

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

Complaint no. : 1719 of 2024
Date of filing complaint: 19.04.2024
Date of Decision: 16.05.2025

1. Sham Sunder Bhatia
2. Vinay Kumar Bhatia

Address: - H. no. 479, East Bhatia Nagar,
Yamuna Nagar, Haryana-135001

Complainants

Versus

M/s Anand Divine Developers Private Limited
Regd. Office at: 711/92, Deepali, Nehru Place,
New Delhi-110019

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Ada Khursheed
Ms. Shivani Dang

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/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 complainants, 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	"Triump", Sector 104, Village-Dhanwapur, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	14.093 acres
4.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited
5.	HRERA registered/ not registered	Not registered
6.	Date of execution of buyer's agreement	05.12.2012 (As per page no. 25 of the complaint)
7.	Unit no.	4151 on 15 th floor, tower 4 (As per page no. 27 of the complaint)
8.	Super Area	2290 sq. ft. (As per page no. 27 of the complaint)
9.	Possession clause	18: Time of handing over possession <i>Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the</i>

		<p>company to the allottee within a period of 36 months with a grace period of 6 months from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, such date shall hereinafter referred to as 'Stipulated date', subject always to timely payment of all amounts including basic sale price, EDC/IDC, IFMS, Stamp duty, Registration charges and other charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification shall be final and binding on the Allottee.</p>
10.	Due date of delivery of possession	<p>05.06.2016</p> <p>[Calculated from the date of agreement as date of construction is not available on records including grace period of 6 months as it is unqualified]</p>
11.	Total consideration	<p>Rs. 1,16,34,750/-</p> <p>(As per payment plan on page no. 45 of complaint)</p>
12.	Total amount paid by the complainants	<p>Rs. 1,16,34,750/-</p> <p>(As alleged by the complainants on page no. 4 of complaint)</p>
13.	Occupation Certificate	<p>28.05.2019</p> <p>(page no.28 of reply)</p>
14.	Offer of possession	<p>30.05.2019</p> <p>(page no. 31 of reply)</p>



15.	Conveyance deed	25.02.2022 (As per page no. 47 of complaint)
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B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants relying on various representations and assurances given by the respondent booked a unit in the project of the respondent by paying an amount of Rs. 30,22,800/-.
- II. That the respondent confirmed the booking of the unit no. 4151, 15th floor, tower no. 4, in Sector 104, Gurgaon having area measuring 2290 sq. ft. in the aforesaid project of the developer for total sale consideration of Rs.1,06,76,000/- along with two car parking's earmarked in the basement/ open area to be identified and allotted by the company at the time of possession of the apartment to the allottee.
- III. That a buyer's agreement was executed between the allottee and respondent on 05.12.2012. As per annexure of the buyer's agreement the sale price of the said apartment shall be Rs. 1,06,76,000/- including the basic sale price, EDC, IDC, preferential location charges and exclusive right to use the dedicated car parking.
- IV. That as per clause 18 of the buyer's agreement, the respondent had agreed to deliver the possession of the flat within a period of 36 months plus 6 months from the date of commencement of construction upon receipt of start of construction. Due date of possession is calculated from the date of agreement i.e. 05.12.2012. Hence due date of possession comes out to be 05.12.2015.
- V. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum



of Rs. 1,16,34,750/- towards the said unit against total sale consideration of Rs. 1,16,34,750/-.

- VI. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent issued the physical handover letter of the unit on account of handing over the physical possession of the unit. The respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. The complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- VII. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent issued the physical handover advice letter of the unit on account of handing over the physical possession of the unit.
- VIII. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 25.02.2022.
- IX. That the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft. The complainants are actually entitled to interest @ 9.80% per annum on the total sum paid by them.



- X. That the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act.

C. Relief sought by the complainants:

4. The complainants in the present complaint are seeking the following relief(s).
- Direct the respondent to pay interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
 - Direct the respondent to pay balance amount due to the complainants from the respondent on account of interest.
 - Direct the respondent to refund the entire amount collected under different heads alongwith offer of possession which the complainants was not liable to pay as per the payment plan.
 - Direct the respondent to return unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainants.
 - Direct the respondent to set aside the one sided indemnity bond get signed by the respondent from complainants under undue influence.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on following grounds:
- That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The Buyer's Agreement was executed between the complainants and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
 - That there is no cause of action to file the present complaint.
 - That the complainants have no locus standi to file the present complaint.



- IV. That the complainants are 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 39 of the buyer's agreement.
- VI. That the complainants have not approached this Hon'ble Authority 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.
- VIII. That the complainants, after checking the veracity of the project namely, 'ATS Triumph', sector 104, Gurugram had applied for allotment of an apartment vide booking application form dated 28.02.2012. The complainants had agreed to be bound by the terms and conditions of the booking application form and based on the said application, respondent allotted to the complainants an apartment no. 4151 on the 15th floor of tower no. 4 having super area of 2250 sq. ft. for a sale consideration of Rs. 1,14,43,750/-.
- IX. That the complainants signed and executed the apartment buyer's agreement on 05.12.2012 and the complainants agreed to be bound by the terms and conditions contained therein.
- X. That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan.

- XI. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 18 of the buyer's agreement the construction was to be completed within a period of 36 months with a grace period of 6 months from the date of actual start of the construction of tower building in question and the same was subject to force majeure events and to the timely payment of all the charges by the allottees. The respondent has already completed the construction of the tower in which the unit allotted to the complainants is located.
- XII. That after the completion of the construction, the respondent had applied for the grant of the occupation certificate. After scrutiny, the concerned authorities granted the occupation certificate for the tower in question only on 29.05.2019 and the respondent offered the possession to the complainants on 30.05.2019 and the respondent had demanded the installment for the net payable amount of Rs. 13,74,756/- due on offer of possession which was to be paid on or before 21.06.2019.
- XIII. That as already mentioned above, the respondent has already obtained the occupation certificate and offered the possession of the unit in question to the complainants. 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 builder buyer's agreement. On the other hand, even though the complainants had been called upon to take the possession of their unit after payment of the amount due to the respondent and fulfillment of the requisite formalities yet the complainants intentionally did not come forward to do so even after reminder dated 03.07.2019 was sent by the respondent to the complainants.

XIV. That there were various other reasons for delay in offering possession of the units in the project such as 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.

- XV. That after the above said reminder dated 03.07.2019, the complainants made payment of the outstanding dues to obtain possession of the said unit. After making payment of all the outstanding dues to the respondent, complainant no. 1 approached the respondent to obtain the physical possession of the unit in question. Complainant no. 1 represented to the respondent that he had been duly authorized by complainant no. 2 to take over the possession of the unit in question on behalf of both the complainants; to sign any document(s) as may be required and to do any other act, deed or thing as may be required to be done on behalf of complainant no. 2. Believing the representations of complainant no. 1 to be correct, the respondent agreed to hand over the physical possession of the unit in question to complainant no. 1.
- XVI. That since there was no delay on the part of the respondent, the complainants never demanded any delayed possession charges. The complainants approached the respondent to hand over the unit after verifying the unit in all respects and being fully satisfied with the unit as well as the tower in which the unit was situated, complainant no. 1 on behalf of the complainants obtained the actual, physical possession of the said unit from the respondent on 24.06.2020. Complainant no. 1 on behalf of himself and complainant no. 2 also executed certificate of possession, key handover letter, possession letter dated 24.06.2020 and Indemnity Cum Undertaking.



- XVII. That the complainants then approached the respondent to execute conveyance deed in their favour. Accordingly, the respondent got executed and registered conveyance deed bearing vasika No. 11499 dated 25.02.2022 in favour of the complainants regarding the said unit admeasuring 4151 sq. ft.
- XVIII. That thus, from a perusal of the conveyance deed dated 25.02.2022, it is clear that the complainants have no claims whatsoever left against the respondent and they cannot claim any compensation as being sought in the present complaint. The complainants are absolutely bound by the said conveyance deed dated 25.02.2022.
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 complainants.

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 complainants at a later stage.

F. Findings on the objections raised by respondent:

F.1 Objection regarding jurisdiction of the complaint w.r.t the buyer's agreement executed prior to coming into force of the Act.

12. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
13. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the

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

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale



entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration

16. 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.
17. 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 the 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.

F.III Objections regarding force majeure.

18. 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 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 36 months with a grace period of 6 months from the date of actual start of the construction of a particular tower. The date of start of construction is not available on records therefore, due date is calculated from the date of execution of buyer's agreement. The date of execution of buyer's agreement is 05.12.2012. Hence, the due date of possession comes out to be 05.06.2016 including grace period of 6 months as it is unqualified. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 05.06.2016. 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.

F.IV. Objection raised by respondent that after execution of the conveyance deed the complainants cannot claim delayed possession charges.

19. The respondent during proceeding raised an objection that the conveyance deed of the unit has already been executed in favour of the complainants on 25.02.2022 and the transaction between the parties' stands concluded upon the execution of conveyance deed. The respondent has further argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
20. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

21. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
22. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer

obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

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

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

G. Findings on the relief sought by the complainants.

- i. **Direct the respondent to pay interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.**
- ii. **Direct the respondent to pay balance amount due to the complainants from the respondent on account of interest.**

25. The complainants intends to continue with the project and are 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."

26. As per clause 18 of the buyer's agreement provides for handing over of possession and is reproduced below:

18: Time of handing over possession

Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the company to the allottee within a period of 36 months with a grace period of 6 months from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, such date shall hereinafter referred to as 'Stipulated date', subject always to timely payment of all amounts including basic sale price, EDC/IDC, IFMS, Stamp duty, Registration charges and other charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification shall be final and binding on the Allottee. "

27. **Due date of handing over of possession:** As per possession clause 18 of the agreement dated 05.12.2012 the possession of the unit was to be handed over within 36 months with a grace period of 6 months from the date of actual start of the construction. The date of start of construction is not available on records therefore, due date is calculated from the date of execution of buyer's agreement. The date of execution of buyer's agreement is 05.12.2012. Hence, the due date of possession comes out to be 05.06.2016 including grace period of 6 months as it is unqualified.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

29. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
31. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
Explanation. —For the purpose of this clause—
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
32. Therefore, interest on the delay payments from the complainants 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 complainants in case of delay possession charges.



33. 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 05.12.2012 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 05.12.2012. As per the clause 18 of the agreement, the possession of the booked unit was to be handed over on or before 05.06.2016. The respondent has obtained the occupation certificate of the project by the competent authority on 28.05.2019 and subsequently offered the possession of the unit on 30.05.2019. Moreover, on 25.02.2022 conveyance deed was executed between the parties. 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 complainants as per the terms and conditions of the buyer's agreement dated 05.12.2012 executed between the parties.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 05.06.2016 till offer of possession (30.05.2019) after obtaining occupation certificate plus two months i.e., 30.07.2019 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.

- iii. **Direct the respondent to refund the entire amount collected under different heads alongwith offer of possession which the complainants was not liable to pay as per the payment plan.**
 - iv. **Direct the respondent to return unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainants.**
 - v. **Direct the respondent to set aside the one sided indemnity bond get signed by the respondent from complainants under undue influence.**
35. As far as common issues with regard to refund of amount collected at time of offer of possession, refund of unreasonable demand, and setting aside of indemnity bond are concerned, the authority is of the view that after the execution of the conveyance deed between the complainants and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee.

H. Directions of the authority

36. 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 complainants from due date of possession i.e., 05.06.2016 till offer of possession (30.05.2019) after obtaining occupation certificate plus two months i.e., 30.07.2019 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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- ii. 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.
37. Complaint as well as applications, if any, stands disposed off accordingly.
38. File be consigned to registry.

Dated: 16.05.2025

(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram



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