

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

Complaint no. : 2480 of 2024
Order reserved on: 07.02.2025
Order pronounced on: 09.05.2025

Mr. Nisar Ahmad

Address: - Ghazan Rugs, Fattupur Dargah,
Bhadohi, Sant Ravidas Nagar—221401,
Uttar Pradesh.

Complainant

Versus

Ishv Realtors Pvt Ltd

Address: - office at Shop No 9-10, GF Plot-1311, A/8
Shankar Market, Fasil Road, Ajmeri Gate, Delhi-110006
Also, 308, Time Tower. Golf Course Road, Gurugram
Haryana.

M/s Anjum and Associates Estates Pvt Ltd

Address: - B-5, Punjabi Basti, Nangloi,
New Delhi -110041,
Also, 145, Golf Course Road, DLF Phase -5,
Sector 43, Gurugram, Haryana - 122002.

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Ishaan Dang
Shri Shankar Wig
Shri Subham Nanda

Advocate for the complainant
Advocate for the respondent No. 1
Advocate for the respondent No. 2

ORDER

1. The present complaint dated 10.06.2024 has been filed by the complainant 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	Platina street 109, Sector 109, Gurugram
2.	DTCP license	24 of 2011 dated 24.03.2011 valid up to 23.03.2015
3.	RERA registered/ or not	37 of 2023 dated 02.02.2023 Vaild up to 30.09.2027
4.	Shop No.	60 first floor 556 sq. ft. (page no. 63 of complaint)
6.	Date of builder buyer agreement	14.05.2013 (page no. 62 of the complaint)
7.	Possession clause	15. Possession <i>That the possession of the said premises is proposed to be delivered by the</i>

		<p>developer to the allottee(s) within four years from the date of this agreement.</p> <p><i>If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient.</i></p>
8.	Due date of possession	<p>14.05.2017</p> <p>[calculating from the date of execution of agreement]</p>

9.	Total sale consideration	Rs.39,17,576/- (As per BBA at page no. 64 of the complaint)
10.	Amount paid by the complainant	Rs.10,67,426/- [As alleged by the complainant at page 9 of complaint]
11.	Occupation certificate on	Not Obtained
12.	Possession letter on	Not Offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That Respondent no. 1 had handed over an attractive Brochure to the Complainant setting out the impressive features and prime location of the commercial complex. Representatives of Respondent no 1 conveyed to the Complainant that the proposed commercial complex was advantageously located on the Dwarka Expressway and in proximity to the IGI Airport, New Delhi as well as the Metro station in Dwarka and other landmarks, which would attract high customer footfall. The marketing /sales representatives of Respondent No 1 assured timely delivery of the project within three years from the date of booking and persuaded the Complainant to book a commercial unit/shop in the said project.
- ii. That the Complainant is the sole proprietor of the business known as "Ghazan Rugs", engaged in the manufacture and export of carpets and other floor coverings. The Complainant booked the

commercial unit/shop in the Project known as "Skyline 109 Gurgaon" (hereinafter referred to as "the Project") with the intention of expanding his business in the Delhi NCR. Representatives of Respondent no 1 assured the Complainant that Respondent No 1 possessed all the necessary approvals, permissions, licences etc to develop the Project and assured the Complainant of timely delivery of possession complete with all the promised amenities and features as set out in the Brochure.

- iii. That relying upon the promises and assurances made by Respondent No 1 orally as well as through brochures and other promotional material and enticed by the attractive picture portrayed by Respondent No 1, the Complainant was induced to book a commercial unit/shop no 60 admeasuring 556 sq ft super area located on the First Floor of the said Project.
- iv. That the Complainant had paid the booking amount of Rs.2,00,000/- (Rupees Two Lacs Only) vide cheque bearing no. 5786 dated 05.11.2012 drawn on the State Bank of Bikaner and Jaipur, Bhadohi. However, Respondent No 1 for reasons best known to itself never issued any allotment letter in favour of the Complainant for the next two months but kept raising demands.
- v. That the Complainant kept requesting Respondent no 1 to issue an allotment letter in his favour and to execute the Buyer's Agreement but Respondent No 1 kept demanding further amounts from the Complainant and assured the Complainant that

the Buyer's Agreement would be executed between the parties within a short span of time.

- vi. That at as per the demands raised by the Respondent, the Complainant made further payment of Rs.2,00,000/- (Rupees Two Lacs Only) vide cheque bearing no. 5874 dated 24.01.2013 drawn on the State Bank of Bikaner and Jaipur, Bhadohi, Rs 4,00,000/- (Rupees Four lacs) vide RTGS on 01.02.2013 and Rs 2,67,491/- vide cheque no 15594 dated 26.04.2013, drawn on the State Bank of Bikaner and Jaipur, Bhadohi. In all, payment of Rs 10,67,491/- was demanded and received by Respondent no 1 without even issuing any allotment letter or execution of any buyer's agreement with the Complainant.
- vii. That eventually after considerable follow up and reminders, Respondent No 1 presented the Complainant with a pre-printed Buyer's Agreement containing stringent, arbitrary, biased and one-sided clauses wholly favouring the builder. The Complainant was shocked to find that timelines for possession were arbitrarily and unilaterally changed by Respondent no 1 from the previously agreed timelines of three years from the date of booking to four years from the date of execution of the buyer's agreement, which was wilfully and needlessly delayed by Respondent no 1.
- viii. That the buyer's agreement provided for high rates of interest to be charged from the allottee in case of delay in payments as per the payment schedule but did not provide for any compensation or interest payable to the allottee in case of delay in delivering

possession to the allottee. Various other clauses of the buyer's agreement provided unilateral and unfettered powers to Respondent no 1 without any adequate and corresponding provisions for safeguarding the rights and interests of the Complainant.

- ix. That the Complainant was also shocked to find out from the buyer's agreement that the demarcation and zoning plans of the Project had been approved by the Director, Town and Country Planning , Haryana only on 01.04.2013 and that Respondent No 1 had falsely represented to the Complainant at the time of booking that Respondent No 1 was in receipt of all approvals from the competent authorities to develop and construct the Project.
- x. That the Complainant protested against the inclusion of the arbitrary and illegal clauses which were tilted in favour of the Respondent and demanded that the Buyer's Agreement be amended so as to result in an equitable balance of power between both parties in a fair and reasonable manner and to reflect the understanding arrived at between the parties at the time of booking. The Respondent flatly refused to entertain the said request and threatened to cancel the allotment and forfeit the amount paid by the Complainant. Faced with the threat of cancellation and forfeiture, the Complainant was compelled to execute the inherently illegal and biased Buyer's Agreement dated 14.05.2013.

- xi. That the Buyer's Agreement set out the total price of the unit to be Rs.39,17,576/- including EDC and IDC, calculated at the rate of Rs.6,506/- per square feet. It would not be out of place to mention that a construction linked payment plan had been chosen by the Complainant which has been appended at the end of the Buyer's Agreement.
- xii. That as per Clause 15 of the Buyer's Agreement, the due date of handing over of possession was on or before 14.05.2017. However, the Project is far from completion. That the Complainant kept contacting Respondent No 1 to try and ascertain the status of construction and possible hand over date. However, the Complainant only received vague and evasive replies from Respondent No 1.
- xiii. That despite the expiry of the stipulated time period mentioned in the buyer's agreement for handing over of possession of the said unit, there was complete and absolute silence on the part of Respondent No.1. The Complainant kept requesting Respondent No.1 to permit the Complainant to visit the site and to verify the status of construction at the site but the demands of the Complainant fell on deaf ears. The Complainant has always been ready and willing and is still ready and willing to make balance payment as per the buyer's agreement which amounts to Rs.28,50,150/-. That the Complainant was constrained to get a Legal Notice issued to Respondent No 1 demanding the actual

status of construction of the unit/Project as per the duly approved layout plan of the Project.

- xiv. That the Complainant instituted enquiries about the registration of the Project under RERA and was shocked to find that Respondent No 1 is not the landowner of licence holder of the Project but that Respondent No 2, M/s Anjum Associates Pvt Ltd and other landowners, are the landowners and Licence holders of the Project.
- xv. That the Complainant was further shocked to come to know that the Project licence had expired as the same was only valid until 23.03.2024 and that the Project has been registered till 30.09.2027, which is the completion date as declared by the Promoters. In other words, there is no expectation of the Project being completed in the near future. The Complainant has lost all hopes of obtaining possession of the commercial unit/shop after investing his hard-earned money with Respondent No 1.
- xvi. That from the facts and circumstances set out in the present complaint, it is evident that Respondent No.1 had obtained the booking of the Complainant by making false representations, assurances and promises. The Complainant has been cheated and defrauded by the Respondents. The hard-earned money of the Complainant has been embezzled/diverted by the Respondents for their own use. Even after more than 12 years from the date of booking, the Project is nowhere near completion.

