

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

Complaint no. : 4652 of 2023  
Date of filing complaint: 17.10.2023  
Date of Decision: 23.05.2025

Rohtas Kumar  
**Address:** - H. no. 713/22, Jhang Colony,  
Rohtak-124001

**Complainant**

Versus

1. Nimai Developers Private Limited  
2. YB Builders Private Limited  
**Address:** SCO-304, 2<sup>nd</sup> Floor, Sector-29, Gurugram

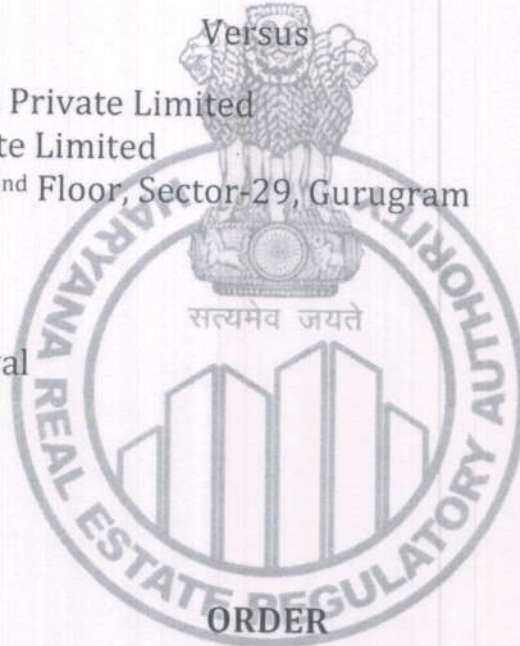
**Respondents**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Sh. Amit Sindhu  
Sh. Sushil Yadav

Complainant  
Respondents



**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:

Sr. No.	Particulars	Details
1.	Name of the project	Nimai Place, Sector 114, Gurugram, Haryana
2.	Nature of the project	Commercial Project
3.	DTCP license no.	126 of 2012 dated 20.12.2012
4.	HRERA registered/ not registered	Registered 7 of 2018 July 2018 upto September 2019
5.	Shop no.	354, 3 <sup>rd</sup> floor [page 19 of compliant]
6.	Shop measuring (super area)	606 sq. ft. [page 19 of compliant]
7.	Date of execution of buyer's agreement	19.05.2014 [page 18 of complaint]
8.	Date of sanction of building plans	18.06.2013
9.	Possession clause	<b>26.</b> <i>The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of</i>





		<i>execution of buyer's agreement whichever is later.</i> (Emphasis supplied) [page 25 of complaint]
10.	Due date of possession	19.05.2017 [Note: Calculated from the date of buyer's agreement as it is later]
11.	Basic Sale consideration	₹ 34,84,500/- [As per buyer's agreement at page 19]
12.	Total amount paid by the complainant	₹ 39,94,576/- (As confirmed by both the counsels during proceedings dated 23.05.2025)
13.	Occupation certificate granted on	10.02.2023, 12.04.2023 (Page 36 and 38 of reply)
14.	Offer of possession	15.04.2023 [pg. 35 of reply]

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the complainant had booked a commercial shop in the respondents project namely "Nimai Place" situated in Sector 114 Gurugram, Haryana and paid an booking amount of Rs 3,00,000/- on dated 01.02.2014 to the respondents.
- II. The respondents issued letter of allotment cum buyer's agreement on dated 19.05.2014 and the same was executed between the parties. The

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complainant allotted a commercial shop bearing no. 354, third floor, having area of unit 606 sq. ft. for a total sale consideration of Rs. 34,84,452/-.

- III. That the complainant has paid an amount of Rs. 39,94,576/- to the respondents till date.
- IV. That even after passing a period of about 10 years from the date of booking. The respondents issued a formal demand of Rs. 10,52,299/- on dated 21.04.2023.
- V. That the letter of allotment cum builder buyer's agreement has been drafted in such a manner which is beneficial for the respondents and pre-judice to the interest of the complainant for delay in handing over the possession that in clause no. 26 of the letter of allotment cum builder buyer's agreement dated 19.05.2017 it was mentioned that in case of delay in handing over the possession, the purchaser shall be entitled to compensation for delay at the rate Rs. 10/- sq. ft on the super area. i.e. 36 months from the date of execution of letter of allotment cum builder buyer's agreement i.e. upto 19th May 2017. Further clause 18 inter charge by the developer at the compounded quarterly interest rate of 24% per annum on the delayed payment/ outstanding Charges. The aforesaid condition is unilateral and arbitrary and the provisions of RERA should be read into the agreement.
- VI. That as per clause 26 of the allotment letter cum buyer's agreement the respondents were under an obligation to handover the physical possession of the residential flat to the complainant within a period of 36 months from the date of execution of buyer's agreement. The said period of 36 months is to be reckoned from 19th May 2014 i.e. when the buyer's agreement was executed between the parties. Thus, 36 months period ended expired on 19th May 2017.

