

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

**Complaint no.** 4684 of 2023  
**Date of filing:** 12.10.2023  
**Date of Order:** 22.05.2025

Mrs. Mumal Singh  
R/o: - E36B, International City, Phase-  
2, Sec 109, Dwarka Expressway,  
Opposite Babupur Village, Gurgaon -  
122 006

**Complainant****Versus**

1. M/s Sobha Limited  
**Regional office at:** 5<sup>th</sup> floor, Rider  
House, Plot No. 136-P, Sector 44,  
Gurgaon-122003.
2. M/s Chintels India Limited  
**Registered office at:** A-11, Kailash  
Colony, New Delhi

**Respondents****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Sh. Gaurav Rawat (Advocate)  
Ms. Priyanka Aggarwal (Advocate)

Complainant  
Respondent

**ORDER**

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

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details.**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	International City, Sector, 106,108,109, Gurugram
2.	Project area	149.093 acres
3.	Nature of the project	Residential project
4.	DTCP license no. and validity status	190 of 2008 dated 22.11.2008 valid upto 22.11.2025
5.	Name of licensee	M/s Chintels export Pvt. Ltd.
6.	Unit no.	E-036B (page 28 of complaint)
7.	Area admeasuring	500 sq. yards plot (page 28 of complaint)
8.	Provisional allotment letter	21.09.2015 (page 28 of complaint)
9.	Date of execution of agreement to sell	26.06.2015 (page 48 of complaint)
10.	Possession clause	<b>IV. COMPLETION &amp; POSSESSION:</b> <i>Subject to timely payments on due dates by the Buyer(s), the Company shall make its best efforts to complete construction/development of the Unit within on or before [48] months from the date of signing of the Agreement, subject to further grace period of [6] months to complete the construction of the allotted Unit, save and except Force Majeure events, restrains or restrictions from any courts/statutory authorities etc., circumstances beyond the control of the company. In the event of any default or negligence attributable to the Buyer(s) in fulfilment of terms and conditions of allotment, the company shall be entitled to reasonable extension in delivery of possession of the Unit to the Buyer(s). No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession on account of any of the said reasons and the Company shall be entitled to proportionate extension of time.</i>

11.	Due date of possession	26.12.2019 (calculated from the date of execution of buyer's agreement including grace period of 6 months)
12.	Total sale consideration	Rs.4,80,11,661/- (as per BBA page 53 of complaint)
13.	Amount paid by the complainant	Rs.4,67,63,411/- (as per conveyance deed page 154 of complaint)
14.	Delayed compensation paid by the respondent	Rs.2,36,000/- (page 2 of written arguments submitted by complainant)
15.	Tripartite agreement	14.10.2015 (page 84 of complaint)
16.	Possession certificate	30.10.2021 (page 124 of complaint)
17.	Handover letter	30.10.2021 (page 125 of complaint)
18.	Occupation certificate	14.05.2022 (page 130 of complaint)
19.	Partial completion certificate for the total land for setting up of a residential plotted colony in Sector, 109, Distt., Gurugram	17.10.2014 (page 27 of reply)
20.	Conveyance deed	19.07.2022 (page 155 of complaint)
21.	Transfer deed in favor of co applicant i.e. complainant (Mumal Singh)	03.05.2023 (page 208 of complaint)

### B. Facts of the complaint.

3. The complainant has made the following submissions:

- a) That the respondent no. 1 launched a residential space project in the name & style of "International City" situated at Sector 106,108,109, Gurugram, and entered into arrangement with the respondent no.2 i.e., M/s Chintels Group to develop and construct a township, comprising of villas, duplex villas and other residential areas. The respondent promoted their project extensively through advertisements on an international level.

- b) That the local sales team representatives of the respondents in Dubai, visited the Dubai residence of the complainant at Meadows-1, Street-11, Villa-33, Exit 32, Sheikh Zayed Road, Dubai with sales brochure, application form, pricing details and location map, creating rosy pictures in the minds of the complainant and her husband.
- c) That complainant and her husband were allured by an enamored email advertisement of the respondents and believing the plain words of respondent in utter good faith the complainant and her husband booked a duplex residential villa in the said project on 23.04.2015 and made an advance payment of Rs.25,00,000/- on 01.05.2015.
- d) Thereafter, vide allotment letter bearing no. *SL/SLSACC/2015/International City/7536*, dated 08.05.2015, the respondent allotted a unit E36B, admeasuring 4,221.90 sq. ft., at a total consideration of Rs.5,08,14,753/-. Thereafter, the complainant secured a home loan of Rs.3,82,50,000/- from HDFC Bank vide loan approval letter dated 14.05.2015.
- e) That on 26.06.2015, a unit buyers' agreement was executed between the parties and as per the terms of the BBA, the total cost of the unit was Rs.5,08,14,748/-. The complainant kept on making payments as and when demanded by the respondents.
- f) As per Section IV, completion and possession clause 1, the time period for completion of the unit was 48 months from date of signing of this agreement making the due date of completion and possession on or before 26.06.2019. Furthermore, Sec IV Clause 2 states that compensation for delay in possession and handover shall be computed @Rs 10/sq. ft. for each month of delay.
- g) That the complainant kept on asking for updates from the respondents via emails but the responses were never satisfactory and, in the meantime, the complainant shifted back from Dubai to India.



- h) That the possession of the said unit was offered by the respondents after a delay of more than 2 years without paying any delayed possession charges although the internal works of the said unit were still lacking finishing and the respondent assured the complainant that the said defects shall be removed at the earliest, thus the complainant accepted the offer of possession and after delay of 2 years builder offered the possession without securing occupancy certificate and incomplete unit. Builder as taken more than 1 year to hand over the physical possession. After receiving of physical possession, lots of finishing work were pending and such corrective/rectification works were still pending and continuing till 2023.
- i) That on 30.10.2021, possession certificate and handover letter were issued in favour of the complainant and her husband after the final payment was made by the complainant vide IDFC Bank Cheque No. 22 for Rs 58,04,205/- and the same was acknowledged by the respondents vide receipt no. CR2280665 dt. 08.11.2021.
- j) That the complainant thereafter repaid the loan taken from HDFC Ltd. and a no objection certificate was issued by HDFC Ltd. vide its letter dt 11.02.2022 and all original documents returned to the complainant.
- k) That on 15.02.2022, the complainant and her husband moved into the said unit. The keys were obtained initially on 04.02.2022 but were handed back as projects needed access to install solar panels on roof. Entry at key register at main gate security signed on 15.02.2022.
- l) That on 14.05.2022, occupancy certificate was issued by DTP (Gurgaon) vide its memo no. 5428 for the said unit, almost a year after the possession was offered by the respondent.
- m) That soon after the complainant moved into the said unit with her family, several visible defects started to emerge in the said unit, like electricity outage, water seepage, cracks in the walls and damaged widows. The complainant and

her husband notify the respondents about the same via several emails and after several follow-ups and delays, the respondents temporarily fixed the issues resulting reoccurrence of the same time and again.

- n) That on 27.06.2022, the complainant paid the stamp duty and registration charges through IDFC Bank Cheque no. 27 for Rs 28,56,500/- and the same was acknowledged by the respondent vide receipt no. CR2309627 dated 28.06.2022.
- o) That the conveyance deed bearing no. document No. 5012, was executed in joint name of complainant and her husband, i.e., Mumal Singh & Mitresh Singh. The structural defects in the said units kept on in increasing day-by-day. The complainant and her family have been forced to live in fear inside their own home being afraid of what next horror they might wake up to on the next day. The complainant and her husband have been continuously harassed by the respondents as they initially used dilly-dallying techniques to avoid the grievances of the complainant and thereafter, blatantly refused to make any further repairs in the structural defects.
- p) That on 03.05.2023, the complainant's husband executed a transfer deed bearing document no.1386 in favour of the complainant and transferred his 50% share in the unit in question in to his wife, Mrs. Mumal Singh i.e., the complainant making her 100% owner of the said unit.
- q) That respondents devised a plan under which the respondents' extracted monies from complainant, then didn't even bother to care about the completion of the project till date. Within only 2 years of possession, the condition of the said unit has become inhabitable, as it suffers from several structural defects.
- r) That recently, the whole basement of the complainant's unit and the units adjacent to it, got heavily flooded with water causing severe damages to the structure. When the respondents were informed about the situation, at first,

they deliberately delayed in taking any action, and thereafter, without even informing the complainant or any other occupants of the said project, the respondents placed unauthorised boring tubes as a temporary fix to drain out the water from the basements, instead of providing a permanent solution.

- s) That as per section 19 (6) of the Act, 2016 complainants have fulfilled his responsibility in regard to making the necessary payments in accordance with the provisions of RERA Act, 2016. Therefore, the complainant herein is not in breach of any of its terms.
- t) That the respondent misrepresented and never disclosed to the complainant the existence of the public "Revenue Rasta" directly opposite to the unit E36B that was shown in the sales/marketing brochure and location maps as a "Green patch". This gross misrepresentation of facts and blatant mis-selling in order to induce complainant to book the said unit has presented a very high security and privacy risk to the complainant as the said revenue rasta is used frequently and regularly by the local villagers creating nuisance and disturbing the peace and tranquillity of the complainant.
- u) That the subject unit at the time of handover/possession was only one of the few completed units in the stretch of row where located with both immediate units on either side viz E35 (right side) and E37 (left side) incomplete and undergoing construction and the entire stretch of villa's to the left of E37 in various stages of construction/completion, creating unwarranted noise and dust pollution from heavy construction vehicles moving unabated during day and night on the temporary 'kaccha rasta' to the left of unit E36B. Further, the entire stretch of the road (temporary 'kaccha rasta' to the left & tarred road to the right) is infested with stray dogs with the husband of the complainant also being bitten by one stray dog in Sep 2022 that was loitering around the adjacent unit E37, and for this incident, sobha flatly denied its accountability or responsibility for keeping the gated community safe and secure for



residents, adding to the already long list of woes of the complainant and her husband.

- v) That possession of an incomplete unit to the allottee is an outright violation of the rights of the allottees under the provisions of Act as well the agreement executed between complainants and respondent.
- w) The complainant requests heavy penalties to be imposed on the respondents for offering the possession of the said unit without even obtaining the occupation certificate first, which is a clear violation of the provisions of the Act. That the mere execution of the sale deed will not deprive the complainant of her rights to seek compensation.

**C. Relief sought by the complainant(s):**

4. The complainants herein are seeking the following relief(s):

- I. Direct the respondent to pay delayed possession charges from the due date of possession i.e., 26.06.2019 till the time for which cause of action continues, i.e., till the respondents resolves all the structural defects from the said unit and complete all the repair works in the said unit; along with interest at the rate prescribed by the Act.
- II. Direct the respondent to repair all the defects in the unit along with all the amenities, in working conditions as per the agreed terms.
- III. To pass direction for the Structural Audit of the said project of the respondent as the unit handed over to the complainant suffers with numerous defects, needing continuous repair, which seriously questions the structural integrity of the Whole Project.
- IV. To appoint a Local Commissioner to overview the drastic condition of the Unit in question as with each passing day, the unit is becoming more dangerous to live and the complainant is now scared for her life. Recently, the whole basement was flooded with water and the respondents placed unauthorized boring tubes as a temporary fix to the problem instead of providing a permanent solution
- V. Direct the respondent to repair all the defects in the unit along with all the amenities, in working conditions as per the agreed terms
- VI. To initiate penal proceedings against the said respondents for non-registration of their Project "International City" which is a direct violation of Section 3 of the Act.



VII. To impose heavy costs on the respondent for sheer violations of the provisions of the Act and causing untold misery, mental agony, emotional turmoil and continuous harassment to the complainant.

**D. Reply by the respondent no.1.**

5. The respondent no.1 has contested the complaint on the following grounds:

- I. That the complaint filed by the complainant is baseless and frivolous and the complainant herein is guilty of concealment of material facts and consequently, have approached this court with unclean hands. It is the settled law that a party who approaches the Court with unclean hands, disentitles itself from any relief whatsoever, as such the present complaint deserves dismissal with exemplary costs.
- II. That as per Clause IV (1) of the unit buyer's agreement dated 26.06.2015, the respondent is only required to make efforts for completing the construction/development of the subject unit within 48 months from the date of signing of the agreement, with a further grace period of 6 months and subject to force majeure events. That the respondent is quite clear as per the terms of the agreement and by no stretch of imagination any liability could be fastened on the respondent no-1.
- III. That a Residential Villa in the Plotted colony namely "SOBHA INTERNATIONAL CITY", developed by respondent no.1 was booked jointly by the complainant and her husband (Later the husband transferred his portion in the name of his wife making the wife, the present complainant, the absolute owner vide transfer deed dated 03.05.2023) bearing no. E-036B admeasuring 4221.90 sq. ft (Super Area) on 23.04.2015 by paying booking amount of Rs.25,00,000/-. Thereafter, allotment letter was issued on 08.05.2015 as per which, the total sale consideration of the unit was. Rs.5,08,14,753/-.
- IV. Thereafter, the complainants after being explained the amenities of the said project and the unit along with payment plan and contents of the unit buyer's

agreement in vernacular language, out of their own free will and volition, signed and executed the unit buyer's agreement on 26.06.2015 between the contracting parties viz. Ms. Mumal Singh, her husband and Sobha Limited.

- V. That as per Clause IV (1) of the said agreement, the construction of the unit was to be completed on 26.06.2019 with a further grace period of 6 months and force majeure events. As per the UBA, there was never any commitment in Clause IV of the agreement with respect to the possession of the Unit but only with respect to the completion of the construction of the unit.
- VI. That the construction of the unit in question was completed in October 2021, however, the occupation certificate was received on 14.05.2022. That the complainant was well aware of the fact that the respondent was preparing to apply for the occupation certificate but, it was the complainant and her husband themselves who were eager for the possession of their unit. That the complainant and her husband had sent several emails seeking possession of the unit at the earliest and at the request of the complainant and her husband for the purpose of fit-outs only, so the respondent offered the possession of the Unit for fit out as requested by buyer. Whereby it has been admitted by the complainant that they were desperately trying to get the possession of the unit in question and had accepted the possession of the unit in question with few pending internal work which were also duly mentioned in the possession letter.
- VII. The possession of the unit was offered to the complainant on 30.10.2021 only at the request of the complainant and the complainant took the physical possession on 30.10.2021 as well and made the payment of Rs. 58,04,205/-. In pursuance of the same, the Possession Certificate and Handover letters were issued dated 30.10.2021. To fund the said payments, the complainant also took financial aid from HDFC bank and has subsequently obtained an NOC from HDFC dated 11.02.2022.

- VIII. The complainant is alleging that after taking possession of the unit, the complainant saw many visible defects in the said unit like Water Seepage, electricity outage, cracks in the wall and damaged windows and claims that the respondent no.1 temporarily fixed the issues however she faced them again and again. This contention and allegation are false, the respondent has gone out of the way to make sure that each amenity has been provided and even rectified every concern that the complainant had with their unit again and again.
- IX. Vide emails dated 01.06.2020, where the complainant requested a lot of modifications to the floor plan, on both the first floor as well as the second floor. These modifications took time, effort, planning and approvals from the architectural teams, however, the same was done and a cost of Rs.2,52,029/- was incurred, and the same was waived off by the company as a gesture of goodwill.
- X. During the course of construction, there were delays caused by the complainant in making the relevant payments and these delayed payments accrued delayed payments interest of Rs.4,20,809/- and the company waived them off as well as gesture towards their commitment to be a customer centric company. A compensation of Rs.2,36,000/- was given to the complainant towards the settlement of the delay in handing over of the possession. The delay compensation was settled between the parties and a delayed possession compensation of Rs.2,00,000/- plus 18% GST was decided upon.
- XI. After taking possession of the unit, the complainant raised some complaints regarding the "Fixed Glass" on 2nd Floor and "Shutter Glass" on 1st floor as well as Lobby landing area openable glass on 2nd Floor, facing the staircase. As per company policy the warranty of glass works is only 90 days, however,

the company went out of their way to fix the same, not twice but thrice and the same is evident from email trail attached.

- XII. The complainant complained about the seepage and leakage in the living room adjacent wall. The same issue was taken up promptly by the respondent no.1 and was immediately repaired on 08.09.2022.
- XIII. That on 17.09.2022, the complainant again raised a complaint with respect to the "Paint Mismatch" "Balcony Glass replacement on 2nd Floor, due to faulty spacing between glass panels. Referring to the email dated 17.09.2022, the complainant explicitly states that "All other points stand closed as confirmed." The company took note of the balcony glass issue and again on 02.12.2022, the complainant stated in their email that "This is the last and final pending point/work from Sobha to close out all my pending issues". Then again on 05.12.2022, the complainant stated that another glass needs replacement as well. The company took note and accepted the replacement of both the glasses despite being out of warranty as a gesture of goodwill and the same were replaced on 17.03.2023.
- XIV. That after closing all other issues, the complainant again on 01.04.2023 complained about the leakage in living room window mains and surface cracks. That despite being out of warranty (12 months from date of handover), after the inspection, the repair work was done and the same was acknowledged on 05.09.2023.
- XV. That the respondent has gone out of its way to make sure that every concern and issue raised by the complainant was resolved as promptly as possible. However, the complainant has deliberately made it an endless process for taking undue advantages from the respondent by continuously harassing them. The possession of the unit in question was handed over to the complainant way back in the year 2021 on 30.10.2021 and the complainant has also occupied the same and has been living there with her family for more



than 2 years now. The complainant has alleged several issues in respect of the Unit in question and has even claimed fear of her life and safety, but, despite the said allegations, she had not once asked to surrender the unit and sought refund. Even in the present complaint, the complainant has sought the monetary relief of delayed possession charges and not refund. This clearly shows the malafide intentions and greedy nature of the complainant.

- XVI. That on 19.07.2022, the complainant willingly and voluntarily executed the conveyance deed and declared that she has received the vacant physical possession of the Unit and the same is as per the specifications and she is satisfied with the same. However, contrary to that the complainant has been alleging in the complaint that she is living in fear in her own home and has been harassed by the respondent no-1.
- XVII. The complainant has further alleged that the whole basement of the unit was flooded with water causing severe damage to the structure of the unit. The respondent has already taken notice of the issue and have fixed the same promptly. Further the complainant in the present case is not the owner of the Basement and the Ground floor. The said Basement and Ground floor is of the unit E-036A. Only unit E-036B is the subject matter of the present complaint, and the complainant is not privy to unit E-036A.
- XVIII. The complainant further alleges that the respondent had never disclosed about the existence of Public Revenue Rasta and misrepresented the same as Green Patch. This claim of the complainant is utterly false and fictitious. The complainant was well aware of the Revenue rasta and the same was part of the Building Plans.
- XIX. That after completing the development works of the project, the application for part competition certificate was applied before the DTCP, Haryana and the DTCP after being satisfied with the construction and other development works, the competent Authority issued Part Completion Certificate on

17.10.2014 for the project and Occupation Certificate dated 14.05.2022 for the Unit.

- XX. That the complaint is not maintainable before this Hon'ble Court as the said Project is not an ongoing project. Thus, the project doesn't come under the purview of this Hon'ble Court. DTCP, Haryana vide Memo No. LC-1439-11.8 JE(VA)/2014/24296 dated 17.10.2014 has already issued partial completion for land admeasuring 74.84 acres out of total license land measuring 149.0938 acres in respect of license no 190 of 2008 granted for setting up of residential plotted-colony in Sector- 106, 108 & 109, Distt. Gurgaon. Therefore, the bare perusal of Section 2 (1)(ii) of Haryana Real Estate (Regulation and Development) Rules, 2017 makes it ample clear that the said Project does not fall under the purview of this Hon'ble Court and the complaint needs to be dismissed at threshold on this ground alone.
- XXI. That the line between valid concerns of allottees and frivolous demands can sometimes be a thin one. There cannot be any doubt that the frivolous demands of some allottees have resulted in the rampant increase in filing of vexatious complaints against the real estate players who are genuine and law compliant.
- XXII. That the delay in handing over the possession of the unit was caused only due to reasons which are beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of this Court.
- XXIII. That the global recession hit the economy and is continuing particularly in the real estate sector. The global recession largely affected the real estate sector. That the construction of project of the respondent is dependent upon the amount of money being received from the bookings made and money received henceforth in form of instalments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the

number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several allottee(s) of the of the instalment or project defaulted in making payment cancelled booking in the project, resulted in less cash flow to the respondent henceforth causing delay in the construction work of the project.

- XXIV. That the complainant requested a lot of modifications to the floor plan, on both the first floor as well as the second floor. These modifications took time, effort, planning and approvals from the architectural teams, however, the same was done and a cost of Rs.2,52,029/- was incurred, and the same was waived off by the company as a gesture of goodwill.
- XXV. That the construction of the project was stopped several times by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India, which were issued in order to curb the level of pollution in the NCR region. All the above problems are beyond the control of the answering respondent. The respondent had at many occasions orally communicated to the complainants that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the answering respondent.
- XXVI. That during the years of 2017 to 2019 there was stoppage of work at the project site due to government's/statutory authority order. The aforementioned circumstances are in addition to the partial ban on construction. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (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 complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

XXVII. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. 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. That considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.





XXVIII. That from the facts indicated above and documents appended, it is comprehensively established that a period of 308 days was consumed on account of circumstances beyond the power and control of the respondent no.1, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent no.1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the agreement.

XXIX. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent. That the respondent no.1 had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per Clause XII of the agreement, however, despite all the hardships faced by the respondent no.1, the respondent no.1 did not suspend the construction and managed to keep the project afloat through all the adversities.

XXX. That the projected timelines for possession are based on date of Statuary Approvals. It was not in the contemplation of the respondent that the force majeure would occur and the construction was also affected on account of the NGT orders prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority from time to time. That vide its order NGT placed sudden ban on the entry of diesel trucks which were older than ten years and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

XXXI. That the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity etc., were the reasons for delay in construction and after that, the Government took long time in granting Occupancy Certificate owing to its cumbersome process. Furthermore, the construction of the unit was going on in full swing and the respondent no.1 was confident to hand over the possession of Unit before due date. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site.

XXXII. Due to Covid 19 outbreak, this Authority itself had provided exemption for a period of 6 months by invoking 'force majeure' clause vide Order No.9/3-2020 HARERA/GGM(Admn.) dated 26.05.2020. Furthermore, in the Matter of **"Sanjay Lakra v/s SS Group"** (Complaint no.4359 of 2021), the Authority had given the 6 months grace period for Covid-19 outbreak.

XXXIII. That the complainants have prayed for reliefs which otherwise have to be claimed in a suit for recovery and damages, after paying appropriate court fee. That in order to avoid the payment of court fee, the complainants have raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this Hon'ble Court. In this view of the matter, the complaint is liable to be dismissed with costs.

XXXIV. That to the mutually agreed clause no. IV (Completion and Possession) of the agreement wherein the delay compensation has been specifically mentioned and agreed by the complainant and hence contending the interest and compensation is incorrect wherein time is not the essence of the contract stands contravened and hence proviso of Section 18 of the Act 2016 is not

applicable in the captioned matter as the parties have agreed to abide by the obligations made under the agreement duly executed between the complainant and the respondent.

XXXV. As per the terms of the agreement, which are binding and agreed upon the complainant and the respondent companies, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. The liability of the answering respondent on account of delay is specified in the clause IV of the said agreement and as such the complainant cannot claim reliefs which are beyond the compensation agreed upon by the complainant. It is a well settled proposition of law that the courts/forums cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract, the responsibility of the courts/forums is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.

6. All other averments made in the complaint were denied in toto.

**E. Reply by the respondent no. 2.**

7. The respondent no.2 has contested the complaint on the following grounds:

- I. That the complainants at the time of execution of the unit buyer's agreement were in express knowledge of the fact that the respondent no.2 had entered into an arrangement with respondent no.1 and each party shall be responsible for the construction and development of land allocated to them. The said factum has been expressly mentioned in Recitals A & B of the unit buyer's agreement executed on 26.06.2015.
- II. As per the Recital D of the agreement, the entitlement and authorization to market, sell, book and to collect money from buyers and to enter into agreement with regard to sale of unit in question vests in respondent no.1, being the seller of the unit in the said project.



- III. Pertinently, the complainant herein has always been in the express notice of the afore-stated facts and arrangement which is evident from the Recital F of the agreement mutually agreed and entered between the parties.
- IV. That all the payments made by the complainant qua the subject unit has been done in favour of the respondent no.1 and no payment has ever been made by the complainant to the respondent no.2. Therefore, it is most respectfully submitted that there arose no cause of action against the respondent no.2 and the captioned complaint is liable to be dismissed on this sole ground.
- V. That the complainant and her husband, on their own free will and volition had jointly booked (Later the husband transferred his portion in the name of his wife making the wife, the present complainant, the absolute owner vide transfer deed dated 03.05.2023) a unit bearing no. E-036B admeasuring 4221.90 sq. ft on 23.04.2015 with respondent no.1 by paying booking amount of Rs.25,00,000/- in lieu of which an allotment letter was issued on 08.05.2015 by the respondent no.1.
- VI. That the line between valid concerns of allottees and frivolous demands can sometimes be a thin one. There cannot be any doubt that the frivolous demands of some allottees have resulted in the rampant increase in filing of vexatious complaints against the real estate players who are genuine and law complaint. This practice needs to be curbed and dealt with iron hands given the potential drain of the frivolous legal proceedings on the limited financial and time resources available to the real estate players.
- VII. That the respondent no.2 has always kept complainants aware with the status of the project, thus the allegation complainants is vague and frivolous. To avoid obligations and with malafide intentions to earn wrongfully from the answering respondent, the complainant has filed the instant complaint. Hence, the complaint is liable to be dismissed in limine.
8. All other averments made in the complaint were denied in toto.



9. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.
10. 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 those undisputed documents and submissions made by the parties.

**F. Jurisdiction of the authority.**

11. 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.**

12. 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.**

13. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***"Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

***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."*

14. 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 the objection raised by the respondent.**

**G.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

15. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the plot buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will 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)** 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."*

16. 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."*

17. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreement has 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, statutes, instructions, directions issued 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.

**G.II Objection regarding force majeure conditions:**



18. The respondent raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) and various court orders. But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondents should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.
19. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 26.12.2019. In the present case, the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

**G.III Objection raised by the respondent no.2 regarding no cause of action arises against it.**

20. It is evident that the Builder Buyer Agreement dated 26.06.2015 for the subject unit was executed between four parties, namely M/s Sobha Limited (Respondent No. 1), M/s Chintels India Limited (Respondent No. 2), and the allottees, Mrs. Mumal Singh and Mr. Mritesh Singh. In view of the privity of contract existing between the allottees and respondent no. 2 under the said agreement, the liability of respondent no. 2 clearly arises for the performance of the obligations stipulated therein. Accordingly, the plea raised by respondent no. 2 is devoid of merit and stands rejected.

**H. Findings on the relief sought by the complainants.**



**H.I Direct the respondent to pay delayed possession charges from the due date of possession i.e., 26.06.2019 till the time for which cause of action continues, i.e., till the respondents resolves all the structural defects from the said unit and complete all the repair works in the said unit; along with interest at the rate prescribed by the Act.**

21. The factual matrix of the case reveals that a unit bearing no. E-036B, admeasuring 500 sq. yards, in the respondent's project "International City, Sector 106, Gurugram," was allotted by the respondent in favor of Mrs. Mumal Singh (the complainant) and Mr. Mritesh Singh. A buyer's agreement in respect of the allotted unit was executed between the parties on 26.06.2015. Subsequently, possession was handed over to the allottees on 30.10.2021. Thereafter, the conveyance deed was executed in favor of the allottees on 19.07.2022. Subsequently, one of the allottees, Mr. Mritesh Singh, transferred his  $\frac{1}{2}$  share in favor of the complainant through a transfer deed (Annexure P/12) dated 03.05.2023. The respondent has received Rs.4,67,63,411/- against the sale consideration of Rs.4,80,11,661/- for the subject unit.

22. The complainant herein intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 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."***

23. Further, clause IV of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**IV. COMPLETION & POSSESSION:**

***Subject to timely payments on due dates by the Buyer(s), the Company shall make its best efforts to complete construction/development of the Unit within on or before [48] months from the date of signing of the Agreement, subject to further grace period of [6] months to complete the construction of the allotted Unit, save and except Force Majeure events,***

*restrains or restrictions from any courts/statutory authorities etc.,  
circumstances beyond the control of the company. ....*

*(Emphasis supplied)*

**24. Admissibility of grace period:** As per clause IV of buyer's agreement, the respondent promoter has proposed to handover the possession to the complainant by 26.12.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

**25. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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, *ibid*. 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]***

*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."*

**26.** The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

27. 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., **22.05.2025** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

28. 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;"***

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

30. On consideration of the documents available on record and submissions made regarding contravention of 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 IV of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered by 26.12.2019. However, the



respondent obtained the occupation certificate on 14.05.2022 after a delay of three years from the due date of possession.

31. Admittedly, as per the documents on record and submissions made by the complainant during proceedings dated 22.05.2025 the possession was handed over to the complainant on 30.10.2021 before the occupation certificate. The complainant is in possession of the subject unit since 30.10.2021. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 26.06.2015 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 26.06.2015 to hand over the possession within the stipulated period.
32. It is also pertinent to note that both the respondent were party to the said agreement dated 26.06.2015, accordingly in the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of both the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 26.12.2019 till 30.10.2021 i.e., actual hand over as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
- H.II Direct the respondent to repair all the defects in the unit along with all the amenities, in working conditions as per the agreed terms.**
- H.III To pass direction for the Structural Audit of the said project of the respondent as the unit handed over to the complainant suffers with numerous defects, needing continuous repair, which seriously questions the structural integrity of the Whole Project.**
- H.IV To appoint a Local Commissioner to overview the drastic condition of the Unit in question as with each passing day, the unit is becoming more dangerous to live and the complainant is now scared for her life. Recently, the whole basement was flooded with water and the respondents placed unauthorized boring tubes as a temporary fix to the problem instead of providing a permanent solution.**
- H.V Direct the respondent to repair all the defects in the unit along with all the amenities, in working conditions as per the agreed terms.**



33. The above-mentioned reliefs are dealt together being inter-connected.
34. Under Section 14(3) of the Act, 2016, it is the obligation of the promoter to rectify any structural defects or defects in workmanship, quality, or provision of services that are brought to their notice by the allottee within five years from the date of possession. These defects must be rectified within 30 days of such notice, and at no additional cost to the allottee.
35. In case the promoter fails to rectify these defects within the stipulated period, the allottee becomes legally entitled to claim appropriate compensation as prescribed under the Act. Relevant part of Section 14(3) is reproduced below:

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

36. The Hon'ble Supreme Court of India, in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Ors. (Civil Appeal Nos. 6745-6749 of 2021)*, has held that the Adjudicating Officer as per section 71 has exclusive jurisdiction to decide matters relating to compensation under Sections 12, 14, 18, and 19 of the Act. Accordingly, the complainant may approach the Adjudicating Officer for redressal of his grievances pertaining to relief of compensation.

**H.VI To initiate penal proceedings against the said respondents for non-registration of their Project "International City" which is a direct violation of Section 3 of the Act.**

**H.VII To impose heavy costs on the respondent for sheer violations of the provisions of the Act and causing untold misery, mental agony, emotional turmoil and continuous harassment to the complainant.**

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37. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

38. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.

39. It is observed that the project "International City" has not been registered with the Authority as required under the Act, 2016. Accordingly, the Planning Branch of the Authority is directed to take necessary action against the respondent as per the provisions of the Act for violation of Section 3(1) of the Act, 2016.

**I. Directions of the authority.**

40. 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):

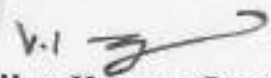
I. The respondent no.1 and 2 are directed to pay delay possession charges on the paid-up amount by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 26.12.2019 till the date of handover of possession i.e. 30.10.2021 to the complainant. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

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- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- V. The planning branch of the Authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act, 2016
41. The complaint stands disposed of.
42. File be consigned to the registry.

**Date: 22.05.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
GURUGRAM