

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

Complaint no. : 4150 of 2023
Date of filing complaint: 06.09.2023
Order Reserve On: 24.01.2025
Order Pronounced On: 28.03.2025

Harish Kumar
Address: - H. no. 492, Near Indian Bank,
Khandsa Road, Khandsa, Gurgaon

Complainant

Versus

M/s ATS Real Estate Builders Private Limited
Regd. Office at: 711/92, Deepali, Nehru Place,
New Delhi-110019

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Sh. Sushil Yadav
Sh. Vinayak Gupta

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.	Name and location of the project	"ATS Marigold", Sector 89A, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	11.125 acres
4.	DTCP License	87 of 2013 dated 11.10.2013 valid till 10.10.2017
	Name of the licensee	Dale Developers Private Limited & Gabino Developers Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 55 of 2017 dated 17.08.2017 valid till 31.07.2021
6.	Application dated	01.07.2014 (A per page no. 13 of complaint)
7.	Allotment letter dated	17.11.2014 (As per page no. 13 of complaint)
8.	Date of execution of apartment buyer's agreement	18.12.2014 (As per page no. 12 of complaint)
9.	Unit no.	5161 on 16 th floor, tower 5 (As per page no. 13 of complaint)
10.	Super Area	1750 sq. ft. (As per page no. 13 of complaint)



11.	Total consideration	Rs. 1,19,06,250/- (As per schedule III, page no. 42 of the complaint)
12.	Total amount paid by the complainant	Rs. 1,10,47,702/- (As per statement of account at page 44 of complaint and as alleged by the complainant on page no. 8 of complaint)
13.	Possession clause	Clause 6.2 <i>(The Developer shall endeavor to complete the construction of the Apartment within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date")., subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. 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).)</i>
14.	Due date of possession	18.12.2018 (Calculated from the date of the agreement i.e.; 18.12.2014 + grace period of 6 months) Grace period is allowed
15.	Occupation Certificate	16.06.2023 (Page 76 of reply)
16.	Offer of possession	20.06.2023 (as per page 46 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That relying on the undertakings given by the respondent the complainant booked an apartment/flat measuring 1750 sq. ft. in aforesaid project of the respondent for a total sale consideration of Rs 1,19,06,250/-. The complainant made a payment of Rs. 1,10,47,702/- to the respondent vide different cheques.
- II. That flat buyer's agreement was executed on dated 18.12.2014 and as per agreement the respondent had allotted a unit/flat bearing no. 5161, 16th floor, on 5 tower having super area of 1750 sq. ft. to the complainant. As per para no.6.2 of the agreement, the respondent had agreed to deliver the possession of the flat within 42 from the date of builder buyer agreement with an extended period of 6 months.
- III. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not complete. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the flat without completing the work and not handing over the possession on time.
- IV. That despite receiving of more than 95% approximately payments on time for all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.

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- V. That on dated 20.06.2023 the respondent sent the offer of possession but when the complainant visited the flat, that flat and entire project complex was not in a habitable condition which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently.
- VI. That as per clause 6.3 of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the flat. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan.
- VII. That on the ground of parity and equity the respondent also subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.
- VIII. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant but respondents has flatly refused to do so.

C. Relief sought by the complainant:

4. The complainant in the present complaint has sought the following relief(s).
- i. **Direct the respondent to hand over the physical possession of the unit.**
 - ii. **Direct the respondent to pay interest for every month of delay at prescribed rate i.e., MCLR + 2%.**

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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. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.

- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
- II. That the respondent i.e. M/s. ATS Real Estate Builders Private Limited is a renowned Real Estate Company engaged in the business of construction and Real Estate. The respondent has successfully developed various real estate projects around the country and due to its uncompromising work ethics, honesty, quality of construction and timely delivery of the projects to the utmost satisfaction of its customers, it has established an unimpeachable reputation in the real estate business. The respondent is known to be the developer who is known for delivering projects without compromising on quality.
- III. That construction industry is one of the significant contributors to the economic growth and development of India, but there are major challenges which are limiting the performance of the construction industry in India. And same applies for ATS Marigold Project. Enumerated below are some unavoidable reasons for delay in project.
- IV. That the delay in completion of the project occurred due to the reason due to delay in development of underpass on Dwarka Expressway and the construction of underpass is still going on. This resulted in difficulty/ delay in delivery of construction material, movement of machinery at the

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project site in stipulated timeline, and had effectively resulted in logistical difficulties.

- V. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. 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:

I) 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.

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.

II) 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 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.

- (III) **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.
- (IV) **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. The said period is also required to be added to the timeline for offering possession by the respondent.
- VI. That Deputy Commissioner, Gurugram vide order dated 09.11.2017 while complying with directions of Hon'ble National Green Tribunal, New Delhi appointed PWD, MCG, HUDA, NHAI, HSAMB, TCP, HSIIDC to prohibit construction activity of any kind in the entire NCR. In fact, only internal finishing and interior work was allowed to be undertaken where no construction material was to be used. Further direction was given to Haryana State Pollution Control Board to maintain due records of air quality in the areas falling under their jurisdiction being part of NCR. Moreover, the office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity.
- VII. That the complaint is not maintainable for the reason that the buyer agreement dated 18.12.2014 contains an arbitration clause which refers

to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.

VIII. 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:

- (i) That the buyer's agreement was executed on 18.12.2014. The Real Estate (Regulation and Development) Act, 2016 was not in force when the Agreement was entered into between the complainant and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.
- (ii) That it was agreed that as per buyer's agreement, total sale consideration of the allotted unit/flat was Rs. 1,19,08,250/-. The complainant has paid amount of Rs. 1,10,47,702/- out of the total payable amount. The complainant was allotted unit no. 5161 on 16th floor in tower 5 in the project "ATS Marigold" admeasuring 1750 sq. ft.
- (iii) That the possession of the unit was supposed to be offered to the complainant on 17.12.2018 in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 6.2 of the buyer's agreement the answering respondent was supposed to offer possession of the unit/flat by 17.06.2018 plus grace period of 6 months, suggesting therein that deem date of possession was 17.12.2018.
- (iv) That occupation certificate qua tower no. 3 wherein the unit/flat in question is located issued by the Director, Town and Country Planning, Haryana on 16.06.2023.
- (v) That intimation regarding status of the project was issued to the complainant by the respondent company vide letter dated 30.09.2022.

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- (vi) That intimation regarding fitout/interior works of the unit in question was sent to the complainant by the respondent vide communication dated 11.10.2022.
- (vii) That the complainant is yet to pay total amount of Rs. 14,69,250/- to the answering respondent, which is evident from perusal of detailed statement of accounts and customer ledger.
- (viii) That the complainant has been quite irregular in making his payments on time to the answering respondent against the booked unit. Time and again demand notices were sent to the complainant for timely payment of his instalments in which he defaulted very badly.
- IX. That the complainant is real estate investors who have invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and they are now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable demands.
- X. That despite the abovementioned illegal conduct of the complainant the respondent company submits that the same is ready and willing to execute conveyance deed with the complainant.
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 first settled through mutual discussions and 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 the 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.

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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.

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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 Objection regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector.

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The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F.III Objections regarding force majeure.

19. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during 2015-2016-2017-

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2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent is regarding various orders of the NGT and demonetisation but all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further, any contract and dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. 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.

G. Findings on the relief sought by the complainant.

- i. **Direct the respondent to hand over the physical possession of the unit.**
- ii. **Direct the respondent to pay interest for every month of delay at prescribed rate i.e., MCLR + 2%.**

20. 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."

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

Clause 6

6.2

The Developer shall endeavor to complete the construction of the Apartment within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. 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).."

22. **Due date of handing over of possession:** As per possession clause 6.2 of the agreement dated 18.12.2014 the possession of the unit was to be handed over within 42 months from the date of agreement, with the grace period of 6 months. The agreement between the parties was executed on 18.12.2014. Therefore, the due date of possession of the unit comes out to be 18.12.2018 including the grace period of 6 month which is allowed as it is unqualified.
23. **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

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rates which the State Bank of India may fix from time to time for lending to the general public.

24. 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.
25. 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., 28.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
26. 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;"*
27. 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.
28. 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 18.12.2014 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 18.12.2014. As per the clause 6.2 of the agreement, the possession of the booked unit was to be handed over within 42 months from the date of agreement, with the grace period of 6 months. Therefore, the due date of possession of the unit comes out to be 18.12.2018 including the grace period of 6 month which is allowed as it is unqualified. The respondent has obtained the occupation certificate of the project by the competent authority on 16.06.2023 and subsequently offered the possession of the unit on 20.06.2023. The respondent has failed to handover possession of the subject unit within prescribed time. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 18.12.2014 executed between the parties.

29. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.12.2018 till offer of possession (20.06.2023) after obtaining occupation certificate plus two months i.e., 20.08.2023 at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

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30. The complainant in the present complaint is seeking relief for the possession of the unit. The occupation for the said unit was received on 16.06.2023 thereafter possession was offered on 20.06.2023. Therefore, the respondents are directed to handover the possession of the unit within 30 days of this order.

H. Directions of the authority

31. 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 due date of possession i.e., 18.12.2018 till offer of possession (20.06.2023) after obtaining occupation certificate plus two months i.e., 20.08.2023 at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- iii. 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.
- iv. 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

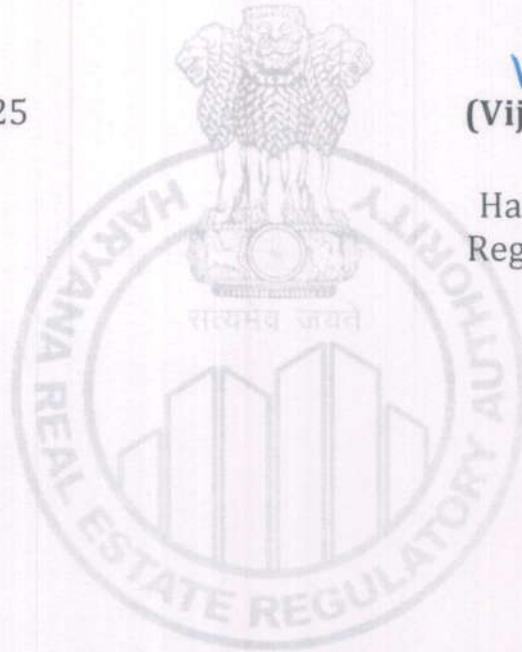
promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.


v. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.

32. Complaint as well as applications, if any, stands disposed off accordingly.

33. File be consigned to registry.

Dated: 28.03.2025



V.I. 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM