complaint on the following grounds by way of reply dated 18.09.2024:
- i. That the present complaint is not maintainable as the Buyer's Agreement dated 20.01.2016 was executed between the parties before coming into force of the relevant provision of the Act and the Rules. These legal provisions have been authoritatively held to be prospective in operation and these do not apply retrospectively before coming into force w.e.f. 01.05.2017. Hence, no interest can be imposed upon the respondent under the provisions of sections 12, 18 or 19 of the Act as the parties are bound by the terms and conditions agreed and contained in the Buyer's Agreement dated 20.01.2016 which was executed prior to coming into force of sections 3-19 of the RERA Act/Rules. Hence, the Hon'ble Authority



has no jurisdiction to modify the terms and conditions of Buyer's Agreement dated 20.01.2016. This Hon'ble Authority has no power to re-write the contract between the parties.

- ii. That further, Conveyance Deed bearing Vasika No. 276 dated 08.04.2024 has already been registered in favour of the complainant. The complainant being satisfied by the discounts offered by the respondent, got the Conveyance Deed registered in his favour and assured that he shall not claim any compensation on account of delayed possession charges. The complainant has no right to claim any amount for delayed possession as agreed between the parties as per clause 8 of the Conveyance Deed dated 08.04.2024.
- iii. That in around April, 2015, the complainant learned about the project and approached the respondent repeatedly to know the details of the project. The complainant further enquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- iv. That even as per clause 13(ii) of the Buyer's Agreement dated 20.01.2016, the respondent was not liable to pay any compensation to the complainant. As per clause 13 (ii) of the Buyer's Agreement, the complainant was entitled for compensation for delayed period, if any, @ Rs. 5/- per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the shop to the complainant which was subject to force majeure. The occupation certificate dated 10.10.2023 has been issued to the respondent by the competent



authority. The respondent has offered possession of the shop to the complainant vide letter dated 15.10.2023. The respondent has already handed over possession to the complainant and the conveyance deed has also been executed in favour of the complainant. The respondent has already paid the entire compensation for delayed possession which is duly accepted and acknowledged by the complainant.

- v. That as per clause 13(iv) of buyer's agreement, the parties agreed that in case the completion of the said shop is delayed due to Force Majeure, then the commitment period, and/or grace period and/or extended delay period, as the case may be, shall be extended automatically to the extent of the delay.
- vi. That the respondent has already obtained the occupation certificate for the unit of the complainant and has conveyed the title of the shop by way of a registered conveyance deed dated 08.04.2024 in favour of the complainant. The complainant is bound by the terms and conditions of a registered document, i.e. conveyance deed dated 08.04.2024 in which the complainant specifically and categorically admits that he has no further claim against the respondent. The complainant cannot seek interpretation of terms and conditions of a registered document from this Hon'ble Authority.
- vii. That the development of the project was affected due to the Covid-19, and accordingly the respondent is entitled for an extension of 6 months in due date of possession. The respondent knowing all the facts and situations agreed to the same and accepted the discounts already given by the respondent and accepted the possession of



the shop without any objection and undertook not to raise any other claim on account of delayed possession charges since delayed possession charges have already been paid to the complainant. It may also be noted that the date of offering possession was to be calculated from the date of sanctioning of revised building plans approved by the concerned authority on 01.09.2016. The respondent herein was entitled for extension for such period of delay caused due to force majeure being purely beyond the control of the respondent.

- viii. That it is an evident fact that since starting the respondent was committed to complete the construction of the project within the proposed timeline and till date had invested an amount approx. ₹1,20,00,00,000/- towards completion of the project including both the land cost and construction related costs/expenditures. The respondent under bonafide had already paid EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottees of the project was only approximate Rs. 45,00,00,000/-. The respondent has already spent more amount than collected from the allottees in completion of the project and even obtained occupation certificate from the concerned department which apparently proves that there was never any malafide on the part of the respondent and there is no intentional delay in completion of the project. The respondent is not liable to pay any delayed charges to the complainant.
- ix. That in accordance with the provisions of the Act, the respondent had even applied for registration of the said project with the Ld. Authority vide application dated 20.07.2017 and upon receiving

the said application, the Ld. Authority had granted registration to the respondent for the project in question vide registration no. 28 of 2017 dated 28.07.2017.

- x. That the respondent was committed to complete the development of the project and handover the possession with the proposed timelines. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of GST Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- xi. That the development of project of the respondent was also adversely affected due to various directions of National Green Tribunal or statutory authorities, etc. The various dates during which the constructions of the project was affected have been detailed as under:

Sr. No.	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 – 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 – 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT	Order/Notification dated 14.06.2018	14.06.2018 – 17.06.2018 (3 days)

	of Delhi /14.06.2018		
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 – 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 – 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 – 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (C) 13029/1985	04.11.2019 – 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
<b>TOTAL</b>			<b>1.4 years (approx.)</b>

xii. As per the aforesaid calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently in June, 2021, after the removal of the Covid-19 restrictions, it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.

xiii. That despite, after facing various hindrances in mid-way of the construction of the project, the respondent herein has managed to

complete the construction of the project. It is further submitted that the respondent has already obtained occupation certificate on 10.10.2023 and has got conveyance deed dated 08.04.2024 executed in favour of the complainant.

- xiv. That the complainant herein, has suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and have mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Hon'ble Authority and in the interest of justice.

12. Written submissions filed by the respondent and the complainant are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant. 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**

13. 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**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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**

15. 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) The promoter shall-

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

### **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.*

16. 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 complainant at a later stage.

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

### **F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

17. The respondent raised an objection that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed





between the parties as the same had been executed prior to coming into force of the Act or the rules made thereunder.

18. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*



19. Iso, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

20. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and the Rules made thereunder and are not unreasonable or exorbitant in nature.

**F.II Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges**

21. The respondent contended that Conveyance Deed dated 08.04.2024 has already been registered in favour of the complainant and the complainant has no right to claim any amount for delayed possession as agreed between the parties as per clause 8 of the Conveyance Deed dated 08.04.2024.



22. The authority has already decided the said issue in the complaint titled as ***Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019)*** wherein it was held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court 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.***
23. Further, Hon'ble Haryana Real Estate Appellate Tribunal vide order dated **14.01.2025** in appeal bearing no. **12 of 2021** titled as "***Renu Garg Vs. Pioneer Urban Land Infrastructure Ltd.***" wherein the matter was remitted to the Authority to be decided afresh keeping in view the law laid down in Arifur Rahman Khan's case (supra) and any other precedent on which learned counsel seek to place reliance.
24. The authority is of the view that allottees have invested their hard-earned money which there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a 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 the ***Wg. Cdr. Arifur Rahman (supra)***, the authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.



**G. Findings on the relief sought by the complainant**

**G.I Direct the respondent to pay Delay Possession charges on the total amount of ₹ 83,43,109/- paid by the complainant for the delayed period at the prescribed rate of interest from due date of possession till the actual date of handover.**

25. 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. Section 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

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

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

26. Clause 13(ii) of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"13. POSSESSION AND HOLDING CHARGES***

*(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."*





27. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 42 months from the date of signing of this agreement or approval of the building plans, whichever is later and further additionally be entitled to a period of 6 months as Grace period. In the present matter, the date of building plan approval is not placed on record, and in absence of the same, due date is ought to have been calculated from the date of execution of the buyer's agreement. The buyer's agreement was executed inter se parties on 20.01.2016. Thus, 42 months from 20.01.2016 comes out to 20.07.2019. Further, grace period of 6 months is allowed to the respondent being unqualified and unconditional for the force majeure. Thus, the due date of handing over possession comes out to be 20.01.2020.
28. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**
- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:  
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.
29. 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.

30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
31. 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;"*

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.90% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
33. On consideration of the documents available on record and submissions made by both the parties, 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 13(ii) of the buyer's agreement executed between the



parties, the possession of the subject apartment was to be delivered by 20.01.2020 as delineated hereinabove. The occupation certificate was obtained by the respondent from the competent authority on 10.10.2023 and the possession of the subject unit was offered to the complainant on 15.10.2023. Subsequently, physical possession was taken by the complainant on 18.03.2024 and conveyance deed was executed in favour of the complainant on 08.04.2024.

34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant-allottee shall be paid, by the respondent-promoter, interest for every month of delay from due date of possession i.e., 20.01.2020 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
35. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant are entitled to DPC
1.	CR/2834/2024	20.01.2020	15.10.2023	W.e.f. 20.01.2020 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.



2.	CR/2835/2024	01.09.2019	15.10.2023	W.e.f. 01.09.2019 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.
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**G.II Direct the respondent to refund the amount taken from the complainant on account of Specifications Improvement Charges to the tune of ₹ 64,664/- and Glass door charges amounting ₹ 48,380/- and also direct the respondent to refund the Interest amount charged @ 20% on the delayed payments amount to ₹ 4,27,223/-.**

36. In the above-mentioned relief sought by the complainant, the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except for the statutory rights under the Act of 2016. The complainant could have asked for the claim before the conveyance deed got executed between the parties.
37. Moreover, the clause 8 of the conveyance deed dated 08.04.2024 is also relevant and reproduced hereunder for ready reference:

*"8. That the Vendee has already taken the possession of the said Unit after having inspected and fully satisfied himself/ herself/ themselves/ itself and confirms that the development of the Project has been carried out on the Project Land with clear title and in accordance with the approved service estimate plan and sanctioned plans and the agreed specifications. The Vendee further confirms that before taking over physical possession of the said Unit the Vendee has inspected /checked and verified all material aspects and has no complaints/ claims in this regard including but not limited to area of the said Unit, all amenities, specifications of the said Unit and all services rendered and / or to be rendered and that the Vendee has no objection, complaint or claims with respect to same. The Vendee assures the Vendor that he/ she/ they/ it shall not raise any objection or make any claim against the Vendor in respect of the Unit and/or the said Project, development and /or any item of work which may be alleged to have been and/or not have been carried out or completed and/or for any reason whatsoever and such claim*



*and/ or objection, if any, shall be deemed to have been waived by the Vendee. The Vendee further assures the Vendor that he/ she/ they/ it shall not claim any interest and/or compensation against the Vendor in respect to the delay in handing over of the Unit and such claim shall be deemed to have been settled by the Vendee."*

38. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

#### **H. Directions of the authority**

39. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 20.01.2020 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. The due date of possession and the date of entitlement of delay possession charges are detailed in table given in para 35 of this order.
- ii. The arrears of such interest accrued from the due date of possession till the date of order by the authority shall be paid by the respondent-promoter to the complainant-allottee within a



- period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant(s) is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. 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.
- v. The respondent/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.
40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
41. True certified copies of this order be placed on the case file of each matter.
42. The complaint and application, if any, stands disposed of.
43. File be consigned to registry.

**Dated:** 11.04.2025

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory  
Authority, Gurugram