

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

Complaint no. : 5906 of 2023
Date of filing complaint: 03.01.2024
Order Reserve On: 07.02.2025
Order Pronounced On: 09.05.2025

Anita Aggarwal

Address: - 9982/8, Street No. 5, Sarai Rohilla, Karol
Bagh, New Delhi-110005

Complainant

Versus

M/s Almond Infrabuild Pvt. Ltd.

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

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Shashi Kant Sharma

Sh. M.K Dang

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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details



2. The particulars of 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:

S no.	Heads	Information
1.	Project name and location	"Tourmaline", Sector-109, Gurugram
2.	Project area	10.41875 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	250 of 2007 dated 02.11.2007 valid up to 01.11.2019
5.	Name of licensee	Raj Kiran and ors. C/o Chintels India Ltd.
6.	RERA registration details	41 of 2017 dated 10.08.2017 valid up to 6 years from EC
7.	Apartment no.	4144, 14 th floor, Tower-4 [page no. 26 of complaint]
8.	Unit measuring	1750 sq. ft. (super area) [page no. 26 of complaint]
9.	Allotment letter	17.01.2014 [page no. 26 of complaint]
10.	Date of execution of apartment buyer agreement	17.01.2014 [page no. 24 of complaint]
11.	Possession clause	6. Completion of Construction <i>6.2 The Developer endeavor to complete the construction of the Apartment within 42 months from the date of this Agreement. .</i> [emphasis supplied] (Page no. 36 of complaint)
12.	Due date of possession	17.07.2017

		(calculated 42 months from the date of agreement)
13.	Total consideration	₹ 1,45,31,250/- [as per payment plan on page no. 56 of complaint]
14.	Total amount paid by the complainant	₹ 1,52,11,120/- [as per SOA at page 59 of complaint]
15.	Occupation certificate	09.08.2019 Tower-1 Pocket-A, Tower-2 Pocket-A, Tower-3 Pocket A, Tower-4 Pocket-A, Tower-5 Pocket-A, EWS Block, Community Building, Convenient Shopping in Community Building, Lower and Upper Basement [page no. 28 of reply]
16.	Offer of possession	09.08.2019 [page no. 71 of complaint]
17.	Mails by respondent stating finishing work is pending	20.09.2023 [page no. 77 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That complainant booked an apartment bearing no. 4144 with two car parking's measuring super area of 1750 sq. ft. on 14h floor, Tower 4, for sale consideration of Rs.1,45,31,250/-. The said unit was booked on 26.08.2013 and the buyer's agreement was also executed between complainant and respondent on 17.01.2014.
- II. That as per terms and conditions of the buyer's agreement, the respondent was supposed to handover the unit on or before 16.07.2017.



- III. That after execution of buyer's agreement the complainant has made a total sum of Rs. 1,52,11,120/- till 10.10.2019.
- IV. That after completion period the possession of the apartment was supposed to be delivered to complainant, but despite completion of the time it is observed that respondent miserably failed to give the possession of the unit till date. As on date the unit is also not in a condition to take possession. The complainant visited the unit on 19.12.2023 and astonished to shock that it is in very worst position.
- V. That the complainant paid the amount from time to time as and when such demands were raised by respondent. That on 09.08.2019 the respondent very kindly issued a letter of offer of possession wherein the respondent demanded a sum of Rs. 16,05,296/- and instructed to clear the outstanding within a period of 21 days i.e., till 30.08.2019. In the said offer of possession, the respondent stated that on receipt of the entire payment the respondent will hand over the possession of the apartment with full furnished within a period of 90 days.
- VI. That on 10.10.2019 the complainant cleared all the dues as demanded by the respondent and on the same day complainant requested to furnish and ready the flat as soon as possible. That according to offer of possession letter 09.08.2019 respondent was supposed to handover the full furnished apartment till 09.01.2020 but till date no physical possession intimation given by the respondent even the apartment is still not in condition to take possession.
- VII. That from 2019 the complainant visits the office of respondent regarding the completion of furnishing work and handing over the unit but on each and every visit the respondent continuously gave the answer that the finishing work is going on and the possession of the unit would be delivered very shortly.

VIII. That from 2019 the complainant sent various reminders by mail in addition to telephonic calls, messages to complete the finishing work and handing over the possession of the unit as well as refund of lift charges but the respondent has not confirmed any confirm date for physical possession of the apartment. The complainant had faced financial hardships leading to mental and financial distress. However there had been no update till date on the confirm date of physical possession of the unit.

IX. That complainant had paid the hard-earned money to respondent, on the promise and inducement. That the respondent has cheated complainant with malafide intentions from the very beginning as respondent took the money from the pockets of complainant by way of misrepresentation, inducement and commitment which were totally false and fake from the very beginning.

X. That at the time of booking of the unit the sale cost indicated was Rs. 1,45,31,250/- and complainant total paid a sum of Rs. 1,52,11,120/- to the respondent and after completion of all the payments the respondent failed to handover the peaceful possession of the flat to the complainant till date.

C. Relief sought by the complainant:

4. The complainant in the present complaint is seeking the following relief(s).
 - i. **Direct the respondent to pay interest @10.75% p.a. on the amount already paid by the complainant i.e., Rs. 1,52,11,120/- from 16.07.2017 till actual handover of the physical possession.**
 - ii. **Direct the respondent that after making payment of delayed interest the possession should be handed over to the complainant within the stipulated time period.**
5. On the date of hearing, the authority explained to the respondents/promoters 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

6. The respondent has contested the complaint on following grounds:
 - I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
 - II. That there is no cause of action to file the present complaint.
 - III. That the complainant has no locus standi to file the present complaint.
 - IV. That the complainant is estopped from filing the present complaint by his acts, omissions, admissions, acquiescence's and laches.
 - V. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 21 of the buyer's agreement.
 - VI. That the complainant has not approached this Hon'ble Forum with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
 - VII. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects in and around NCR region such as ATS Greens-I, ATS Greens-II, ATS Village, ATS Paradiso, ATS Advantage Phase-I & Phase-II, ATS One Hamlet, ATS Pristine, ATS Prelude & ATS Dolce and in these projects large number of families have already shifted after having taken possession and Resident Welfare Associations



have been formed which are taking care of the day to day needs of the allottees of the respective projects.

- VIII. That the complainant, after checking the veracity of the project namely, 'ATS Tourmaline', sector 109, Gurugram. It is submitted that complainant signed and executed the apartment buyer's agreement on 17.01.2014 and the complainant agreed to be bound by the terms and conditions contained therein. The apartment booked by the complainant was located in tower no. 4 having super builtup area of 1750 sq. ft. for a sale consideration of Rs. 1,45,31,250/-.
- IX. That 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. The complainant was bound to pay the sale consideration amount of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
- X. That the respondent vide its reminder dated 13.01.2017, had requested the complainant to make the due payment for the net payable amount of Rs. 743/-.
- XI. That the respondent vide its letter dated 08.12.2017, had raised payment demand towards Haryana Value Added Tax (HVAT) for Rs. 1,44,113/-. The complainant failed to make the entire payment and the respondent was constrained to send reminder dated 09.08.2019 to the complainant.
- XII. That the respondent being a customer-oriented company completed the construction of the unit and applied for the occupation certificate on 19.03.2018 and the same was granted by the concerned authorities on 09.08.2019. The respondent has already offered the possession of the unit to the complainant vide notice of possession dated 09.08.2019 and the respondent had demanded the installment for the net payable amount of



Rs. 16,05,296/- due on offer of possession which was to be paid on or before 30.08.2019.

- XIII. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 6.2 of the buyer's agreement the construction was to be completed within a period of 42 months from the date of the agreement and the same was subject to the occurrence of force majeure conditions. The possession of the unit was to be handed over to the complainant only after the receipt of the occupation certificate from the concerned authorities. The respondent has already completed the construction of the tower in which the unit allotted to the complainant is located.
- XIV. That 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 materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under :
- **Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization:** [Only happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to

demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000/- per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government.

Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.

The Reserve Bank of India has published reports on impact of Demonetization. In the report-Macroeconomic Impact of Demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

Furthermore, there have been several studies on the said subject matter and all the studies record the conclusion that during the period of demonetization the migrant labour went to their native places due to shortage of cash payments and construction and real

estate industry suffered a lot and the pace of construction came to halt/ or became very slow due to non-availability of labour. Some newspaper/print media reports by Reuters etc. also reported the negative impact of demonetization on real estate and construction sector.

That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

- **Orders Passed by National Green Tribunal:** In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April-May 2015, November- December 2016 and November-December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and

the said period is also required to be added for calculating the delivery date of possession.

- **Non-Payment of Instalments by Allottees:** 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.
- **Inclement Weather Conditions viz. Gurugram:** Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions. This period is also required to be added to the timeline for offering possession by the respondent.
- **Covid-19 Outbreak:-** The outbreak of the deadly Covid-19 virus has resulted in significant delay in completion of the construction of the projects in India and 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 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.

- XV. That as already mentioned above, 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 Apartment Buyer's Agreement. On the other hand, even though the complainant had been called upon to take the possession of her unit after fulfillment of the requisite formalities yet the complainant has not come forward to do so. 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.
- XVI. That the demands of the complainant are highly untenable, misconceived and aimed at blackmailing the respondent. Instead of completing the requisite possession related formalities, the complainant has filed the present highly false, frivolous and baseless complaint with totally mala fide and dishonest intentions of arm twisting, blackmailing, pressurizing and harassing the respondent.
- XVII. That the fact of the matter is that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that her calculations went wrong on account of slump in the real estate market and the complainant now wants to somehow get out of the concluded contract on highly flimsy and baseless grounds. Such mala fide tactics of the complainant cannot be allowed to succeed.

XVIII. That in the facts and circumstances of the present case, a direction is required to be given by this Hon'ble Authority to the complainant that upon complying with the requisite formalities, she is required to take over the possession of the said unit. Moreover, as already stated, there has been no delay on the part of the respondent and the complaint is liable to be dismissed.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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) 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 may be;

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by respondent:

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration

12. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"21. Dispute Resolution

"All or any disputes that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be first settled through mutual discussion an amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by Parties or if unable to be mutually appointed, then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties."

13. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction



of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

14. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-

arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

15. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

16. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration.

Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration mandatorily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F.II Objections regarding force majeure.

17. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana, NGT and Environment Pollution (Prevention & Control) Authority, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization but all the pleas advanced in this regard are devoid of merit. The authority has gone through the possession clause and observes that the respondent-promoter proposed to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement. The date of execution of agreement is 17.01.2014 hence, the due date of possession comes out to be 17.07.2017. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 17.07.2017. The events such as demonetization and various orders passed by Hon'ble High Court of Punjab and Haryana, NGT and Environment Pollution (Prevention & Control) Authority, were for a shorter duration of time and were not continuous as there is a delay of more than two years. Hence, in view of aforesaid circumstances, no grace period on such grounds can be allowed to the respondent- promoter. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the

view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

- i. **Direct the respondent to pay interest @10.75% p.a. on the amount already paid by the complainant i.e., Rs. 1,52,11,120/- from 16.07.2017 till actual handover of the physical possession.**
- ii. **Direct the respondent that after making payment of delayed interest the possession should be handed over to the complainant within the stipulated time period.**

18. 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

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."

19. As per clause 6 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

Clause 6. Completion of Construction

*6.2 The Developer endeavour to complete the construction of the Apartment within **42 months from the date of this Agreement**. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies)."*

20. **Due date of handing over of possession:** As per possession clause 6.1 of the agreement dated 17.01.2014 the possession of the unit was to be handed over within 42 months from the date of agreement. The



agreement was executed on 17.01.2014 therefore, the due date of possession comes out to be 17.07.2017.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges in terms of proviso to section 18 of the Act which 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.

22. 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.
23. 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% per annum.
24. 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;"*
25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
26. On consideration of the documents available on record and submissions made by 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 dated 17.01.2014 executed between the parties. It is a matter of fact that agreement containing terms and conditions regarding the said unit was executed between the parties on 17.01.2014. As per the clause 6 of the agreement, the possession of the booked unit was to be handed over on or before 17.07.2017. The respondent has obtained the occupation certificate of the project by the competent authority on 09.08.2019 and subsequently offered the possession of the unit on 09.08.2019.
27. However, the complainant in the present complaint is seeking possession of the unit and delay possession charges till actual handing over of possession and has stated that although the respondent has offered the possession of the unit but the unit is not in a habitable condition as finishing works are pending in the unit till date. The complainant in this

regard has referred to a mail by respondent dated 20.09.2023 annexed at page 77 of the complainant in which respondent admitted that finishing works are pending. The said mail is reiterated as under:

"With reference to possession of your unit, we would like to intimate you that finishing of your flat has been taken in priority list but, there is lots of finishing work is pending in your apartment so it will take time, We will get back to you once finishing work get completed in your apartment."

28. The plea of the respondent is otherwise and has stated that vide email dated 03.01.2022 the complainant herself asked the respondent to hold the unit. The said email is reiterated as under:

"Please put my handover request on hold for now and kindly let me know when the things are back on track in few months. I'll confirm my plans to you then."

29. The Authority observes that the possession of the booked unit was to be handed over on or before 17.07.2017. The respondent has obtained the occupation certificate of the project by the competent authority on 09.08.2019 and subsequently offered the possession of the unit on 09.08.2019. However, the allottee's unit remains incomplete due to pending finishing works. It is a matter of fact that on 03.01.2022 the complainant has asked the respondent to hold the unit but thereafter vide various emails dated 01.08.2023, 12.08.2023, 02.09.2023, 04.09.2023, 12.09.2023, 20.09.2023 the complainant requested the respondent for possession of the unit. So, the complainant, vide his own communication dated 03.01.2022, had requested the unit to be put on hold. Thereafter, the complainant sought possession of the said unit only through his subsequent communication dated 01.08.2023.

30. The complainant has paid an amount of ₹ 1,52,11,120/- out of sale consideration of ₹ 1,45,31,250/-. Moreover, vide email dated 20.09.2023

the respondent acknowledged that finishing works are pending. The Authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations within the stipulated period.

31. Accordingly, 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 complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainant to the respondent from the due date of possession i.e., 17.07.2017 till the actual handing over of possession of the allotted unit as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
32. Moreover, in light of the above, the intervening period between 03.01.2022 and 01.08.2023 shall not be reckoned for the purposes of calculating Delay Possession Charges (DPC). The said period shall be treated as a 'zero period'.
33. The complainant in the present complaint is seeking relief for the possession of the unit. The occupation for the said unit was received on 09.08.2019 thereafter possession was offered on the same day i.e., 09.08.2019. Therefore, the respondent is directed to handover the possession of the unit within 60 days of this order.

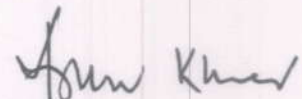
H. Directions of the authority

34. 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 is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 17.07.2017 till actual handing over of possession of the allotted unit as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii. The period from 03.01.2022 till 01.08.2023 will be treated as zero period and the respondent shall not pay the delay possession charges for the said period.
 - iii. The respondent is directed to handover the possession of the unit within 60 days of this order.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vi. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.
35. Complaint as well as applications, if any, stands disposed off accordingly.
36. File be consigned to registry.

Dated: 09.05.2025


(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram