

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

Complaint no.: 1218 of 2024  
Date of filing of complaint: 01.04.2024  
First date of hearing: 11.07.2024  
Date of Order: 15.05.2025

1. Neha Kariwal
2. Ravi Kumar Kariwal

**Complainants**

**Both R/O:** - Flat No.- B810, Sea Show Apartment,  
Plot No. 14, Sector-19B, Near OPG World School,  
Dwarka, South West Delhi, Delhi-110075

**Versus**

Identity Buildtech Private Limited

**Office:** 110, Indraprakash, 21, Barakhamba Road,  
New Delhi-110001

**Respondent No. 1**

Ansal Housing and Construction Ltd.

**Office:** 15, UGF, Indraprakash, 21, Barakhamba Road,  
New Delhi-110001

**Respondent No. 2****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Om Parkash Singh

Shri Amandeep Kadyan

Counsel for the Complainants  
Counsel for the Respondent No. 2

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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 allottees as per the agreement for sale executed inter se.

#### A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Ansals Highland Park
2.	Project location	Sector 103, Gurugram, Haryana
3.	Project type	Residential Group Housing Project
4.	DTCP License	32 of 2012 dated valid up to 11.04.2025
5.	RERA Registration	16 of 2019 dated 01.04.2019 valid up to 30.05.2024
6.	Date of apartment buyer's agreement	20.04.2013 (As per page no. 36 of the complaint)
7.	Date of sanction of building plan	16.04.2013 (Taken from another complaint no. 1612 of 2018 of the same project)
8.	Unit no.	EDNBG-1504 (As per page no. 39 of the complaint)
9.	Unit area admeasuring	1940 sq. ft. (As per page no. 39 of the complaint)
10.	Possession clause	<b>31. Offer of possession</b> <i>The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months</i>



		<i>from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to the timely payment of all the dues by Buyer and subject to force majeure conditions as described in clause 32. Further there shall be a grace period of 6 months allowed to the Developer over and above the period of 48 months as above in offering of unit. (As per page no. 45 of the complaint)</i>
11.	Due date of possession	20.10.2017 (Note: Due date to be calculated 48 months from the date of apartment buyer's agreement i.e., 20.04.2013, being later plus grace period of 6 months being unqualified)
12.	Total sale consideration	Rs.1,02,31,443/- (As per payment plan on page no. 53 of the complaint)
13.	Amount paid by the complainant	Rs.82,25,720/- (As per receipt information on page no. 54-67 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not Offered

### B. Facts of the complaint:

3. The complainants have made the following submissions:
  - i. That the complainants are a law abiding citizens and consumer who have been cheated by the malpractices adopted by the respondents are stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project

because it was a housing project and the complainants had need an own home for their family.

- ii. That one-sided development agreement and inordinate delay in possession has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and buyers even if they do not agree to a term, there are no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the buyer imposes unfair and discriminatory terms and conditions. That the complainants were subjected to unethical trade practice as well as subject of harassment, Flat buyer's agreement clause of escalation cost, many hidden charges which was forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and discriminatory.
- iii. That on the Advertisement by "M/s Ansal Housing Limited" the promoter, the applicant collected a copy of the performa application and applied for allotment of one unit flat bearing no. EDNBG-1504 in Group Housing Project "Ansal Highland Park" located in sector-113, Gurugram, Haryana vide application dated 20.10.2012 depositing an amount of Rs.1,00,000/-.
- iv. That the respondents to dupe the complainants in their nefarious net even executed apartment buyer's agreement signed between complainants and M/S Ansal Housing Limited on dated 20.04.2013, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.



- v. That the total cost of the said plot is Rs.1,02,31,443/- (including EDC, IDC, Club membership charges, PLC & others) and sum of Rs.82,25,720/- have already been paid by the complainants in time bound manner.
- vi. That according to the statement the complainants paid a sum of Rs.82,25,720/- to the respondent and as per demand raised by respondent till 15.04.2017 (more than 80% of total sale consideration paid by complainants till 15.04.2017) and paid amount is demanded by the respondent without doing appropriate work on the said project.
- vii. That as per clause 31 of the apartment buyer's agreement dated 20.04.2013, the respondent was liable to hand over the possession of a said unit before 19.04.2017 but the builder did not offer the possession till date because the project is incomplete.
- viii. That the complainants have paid all the instalments timely and deposited Rs.82,25,720/-. The respondent in an endeavour to extract money from allottees devised a payment plan under which respondent linked more than 35 % amount as an advance and rest 60% amount to be paid on construction of super structure only, which is not depended or co-related to the finishing of unit and internal development of amenities and after taking the same respondent have not bothered to any development on the project till date.
- ix. That the respondent-builder started the construction work almost 10 years back and the respondent still want more time to complete the project. Despite paying a considerable amount, there seems to be no sign that construction of the unit would be completed and possession would be handed over soon, though the construction was required to be completed within 48 months from the date of execution of agreement.



- x. That on the other hand, if there is any default on the part of the applicant/allottee, he/she would also be liable to pay interest to the seller @ Rs.24% per annum compounded quarterly as per clause no. 24 of the apartment buyer's agreement dated 20.04.2013.
- xi. That as the delivery of the apartment was due on 19.04.2017 which was prior to the coming into force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondents. Therefore, the respondents should pay the GST on behalf of the complainants but the builder collected the GST from the complainants and enjoyed the input credit as a bonus.
- xii. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondents, the chances of getting physical possession of the assured unit in near future seems bleak and the same is evident of the irresponsible and desultory attitude and conduct of the respondents, consequently injuring the interest of the buyers including the complainants who have spent their entire hard-earned savings in order to buy this home stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondents conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.
- xiii. That the applicants/allottees have made so many requests through email and also visited the site and office of the respondents but the respondent has neither completed the construction nor applied for occupancy certificate as well as did not offer the possession of the unit though a period of more than 10 years has lapsed.



- xiv. That due to the malafide intentions of the respondents and non-delivery of the unit, the complainants have accrued huge losses on account of the career plans of their family members and themselves and the future of the complainants and their family are rendered dark as the planning with which the complainants invested their hard-earned money have resulted in zero results. The complainants also taken loan from SBI and paying EMI and due to delay in possession complainants have compulsion to stay in rented property. EMI and rent of the house has created extra financial burden on complainants.
- xv. That all the banks and financial institutions have blacklisted the given project and not providing any loan / finance facility as there has been a significant delay in offering the possession of this property by the respondents. The complainants have availed home loan from SBI, Sarai Khwaja Branch, Faridabad and the bank has denied disbursing any further amount on this project. Final disbursement can be made only when the project is completed, occupancy certificate is obtained and sale deed has been executed/ registered. Since other banks / financial institutions are also not offering loan/finance facility on this project, complainants cannot even get their home loan transferred to other banks / financial institutions.
- xvi. That the cause of action to file the instant complaint has occurred within the jurisdiction of the Hon'ble Authority as the unit which is the subject matter of this complaint is situated in Sector-103, Gurugram, Haryana which is within the jurisdiction of the Hon'ble Authority.

**C. Relief sought by the complainants:**

4. The complainants have sought following reliefs:

- i. Direct the respondents to deliver immediate physical possession of the unit (EDNBG-1504) in a habitable condition along with all the promised amenities and specifications to the satisfaction of the complainants after obtaining a valid occupation certificate.
  - ii. Direct the respondents to pay delay interest on amount of Rs.82,25,720/- paid by the complainants as per the prescribed rate of interest from the promised date of possession i.e., 19.04.2017 till the actual delivery of possession after adjusting any overdue outstanding.
  - iii. Direct the respondents not to cancel the allotment on account of non-payment of overdue outstanding until project is completed in all respect as agreed in the builder buyer's agreement, occupancy certificate is obtained and peaceful possession is offered to the complainants.
  - iv. Direct the respondents to quash the VAT charges.
5. The authority issued a notice dated 02.04.2024 of the complaint to the respondents by speed post and also on the given email address at [ravikarwal@gmail.com](mailto:ravikarwal@gmail.com), [karun.ansal@ansals.com](mailto:karun.ansal@ansals.com), and [rera.panindia@gmail.com](mailto:rera.panindia@gmail.com) for filing reply within 30 days from the date of issuance of notice. The delivery reports have been placed on the file. The counsel for the respondent no. 1 neither put in appearance on 11.07.2024, 08.08.2024, 12.09.2024, 16.01.2025, 06.03.2025 and 15.05.2025 nor filed reply to the complaint within the stipulated period despite given ample opportunities. It shows that the respondent no. 1 was intentionally delaying the proceedings by avoiding filing of written reply. Therefore, in view of above, the authority is left with no option but to proceed ex-parte against respondent no. 1.

**D. Reply by the respondent no. 2:**





6. The respondent contested the complaint on the following grounds:
- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The complainants had approached the answering respondent for booking a unit no. EDNBG 1504 in an upcoming project Ansals Highland Park, Sector-103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 20.04.2013 was signed between the parties.
  - II. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer's agreement signed between the complainants and the answering respondent was in the year 2012. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e., RERA Act, 2016. It is further submitted that parliament would not make the operation of a statute retrospective in effect.
  - III. That the complainants specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer's agreement. It is submitted that the complainants cannot be allowed to take advantage of their own wrong.
  - IV. That even if for the sake of argument the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainants belatedly. The complainants have admittedly filed the complaint in the year 2024 and the cause of action accrue in year 2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
  - V. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2013 without coercion or any

duress cannot be called in question today. It is submitted that the builder buyer's agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 35 of the said agreement provides for Rs.5/ sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in clause 30 of the agreement. Therefore, the complainants will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.

- VI. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
- VII. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainants.
- VIII. That the answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer's agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The



respondents ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

- IX. That the answering respondent and the complainants admittedly have entered into a builder buyer's agreement which provides for the event of delayed possession. It is submitted that clause 31 of the builder buyer's agreement is clear that there is no compensation to be sought by the complainants/prospective owner in the event of delay in possession.
- X. That the answering respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the complainants cannot alter the terms of the contract by preferring a complaint before the Authority.
7. The respondent no.1 i.e., Identity Buildtech Pvt. Ltd. was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 32 of 2012 to develop and construct the residential group housing project in Sector-103, Gurugram. Though the apartment buyer's agreement have been executed with R2 and payments have also been made to the respondent no. 2 but the respondent no.1 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i), (v).

8. The promoter has been defined in section 2(zk) of the Act of 2016. The relevant portion of this section reads as under:

**"2. Definitions.** — In this Act, unless the context otherwise requires —  
(zk) "promoter" means, —

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) xxx
- (iii) xxx
- (iv) xxx
- (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

9. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respondent no. 2 in whose allocated share the apartments have been bought by the buyer and payments have been received.
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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

11. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:





**E.I Territorial jurisdiction**

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.

**E.II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

12. 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. Finding on objections raised by the respondent:**

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

13. The contention of the respondents 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 apartment 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."



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 apartment 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.

#### **F.II Objection regarding complaint barred by Limitation Act, 1963**

16. Another contention of the respondent is that if the date of possession was to be construed in April 2017, the period of limitation has come to an end in the year April 2020. However, the possession of the unit is yet to be handed over to complainants, therefore, the project shall be regarded as an "on-going" project and liability of the respondent is still continuing. Further, as per section 11(4)(a) of the Act of 2016, the responsibility of the promoter

continues till the execution of conveyance deed. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as **M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others** which provides as under:

*"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."*

17. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

#### **F.III Objection regarding delay due to force majeure circumstances**

18. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the courts, non-availability of construction material and labour, demonetisation of currency and lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. But all the pleas advanced in this regard are devoid of merit. 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 within a period of 48 months plus grace period of six months from the date of





execution of agreement or the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. In the present case, the date of execution of agreement is 20.04.2013 and date of sanction of building plan is 16.04.2013 as taken from another complaint no. 1612 of 2018 of the same project. The due date is calculated from the date of execution of buyer's agreement being later, so, the due date of subject unit comes out to be 20.10.2017. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that:

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The 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."*

19. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 20.10.2017 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 20.10.2017, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being

developed by the respondent and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

**G. Findings on the relief sought by the complainants:**

- G.I Direct the respondents to deliver immediate physical possession of the unit (EDNBG-1504) in a habitable condition along with all the promised amenities and specifications to the satisfaction of the complainants after obtaining a valid occupation certificate.**
- G.II Direct the respondents to pay delay interest on amount of Rs.82,25,720/- paid by the complainants as per the prescribed rate of interest from the promised date of possession i.e., 19.04.2017 till the actual delivery of possession after adjusting any overdue outstanding.**

20. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.
21. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

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

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

***(Emphasis supplied)***

22. The due date of possession of the apartment as per clause 31 of the apartment buyer's agreement dated 20.04.2013, is to be calculated as 48 months from the date of execution of agreement i.e., 20.04.2013 being later including grace period of 6 months. Therefore, the due date of possession comes to 20.10.2017.

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

The complainants are seeking delay possession charges at the prevailing rate



of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.*

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. 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;"*

27. 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 the complainants in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by both the parties 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. The due date of handing over of possession comes out to be 20.10.2017 as reasoned above in para no. 18 and 19. The respondent has failed to handover possession of the subject unit till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 20.04.2013 executed between the parties. It is pertinent to mention over here that even after a passage of more than 12 years from the date of buyer's agreement neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation



certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 20.10.2017 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.
30. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. 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 is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.10.2017 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.III Direct the respondents not to cancel the allotment on account of non-payment of overdue outstanding until project is completed in all respect as agreed in the builder buyer's agreement, occupancy certificate is obtained and peaceful possession is offered to the complainants.**

31. In the present complaint, the complainants have paid a considerable amount of Rs.82,25,720/- which is 80% of the total sale consideration of Rs.1,02,31,443/-. Despite waiting for almost 8 years since the due date of

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possession has lapsed and payment of 80% of the sale consideration was back in 2017, the respondent has neither obtained the occupation certificate nor offered the possession of the unit. Moreover, the complainants intend to continue with the project thus, the respondent is directed not to cancel the allotment of the unit of the unit on account of non-payment till the occupation certificate is obtained and peaceful possession is offered to complainants.

**G.IV Direct the respondents to quash the VAT charges.**

32. No material evidence has been placed on record w.r.t the payment of VAT charges. Neither it is mentioned in the facts of the complaint that the complainants are seeking quashing of VAT charges of which financial year nor pressed before the Authority during the proceedings of the day. Thus, no direction to this effect.

**H. Directions of the Authority:**

33. 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):
- The respondents are directed to pay interest on the paid-up amount of **Rs.82,25,720/-** by the complainants at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 20.10.2017 till valid offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
  - The arrears of such interest accrued from 20.10.2017 till the date of this order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order. Thereafter, interest



for every month of delay shall also be paid by the promoter to the allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules till a valid offer of possession is made to the complainants/allottee(s) after obtaining occupation certificate.

- iii. The complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondents shall handover the possession of the allotted unit on obtaining of occupation certificate.
- iv. The respondents shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter 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.

34. Complaint stands disposed of.

35. File be consigned to registry.

**Dated: 15.05.2025**

**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram