

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

Date of filing: 13.06.2024
Order reserved on 06.03.2025
Date of pronouncement: 03.04.2025

1. Ved Prakash

2. Sabita

Both R/O: H.No. 187/188, Phase-III, New Palam Vihar,
Gurugram-122017

Complainants

Versus

Ansal Housing & Construction Limited

Office: 15, UGF, Indraprakash, 21, Barakhamba Road,
New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Satvir Singh Hooda
Shri Amandeep Kadyan

Counsel for the Complainants
Counsel for the Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees 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

complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Ansal Highland Park
2.	Project location	Sector 103, Gurugram
3.	Nature of Project	Group Housing Colony
4.	RERA registration	16 of 2019 dated 01.04.2019 Project Lapsed
5.	Date of booking	30.08.2013 [As alleged by the complainant at page no. 55 of the complaint]
6.	Unit No.	Perth-0401 [As per additional documents filed by the complainant dated 11.04.2025]
7.	Unit Area	1940 sq. ft. [Page no. 14 of the complaint]
8.	Date of agreement for sale in favor of original allottee	30.08.2013 (Page 11 of complaint)
9.	Date of agreement for sale in favor of complainant	18.09.2013 (Page 39 of complaint)
10.	Possession clause	31. The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 48



		<i>months as above in offering the possession of the Unit.</i> [Page no. 19 of complaint]
11.	Commencement of Construction	16.04.2013
12.	Due date of possession	18.03.2018 (Calculated from execution of BBA being later + 6 months of grace period is allowed unconditionally)
13.	Complainant's request to shift allotted unit GLAGW-0304 to Perth-0401	06.08.2020 (As alleged by the complainant at page 06 of complaint)
14.	Total sale consideration	Rs.77,30,301.18/- [Page no. 56 of complaint]
15.	Amount paid by the complainant	Rs. 64,47,619/- [As per customer ledger dated 13.05.2023 filed as additional document by the complainant on 11.04.2025] Rs.88,00,000 /- [As alleged by the complainant vide additional documents filed on 11.04.2025, however, no payment receipts for Rs. 20,00,000/- and Rs. 3,50,391/-]
16.	Possession for Fit-Outs	08.04.2024 [Page 06 of complaint]
17.	Occupation certificate	Not Obtained
18.	Offer of possession	Not Offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

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- a) The complainants are law abiding Indian Citizen and the Respondent is private limited company incorporated under the Companies Act, 1956 registered with the Office of Registrar of Companies, Delhi and the companies are engaged in the business activities relating to construction, development, marketing & sales of various types of residential as well as commercial properties to its various customers/clients and works for gains.
- b) That Mr. Shree Mohan Chaudhary and Mrs. Mira Chaudhary booked a residential unit / flat bearing No. GLSGW-0304 in co-ownership in the project named Ansal High Land Park at Sector-103, Gurugram, Haryana to be constructed by Ansal Housing and construction Ltd. AN ASO 9001:2008 Company 15, UGF, Indra Prakash, 21, Barakhamba Road, New Delhi 110001 on 30.08.2013 area measuring 1940 Sq. Ft.
- c) The total sale consideration value of the said unit was total Rs.85,35,880.02/- which was to be paid as per the construction link plan by the buyer with basic cost of Rs.7762480/-, Unit No.GLSGW-0304. An apartment buyer agreement depicting the payment schedule was executed on dated 30.08.2013 between Mr. Shree Mohan Chaudhary and Mrs. Mira Chaudhary and respondent by authorized person of the respondent.
- d) Mr. Shree Mohan Chaudhary and Mrs. Mira Chaudhary after seeking permission and approval along with NOC on dated 02.09.2013 from the respondent sold that unit no. GLSGW-0304 to Mr. Ved Prakash 18.09.2013 with endorsement in the original apartment buyer apartment no 012. The name of Mrs. Sabita was also endorsed on the same date in the apartment buyer agreement of the said unit.
- e) The unit / flat bearing no. GLSGW-0304 dated on 18.09.2013 was transferred in the name of the complainants and a fresh apartment buyer agreement including payment schedule / allotment letter was executed between the complainant and the respondent.

- f) By that time (18.09.2013) Mr. Shree Mohan Chaudhary and Mrs. Mira Chaudhary had made a payment of Rs.2660825/- to the respondent which was directly paid to them by the complainant as per the direction and approval of the respondent in his office by.
- g) The above said payment of Rs. 26,60,825/- only was paid out of the total sale consideration value by Mr. Shree Mohan Chaudhary and Mrs. Mira Chaudhary. The permission and approval to sell the above said unit no. GLSGW-304 was sought by the Mr. Shree Mohan Chaudhary and Mrs. Mira Chaudhary on dated 02.09.2013.
- h) On 30.01.2015 with the due permission and NOC from respondent, the complainants sought a loan of Rs. 1195000/- from the State Bank of India under subvention scheme of Unit No. GLSGW-0304. After 03.02.2015, an allotment letter was issued to the complainants.
- i) On 06.08.2020, the complainants requested the respondent to shift their above said unit from GLSGW-0304 to Perth-0401 because the allotted unit was technically unsafe to live in.
- j) on the request of complainants, the respondent shifted / allotted the unit from GLSGW-0304 to Perth-0401 on 10.12.2020 and the total amounting Rs.6167619/- has been shifted to the new unit Perth-0401 on 10.12.2020. The total amount was paid to the respondent is Rs.88,00,000/- vide customer ledger as on 22.12.2023.
- k) On 08.04.2024, the respondent issued a registered letter regarding offer of possession for fit-outs of unit no.Perth-0401 in Ansal's Highland Park, Sector-103, Gurugram, Haryana and the respondent issued a fresh payment schedule to the complainant along with an order to make the payment of the balance amount of Rs.2262059/- within a period of 45 days to the builder and an amount of Rs.154006/- as maintenance charges to be paid to the maintenance agency but the said unit was technically faulty and

incomplete not having any kind of civil amenities and O.C. also. It was lacking total life required civil amenities

- l) The letter dated 08.04.2024 is illegal hence it has to be treated null and void because the possession of the above said unit was to be handed over to the complainant completed with all kinds of civil amenities and other legal requirements.
- m) The peaceful possession complete in all respect with all kinds of civil amenities and O.C. was to be handed over in 48 months with grace period of 6 months (54 months) w.e.f. 30.08.2013 to 28.02.2024, hence the project has been delayed almost 11 years but later on the respondent said the O.C. would be achieved latest by 30.08.2023 but till date the O.C. of the concerned unit has not been received / acquired by the respondent and issued wrongly and illegally fitout possession letter to the complainants on 08.04.2024.
- n) According to the apartment buyer agreement, the complainant was ready to make the payment of stamp duty, registration charges and other administrative charges as and when it was to be required by the respondent company, but the respondent company never followed the terms and conditions laid down in buyer agreement.
- o) As per one of the terms and conditions of the said apartment buyer agreement executed, it was agreed upon and settled down between the complainant and the respondent company that the possession of the said unit/flat shall be handed over to the complainant within the period of 54 months from the date of execution of the agreement. That the respondent company was duty bound to handover the physical possession of the above said unit/flat to the complainants positively up to year 2017 but till date nothing has been done in that context.

- p) The complainant without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainants immediately on receipt of letters from the respondent company.
- q) From the above said timely payments made by the complainant in the respondent company leaves no iota of doubt that the complainants have been very sincere and honest while complying with the terms and conditions of the letter of allotment as well as of apartment buyer agreement as the same was agreed and settled to be payable at the time of offer of peaceful physical possession complete in all respect of the said unit by the respondent company.
- r) On account of not constructing the above said unit within a stipulated period of 48 months, the complainant contacted the respondents several times to inquire after the progress of construction of the booked unit and asked to handover the peaceful physical possession of the above said unit on committed period to the complainant but to no purpose at all. That due to the lapses of the respondent company, the complainants had to bound to pay the regular loan instalments and interest to the financier.
- s) Instead of admitting their fault/negligence on account of not offering the possession of the said unit to the complainant complete in all respect fit for living, respondents kept on issuing reminders for illegal demand of payment regularly. That the respondents had crossed all the limits by keeping aside all the provisions of law of the land and without bothering having any fear of natural justice of law, they kept on sending their illegal demands to the complainant regularly.
- t) On account of issuance of the above illegal demands regularly, followed by reminders and claiming huge amount without their being any justification leaves no doubt in the minds of the complainants that the respondent being

such a type of company which firstly trapped the several innocent home buyers customers like the complainants by showing attractive brochures, boosting about the reputation of the respondent and once the customers like the complainants are trapped in their net, the builder company without having any justification and fear of law of the land continuously carried on its illegal demands of amount without having any norms leaving the customers. That like the complainants several other buyers are compelled to run from pillar to post without their being any fault on their part.

- u) On account of being not getting the possession of the above said unit allotted to the complainants within the stipulated period of 48 months, the complainant had suffered a huge monetary loss for the past more than 11 years. The complainant had been burdened by the respondent by paying penal rate of interest to the bank. The act and conduct of the respondent have also snatched the right to live a peaceful life of the complainants.
- v) The complainants approached the respondent many a times to inquire after the progress made in the construction of the said unit and handing over the physical possession of the said unit/flat. But the respondent did not even bother to respond the buyer and paid no heed to his request.
- w) Till date the respondent had failed to complete the said project on the assured time and date. That the respondent had backed out from their assurances / promises and kept on misappropriating the huge hard-earned money of the complainants.
- x) As the respondent has failed to discharge their liabilities to complete the project and to handover the peaceful physical possession of the allotted unit / apartment to the complainants within the stipulated time and thus the respondent has cheated the complainants to invest their hard-earned money on believing upon their false assurances. The respondent in a master minded and scripted way succeeded to their ulterior motive and caused

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wrongful losses to the complainant for their wrongful gains. Thus, the respondent has not only breached the trust of the complainants but also in a planned and thoughtful way cheated/defrauded the complainant.

- y) The complainants due to their said illegal acts, conduct and misdeeds of the respondent company had suffered a great loss of money. The respondent are involved in the swindling and embezzlement of funds not only of the complainants, but several other peoples at large. Therefore, the respondent company is liable to pay the delay possession compensation to the complainants with compound interest @24% per annum till the respondent company handover the physical possession to the complainants immediately.

C. Relief sought by the complainants.

4. The complainants have sought following relief:

- i. Direct the respondent to handover the physical possession date bound along with the delayed possession charges along with interest @24% per annum to the complainant from 30.08.2013 to till the order of Hon'ble Court.
- ii. Direct the respondent to give special discount of 3% amounting Rs.2,09,520/- according to BBA.
- iii. Direct the respondent to give interest which was paid by the complainants to the banker for the purchase of said property.

D. Reply by the respondent.

5. The respondent contested the complaint on the following grounds:-

- a) The complainants had approached the answering respondent for booking a unit no. PERTH-0401 in an upcoming project Ansal Highland Park, Gurugram. Upon the satisfaction of the complainant regarding inspection of

the site, title, location plans, etc. an agreement to sell was signed between the parties.

- b) The complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
- c) Even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2024 and the cause of action accrue in 2016 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- d) Even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2013 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 3 years after it was agreed upon by both parties.
- e) The complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
- f) The respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector



103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

- g) The answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- h) The answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- i) The answering respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the

Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.

- j) 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

6. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

8. 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.

9. 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

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decided by the adjudicating officer if pursued by the complainants at a later stage.

10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on **11.11.2021** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on objections raised by the respondent

F.I. Objection regarding the force majeure.

12. The respondent-promoter raised the contention that, the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008 vide order dated 16.07.2012, 31.07.2012, 21.08.2012 banned the extraction of water

which is the backbone of the construction process. Similarly, the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 18.09.2013 and the orders afore-mentioned by the respondent passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008 were passed before the execution of buyer's agreement. Moreover, some of the events mentioned above are of routine in nature happening annually and are for very shorter period of time. The promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

13. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69....The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

14. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 18.03.2018. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of

possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession. In view of above the objection raised by the respondent stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondents to handover the physical possession along with the delayed possession charges along with interest @24% per annum from 30.08.2013 till the order of Hon'ble Court.

G.II Direct the respondent to give special discount of 3% amounting Rs. 2,09,520/- according to BBA.

15. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

16. That the complainants booked a unit GLSGW-0304 in the project of the respondent namely, "Ansals Highland Park" admeasuring super area of 1940 sq. ft. for an agreed sale consideration of Rs. 77,30,301/- against which complainants allegedly paid an amount of Rs. 88,00,000/- and the respondent has failed to hand over the physical possession till date. However, the said amount includes Rs. 20,00,000/- paid in cash for which no receipts are annexed and hence only Rs. 64,47,619/- as per receipts and SOA placed on record is being considered as paid -up amount. That the complainants intend to continue with the project and are seeking delayed possession charges against the paid-up amount as provided under the 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, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building,

as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act;

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)

17. As per clause 31 of the agreement provides for handing over of possession and is reproduced below:

The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 48 months as above in offering the possession of the Unit.

18. On consideration of the abovementioned clause, 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 31 of the agreement dated 18.09.2013, the possession of the subject unit was to be delivered within a period of 48 months with an additional grace period of 6 months from the date of execution of the agreement or date of obtaining all licenses or approvals for commencement of construction. The due date is calculated 48 months from date of execution of agreement i.e., 30.08.2013 being later. Accordingly, the due date of possession comes out to be 18.03.2018 and there is a delay of more than 4 years on the date of filing of complaint to handover the possession of the allotted unit.

19. The occupation certificate/part occupation certificate of the buildings /towers where allotted unit of the complainants is situated has not been obtained by the respondent till date. After delay of more than 4 years, on respondent's failure to provide possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the complainants have approached the Authority seeking possession of the unit in

question along with delay possession charges. The matter is covered under section 18(1) of the Act of 2016.

20. Upon perusal of documents available on record, the respondent has failed to obtain the Occupation Certificate for the buildings/towers where the complainant's allotted unit is situated, despite a delay of over four years. The offer for possession for fit-outs was made on 08.04.2024 prior to obtaining of occupation certificate, which is not a valid offer of possession. This failure, along with the respondent's non-fulfilment of the obligation to deliver possession of the units as per the terms of the agreement for sale and within the stipulated timeframe, has necessitated the complainants to approach this Authority. In view of the facts and circumstances, the matter falls within the ambit of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, entitling the complainants to seek possession of the units along with compensation for the delay in possession.

21. **Admissibility of delayed possession charges at prescribed rate of interest:** The complainants are continuing with the project and seeking delay possession charges. However, proviso to section 18 of the Act 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 the possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules 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., 03.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—

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 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. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of agreement to sale executed between the parties on 18.09.2013, and the due date of as per agreement comes out as

18.03.2018. Occupation certificate has not been granted by the concerned authority till date. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the physical possession within the stipulated period.

26. Accordingly, the non-compliance of the mandate contained in 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 prescribed rate of the interest @ 11.10 % p.a. w.e.f. 18.03.2018 till the date of offer of possession plus 2 months after obtaining the occupation certificate or actual handover, whichever is earlier as per provisions of Section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority

27. 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 delay possession charges to the complainant against the paid-up amount of Rs. 64,47,619/- at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 18.03.2018 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid.
- II. The respondent is directed to refrain from levying or collecting any charges that are not expressly stipulated in the buyer's agreement

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respondent is also directed to issue revised account statement within 60 days after adjustment of delay possession charges.

- III. 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.
- IV. The respondent shall hand over the possession after obtaining occupation certificate and receiving the payment of outstanding amount if, any.
- V. The complainants are directed to remit outstanding amount, if any remains after the adjustment of the delayed possession charges.
- VI. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 03.04.2025

HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram