

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

Complaint no.: 2182 of 2024

Date of decision:- 28.05.2025

1. Rekha Sharma
2. Pallavi Sharma
(Through Power Of Attorney Mr. Rajender Sharma)
R/o: RTDC Road, Lalbag,
Nathdwara, Rajsamand,
Rajasthan-313301.

Complainants

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

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Seema (Advocate)

Complainants

Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint dated 04.06.2024 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 as provided 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"ATS Triumph", 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.	Date of execution of Buyer's Agreement	08.02.2014 (As on page no. 26 of complaint)

6.	Unit no.	2101, Floor-10 th , Tower/Building No.-2 nd (As on page no. 27 of complaint)
7.	Super Area	2290 sq.ft. (As on page no. 28 of complaint)
8.	Possession clause	<p>As per clause 18 of the agreement: Time of handing over possession</p> <p><i>Barring unforeseen circumstances and force majeure events as stipulated hereunder, possession of the said apartment is proposed to be, offered by the company to the allottee within a period of 36(Thirty Six) months with a grace period of 6 (six) 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 the Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, Registration Fees 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 the certification by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 37 of complaint)</p>

9.	Due date of delivery of possession	20.01.2017 [Calculated 36 months from 20.07.2013 plus 6 months]
10.	Total consideration	Rs.1,33,59,000/- (As on page no. 29 of complaint)
11.	Total amount paid by the complainant	Rs.1,53,85,660/-
12.	Occupation Certificate	28.05.2019
13.	Offer of possession	30.05.2019 (As on page no. 73 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That complainants are aggrieved allottees who had booked Flat no. 2101 on the 10th Floor in Tower No. 2 (Flat) of the "ATS Triumph" project (Project) located at Dwarka Expressway, Sector 104, Gurugram, Haryana on 31.01.2013. The possession of the said apartment was proposed to be offered by the company to the allottee within a period of 36 months with a grace period of 06 months from the date of actual start of construction of the particular tower in which unit is situated. The date of actual start of construction shall be the date on which the foundation of that particular building in which the said apartment is allotted shall be laid. Respondent delayed the possession of the apartment by more than 07 years, in contravention of the terms and conditions of the agreement as well as understanding between the parties.
 - II. As per Clause 18 of the Agreement, the possession of the flat was to be handed over to the complainants within a period of 36 months with a

- grace period of 06 months from the date of the start of the construction of the tower in which the unit is located, with the only condition being timely payment of dues by the complainant.
- III. That the complainant received the "Offer of Possession" on 30.05.2019 requesting to clear the entire outstanding dues on or before 21.06.2019 and informing that the respondent will take approximately 90 days to complete the apartment on receipt of entire payment including TDS and a written request for final finishing. The complainant cleared all the outstanding dues within the time specified in the letter.
- IV. Upon the payment of the aforesaid amount, the payment obligations of the complainant prior to grant of possession, as provided under the Agreement, stood satisfied. Though the complainant made all the payments, the respondent has failed to deliver possession of the flat as per the promised timeline of approximately 90 days as mentioned in the letter of offer of possession. The complainant repeatedly followed up with the respondent's officials regarding the status of their flat.
- V. From the aforesaid, it is evident that the complainants have made payment of all amounts to the respondent under the Agreement, and are thus, in compliance with all of their obligations thereunder. However, the respondent has failed in its obligation to deliver possession of the flat to the complainant within the time frame.
- VI. The complainant have also discovered that the apartment whose possession has been delivered by the respondent suffer from the following deficiencies/ discrepancies:
- i. *The parking lot area is not compliant with the extant regulations enacted by the State of Haryana in this regard.*
 - ii. *The specifications of the sanitary fixtures are not as per agreement;*

VII. In view of the above, it is evident that the respondent has delayed the delivery of possession of the unit to the complainant, contrary to the terms and conditions of the Agreement. The delay caused by the respondent in handing over the possession of the flat has caused considerable financial hardship, harassment and mental distress to the complainant, who has invested their life savings in the project.

VIII. Accordingly, the complainant is filing the present complaint seeking interest for the delay in handing over possession as well as compensation for failure to comply with the terms of the Agreement. The cause of action for the present complaint first arose on 08.02.2017, when the possession was not granted by the respondent. The cause of action thereafter arose on 08.08.2019 and on 21.06.2019 when the respondent yet again failed to offer possession to the complainant. The cause of action has continued till the date of filing of the complaint as the complainant have not been given possession of the apartment nor any intimation has been given by the respondent regarding offer of possession.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):-
 - i. Direct the respondent to handover possession of the unit to the complainants, complete in all respects and in conformity with Buyer's Agreement with all the additional facilities and as per the quality standards promised and execute all necessary and required documents in respect of the said apartment in favour of the complainant in time bound manner.

- ii. Direct the respondent to make payment of interest for delay in handing over possession at 18% per annum.
- iii. Direct the respondent to execute and register the Conveyance deed in favour of the complainants.
- iv. Direct the respondent to refrain from charging advanced maintenance charges.
- v. Direct the respondent to refrain from charging holding charges.

D. Reply filed on behalf of respondent:

5. The respondent has made the following submissions:

- I. That the complainants approached the respondent and expressed interest in applying of an apartment/flat in Residential Group Housing developed by the respondent known as "ATS Triumph" situated in Sector 104, Gurugram, Haryana. The project has licenses bearing no. 63 of 2011 dated 16.07.2011 and 10 of 2012 dated 03.02.2012. That the building plan for the project was approved on 16.12.2011.
- II. That the complainants applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. 2101 on 10th Floor, Tower 2 with 2 car parking spaces, admeasuring super area 2290 sq. ft. (tentative area). The complainants represented to the respondent that he shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the *bonafide* of the complainants and proceeded to allot the unit in question in their favor.
- III. Thereafter, a Buyer's Agreement dated 08.02.2014 was executed between the complainants and the respondent. As per clause 18 of the Agreement, the due date of possession was subject to the allottee having made all the payment and *force majeure* circumstances. That being a

contractual relationship, reciprocal promises are bound to be maintained. The relevant para of the Agreement is reiterated below:

Clause 18 of the Agreement

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 36 (Thirty Six) months with a grace period of 6 (six) 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 the Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, Registration Fees 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 by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.

- IV. That the construction in the tower of the complainants started on 20.07.2013 Thus, the proposed due date of possession comes out to be 20.01.2017. It is submitted that the grace period of 6 months cannot be excluded and is liable to be included.
- V. Furthermore, the offer of possession was also subject to the incidence of *force majeure* circumstances under clause 22 of the Agreement. That the construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.
- VI. That the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

S. No.	Date of Order	Directions	Period Of Restriction	Days Affected	Comments
1.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
2.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 07.11.2017 till further notice.		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding



					<p>construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21.12.2019 and 30.01.2020.</p>
3	9 th Nov 2017 and 17 th Nov, 2017	<p>National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th</p>		9 days	<p>On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly,</p>

		of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.			construction activity has been completely stopped during this period.
4	Notification HSPC B/MS/2018/2 939-52 dated 29.10.2018	Haryana State Pollution Control Board	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
5	Notification DPCC/PA to MS/2018/791 9-7954 dated 24-12-2018	DELHI POLLUTION CONTROL COMMITTEE	24-12-2018 to 26-12-2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December 26 2018
6	Direction dated	Environment Pollution (Prevention	01.11.2019 to 05.11.2019	6 days	Construction activities in



	01.11.2019 bearing no. EPCAR/2019/L—53	and Authority National Capital Region Control) for			Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning)
7	01.11.2019	Environmental Pollution (Prevention and Control) Authority, NCR vide its notification bearing no. R/2019/L-53 dated 01.11.2019 converted the partial ban of 12 hours to a complete ban	01.11.2019 to 05.11.2019	4 days	This was in addition to the partial ban on construction by the EPCA vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to

					30.10.2019 which was later on converted to by
8	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	103 days	These bans forced the migrant labourers to return to their native towns/states/ villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court
9	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11 th October to 31 st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-	11.10.2019 to 31.12.2019	81 days	

		R/2019/L-42 dated October 09, 2019.			
			Total days	314 days	

- VII. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. The Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.
- VIII. That the respondent applied for Occupation Certificate in respect of the unit on 30.01.2016 and the same was thereafter issued on 28.05.2019. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. That the construction of the unit was completed and Occupation Certificate was obtained thereafter, the complainants were offered possession of the unit in question through letter of offer of possession dated 30.05.2019.

- IX. That the complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. It is pertinent to note that multiple emails were sent to the complainants in regard to handing over the possession of the said unit but all requests, reminders fell on deaf ears of the complainants.
- X. That it is an established principle of law that the law assists those who are vigilant to protect their rights. The Doctrine of Delay and Laches provides that all claims should be brought before the respective courts/forums within reasonable time frame and no litigant who approached court/forum belatedly without any justifiable explanation should be allowed to seek benefit of his negligence, similar genesis flows from the provisions of Limitation Act, 1963. Hence, the cause of action, if any, came to an end on the receipt of Occupation Certificate. However, after the offer of possession, the complainants did not press for the payment of delay possession charges and it was only after 4 years 11 months and 14 days that the present complaint was filed as an afterthought. The complainants had been sleeping on his rights for years and hence, no equity can be granted in favour of the complainants in such a circumstance.
6. Copies of all the relevant documents have been filed and placed on 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.

F. Jurisdiction of the authority:

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

F. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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.

G. Findings on objections raised by the respondent

G.I Objection regarding delay due to force majeure circumstances

12. The respondent has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic, notification of the Haryana State Pollution Control Board, Delhi Pollution Control Committee, Directions issued by the Environmental Pollution(Prevention and Control) Authority for NCR, Orders passed by Hon'ble Supreme Court of India. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Builder Buyer Agreement was executed between the parties on 08.02.2014. As per clause 18 of the Agreement dated 08.02.2014, the due date for offer of possession of the unit was within a period of 36 months from the date of actual start of the construction of the tower in which the unit is situated along with a grace period of six months. The date of start of construction of the tower in which the unit is situated is 20.07.2013 (as per respondent's submissions), the due date is calculated 36 months from the date of

construction i.e., 20.07.2016. A grace period of six months over and above the said period was agreed between the parties, the same being unqualified is granted to the respondents. Thus, the due date of possession comes out to be 20.01.2017.

13. The respondent no.1 have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondents were very much aware of these event and thus, the promoter/ respondent cannot be given any leniency based on the aforesaid reasons. The respondent no.1 has further stated that due to the outbreak of Covid-19 the project was stalled. The Authority is of the view that the Authority through notification no. **9/3-2020 dated 26.05.2020**, had already provided a six months extension for projects with completion dates on or after 25.05.2020 , the due date of possession in the present case is much before the above mentioned timeline. Thus, no relief in lieu of covid-19 is granted to the respondent. Therefore, the due date of handing over possession was 20.01.2017.

H. Findings on the relief sought by the complainants.

- H.I Direct the respondent to handover possession of the unit to the complainants, complete in all respects and in conformity with Buyer's Agreement with all the additional facilities and as per the quality standards promised and execute all necessary and required**

documents in respect of the said apartment in favour of the complainant in time bound manner.

H.II Direct the respondent to make payment of interest for delay in handing over possession at 18% per annum.

14. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainants booked a unit bearing no. 2101 on 10th floor in Tower-2nd in the project "ATS Triump" situated in Sector 104 of the respondent for a sale consideration of Rs.1,33,59,000/- and they have paid a sum of Rs.1,53,85,660/- till date. The Builder Buyer Agreement dated 08.02.2014 was executed between the complainants and respondent. As per clause 18 of the Agreement dated 08.02.2014, respondent was obligated to handover the possession of the unit to the complainants within a period of 36 months from the date of start of construction of the tower in which the unit is situated, alongwith a grace period of six months. Thus, the due date of possession comes out to be 20.01.2017. The Occupation Certificate for the project has been obtained by the respondents from the competent authority on 28.05.2019 and thereafter, offered possession of the unit to the complainants on 30.05.2019.

15. The Authority is of the view that the Builder Buyer Agreement dated 08.02.2014 was signed by the complainants and the respondent. The complainants intend to continue with the project and are seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules:

"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 to 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. Due date of possession and admissibility of grace period: As per clause

18 of the agreement dated 08.02.2014, the possession of the allotted unit was supposed to be offered within a period of 36 months from the date of start of construction of the tower wherein the unit of the complainants is situated. Further, a unqualified grace period of 6 months is granted to the respondent over and above the said period. The date of start of construction of the tower wherein the unit of the complainants' is situated is 20.07.2013. Hence, the due date comes out to be 20.01.2017 including grace period of 6 months, being unqualified.

18. Payment of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. 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.

20. 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., 28.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

21. 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:

"(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;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

23. 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 18 of the agreement dated 08.02.2014, the possession of the subject unit was to be delivered within stipulated time schedule i.e., by 20.01.2017. However, the occupation certificate has been received by respondent from the competent authorities on 28.05.2019 and the offer of possession has been made to the complainants on 30.05.2019.

24. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement dated 08.02.2013. 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.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottees shall be paid by the promoters interest for every month of delay from the due date of possession i.e., 20.01.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; 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.
26. The complainants have apprised the Authority of the fact that despite offer of possession being made in 2019 after obtaining the Occupation certificate, the unit is still not complete and the possession has not been handed over to the complainants till date, even after passing of more than five years from the date of offer of possession. The Authority directs the respondent to handover possession of the unit to the complainants within 30 days of this order.

H.III Direct the respondent to execute and register the Conveyance deed in favour of the complainants.

27. The respondent is directed to execute Conveyance Deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 60 days of the order.

H.IV Direct the respondent to refrain from charging holding charges.

28. The Hon'ble NCDRC in its order dated **03.01.2020** in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd.,** Consumer case no. **351 of 2015** held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cumUndertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed." (Emphasis supplied) 133.

29. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra). The authority earlier, in view of the provisions of the rules in a lot of complaints decided in favour of promoters that holding charges are payable by the allottee.

30. However, in the light of the recent judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the Authority concurring with the view taken therein decides that a developer/ promoter/ builder cannot levy holding charges on a homebuyer/ allottee as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case. 134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

H.V. Direct the respondent to refrain from charging advance maintenance charges.

31. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

I. Directions of the authority

32. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 20.01.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; 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 hand over the actual physical possession of the unit to the complainants within 30 days of this order.
- iii. The respondent is directed to execute Conveyance Deed in favour of the complainant within a period of 60 days of this order, on the payment of the requisite stamp duty, charges etc.
- iv. The respondent is directed not to charge holding charges from the complainants.
- v. The respondent is directed not to demand the advance maintenance charges for more than one year from the allottee .
- vi. The respondent shall not charge anything from the complainants which is not a part of the agreement.

33. Complaint stands disposed of.

✓

34. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.05.2025



HARERA
GURUGRAM