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VII. That now respondents are charging GST from complainant whereas the delay in possession of the commercial shop is on the part of respondents, and complainant is not liable to pay any GST, as the possession was to be handover upto 19th September 2017, and implementation of GST across the country was on 1st July 2017.

VIII. That since the respondents could not develop the project in time and handover physical possession of the commercial shop with in time as stipulated in buyer agreement i.e. upto 19th May 2017, thus the complainant is entitled for delay possession interest as per rule 15 of RERA Rules, 2017 i.e. SBI MCLR + 2% w.e.f. 19th May 2017 to actual physical possession of the commercial shop and directed the respondents to handover the possession of commercial shop as soon as possible.

**C. Relief sought by the complainant:** जयते

4. The complainant in the present complaint has sought the following relief(s).
  - i. **Direct the respondents to pay delayed possession charges on the total amount paid by the complainant at prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession.**
  - ii. **Direct the respondents to waive off the arbitrarily and illegally levied interest of Rs. 10,52,299/-, restoration cost and delayed payment charges as per demand letter dated 21.04.2023.**
  - iii. **Direct the respondents to charge on the carpet area and to provide a detailed break up of super area and common area applicable and allotted to the complainant.**
  - iv. **Direct the respondents to reimburse litigation cost of Rs. 1,50,000/-**
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 respondents**

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 before this Hon'ble Authority and is liable to be out-rightly dismissed. The builder buyer agreement was executed between the complainant and the respondents prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.
  - II. That there is no cause of action to file the present complaint. The present complaint has been filed pre-maturely by the complainant.
  - III. That the complainant has no locus stand to file the present complaint.
  - IV. That the complaint is not maintainable as the matter is referable to arbitration as per The Arbitration and Conciliation Act, 1996 in view of the fact that apartment buyer's 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 57 of the apartment buyer's agreement, and the same is reproduced for the ready reference of this Hon' ble Authority-
  - V. That the complainant has not approached this Hon'ble Authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them 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:
  - VI. That the respondents are reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has





always believed in satisfaction of its customers. The respondents have developed and delivered several prestigious projects in and around NCR region such as Nimai Greens, Nimai Hills, and Nimai Arcade and in these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

- VII. That the complainant, after checking the veracity of the project namely, "Nimai Place", Sector 114, Gurugram had applied for allotment of a shop and were accordingly allotted shop number 354 in Third Floor having super built up area of 606 square feet for a total sale consideration of Rs. 50,38,768/-. The complainant agreed to be bound by the terms and conditions of the documents executed by him with the respondents.
- VIII. That the complainant has failed to make timely payments as per the agreed payment plan. That despite numerous opportunities, reminders, and additional chances, the complainant has failed to fulfil their promise of paying the total consideration amount as mutually agreed upon and thus, with no fault on the part of the respondents.
- IX. That the project in question have been completed by the respondents company. Moreover respondents have received the occupation certificate from the Director General, Town and Country Planning, Chandigarh, Haryana, vide letter dated 10.02.2023.
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**

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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 respondents:****F.I Objection regarding jurisdiction of the complaint w.r.t the builder buyer agreement executed prior to coming into force of the Act.**

12. The respondents submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyer's agreement was executed between the parties 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 will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. 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 and 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. Also, 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 respondents w.r.t. jurisdiction stands rejected.





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

16. The respondents 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.

**G. Findings on the relief sought by the complainant.**

- i. Direct the respondents to pay delayed possession charges on the total amount paid by the complainant at prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession.**

18. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.





**"Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

19. As per clause 26 of the agreement provides for handing over of possession and is reproduced below:

*Clause 26*

*The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later subject to force majeure circumstances such as God, fire earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities.....*

20. **Due date of handing over of possession:** As per possession clause 26 of the agreement dated 19.05.2014 the possession of the unit was to be handed over within 36 months from the date of sanction of building plans or execution of agreement whichever is later. Date of sanction of building plans was 18.06.2013 and the date of execution of agreement was 19.05.2014 so, the due date is calculated from the date of agreement being later. Therefore, the due date of possession of the unit comes out to be 19.05.2017.

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

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

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

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

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
24. The definition of term 'interest' as defined under section 2(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;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% p.a. by the





respondents/promoters which is the same as is being granted to the complainant in case of delay possession charges.

26. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondents are 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 19.05.2014 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 19.05.2014. As per the clause 26 of the agreement dated 19.05.2014 the possession of the unit was to be handed over within 36 months from the date of sanction of building plans or execution of agreement whichever is later. Date of sanction of building plans was 18.06.2013 and the date of execution of agreement was 19.05.2014 so, the due date is calculated from the date of agreement being later. Therefore, the due date of possession of the unit comes out to be 19.05.2017. The respondents have obtained the occupation certificate of the project by the competent authority on 10.02.2023, 12.04.2023 and subsequently offered the possession of the unit on 15.04.2023. The respondents have failed to handover possession of the subject unit within prescribed time. Accordingly, it is the failure of the respondents/promoters 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 respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 19.05.2014 executed between the parties.
27. 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





respondents are established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 19.05.2017 till offer of possession (15.04.2023) after obtaining occupation certificate plus two months i.e., 15.06.2023 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.

28. The Authority observes that in the present complaint, it is evident that Nimai Developers Private Limited executed the agreement with the complainant and received consideration towards the same, for which receipts have been issued. Additionally, YB Builders Private Limited holds the requisite license pertaining to the project. In view thereof, both Nimai Developers Private Limited and YB Builders Private Limited are held jointly and severally liable. सत्यमेव जयते

ii. **Direct the respondents to waive off the arbitrarily and illegally levied interest of Rs. 10,52,299/-, restoration cost and delayed payment charges as per demand letter dated 21.04.2023.**

29. In the present relief complainant sought relief w.r.t the waive off of interest, delayed payment charges the Authority is of the view that the rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. In view of the same, the demand of interest on delayed payment shall be charged at prescribed rate of 11.10% p.a.

iii. **Direct the respondents to charge on the carpet area and to provide a detailed break up of super area and common area applicable and allotted to the complainant.**

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30. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondents/ promoters are directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

**iv. Direct the respondents to reimburse litigation cost of Rs. 1,50,000/-**

31. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that the adjudicating officer has exclusive jurisdiction to deal with the relief with respect to the compensation.

**H. Directions of the authority**

32. 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 respondents are 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., 19.05.2017 till offer of possession (15.04.2023) after obtaining occupation certificate plus two months i.e., 15.06.2023 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.

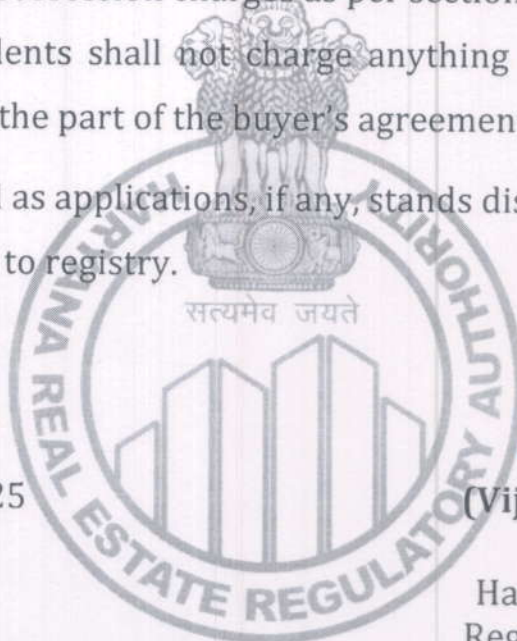
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- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondents/promoters, 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(z a) of the Act.
  - iv. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement.
33. Complaint as well as applications, if any, stands disposed off accordingly.
34. File be consigned to registry.

Dated: 23.05.2025



  
(Vijay Kumar Goyal)

Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**