- xvii. That it is pertinent to mention herein that Respondent No 1 had always kept all the buyers in the said project in the dark and never shared the status of construction of the project or the proposed delivery date. The secretive and mysterious conduct of Respondent No 1 coupled with the inordinate and inexplicable delay in completing the project leads to the irresistible conclusion that Respondent No 1 has defrauded the allottees and utilised their hard money for some other extraneous purpose unconnected with the development of the project. It is submitted that in the facts and circumstances of the case, this Authority ought to institute an enquiry into the affairs of Respondents in order to ascertain that the hard-earned money of the buyers has not been diverted for some other purpose.
- xviii. That even till date the Respondent has not completed construction of the project and the promised amenities and facilities are nowhere to be seen. The validity dates of Licence of the project have expired on 24.03.2024 and it is not known as to whether the same has been renewed. Thus, prima facie, Respondent No 1 is in violation of RERA and the Rules made thereunder and is liable to be penalised for its violations and transgressions.
- xix. That the cause of action in favour of the Complainant is a continuing cause of action as Respondent no 1 has failed to offer possession of the unit to the Complainant even after the due date of possession as per the buyer's agreement dated 14.05.2013.

Cause of action also arose in favour of the Complainant each time the Complainant requested Respondent no 1 to inform him about the status of the project and for possession of the unit and lastly upon the refusal of the Respondent to accede to the just and legitimate demands made by the Complainant. Cause of action had further accrued in favour of the Complainant upon issuance of legal notice dated 18.03.2024 to Respondent no.1 through his counsel. The cause of action is still subsisting.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):

- i. Direct Respondents to deliver possession of Commercial Unit/Shop No 60, admeasuring 556 sq ft , located on the First Floor of Commercial Complex known as Platina Street 109 (Previously Skyline 109 Gurgaon), Sector 109, Gurugram.
- ii. Direct Respondents to pay interest at the prescribed rate on the amount paid to the Respondent amounting to- Rs. 10,67,426/- from the due date of possession, i.e.14.05.2017till handing over of possession of the said unit.
- iii. Direct the Respondents not to charge any amount from the Complainant not payable under the Buyer's Agreement.

D. Reply filed by respondent no. 1.

5. The respondent had contested the complaint on the following grounds:
 - a. That the present complaint is neither maintainable nor tenable in the eyes of law and is liable to be dismissed. That the complainant has no locus-standi and cause of action to file the present

complaint. That the complainant has failed to furnish any document on record showing his locus to file the present case.

- b. However, due to unforeseen circumstances and force majeure, the company faced huge losses because of which the project "Skyline-109", Gurugram could not be completed.
- c. Moreover, there has been a change in the directorship of the respondent no. 1 Company in the year 2023 and since then the new directors namely Sh. Amit Yadav and Sh. Mahesh Yadav have been endeavouring to revive the company from the losses suffered over the years. That even the name of the company has been changed, and the rights and liabilities have also been restructured.
- d. That the complainant has suppressed and concealed the true and material facts and has not approached the Hon'ble Authority with clean hands.
- e. That despite its various efforts, the force majeure event rendered the respondent no. 1 Company unable to complete the project "Skyline-109", Gurugram. It is equally important to mention that the respondent no. 1 Company under the directorship of the previous directors had also gone till the doors of insolvency, but upon the induction of the aforementioned new directors, the company was saved from the deadly clutches of insolvency because of their diligent efforts. That the respondent no. 1 Company despite, various efforts are unable to complete the project and handover the possession of the unit to the complainant within the requisite timelines as promised by the previous directors

- f. It is pertinent to mention here that the respondent no. 1 company is unable to provide the allotted unit to the complainant in such circumstances not only because of financial reason but also on technical grounds that there are license of the project is already expired and under the process of extension. Further approvals from other government authorities are also pending and because of which the relief of handing over the units to the Complainant cannot be granted.
- g. That the respondent no. 1 company is at the stage of reviving itself and it will cause great hardship for the respondent no. 1 to complete the project and handover the units to the Complainant within the timelines. That the Complainant had paid the amount of Rs. 10,67,426 (Rupees Ten lakhs sixty-Seven thousand Four hundred and Twenty-Six Only) in the books of the Respondent Company. Thereby, the respondent no. 1 is willing to refund the above-mentioned amount of the complainant in installments, as the failure on the part of the erstwhile directors to fulfil the terms of the agreement and handover the possession to the complainant.
- h. In the interest of justice, it is prayed before the Authority to kindly direct the Complainant to collect the refund of Rs. 10,67,426 (Rupees) Ten lakhs sixty-Seven thousand Four hundred and Twenty-Six Only) paid by the complainant against the unit.

E. Reply filed by the respondents No. 2

6. The respondents had contested the complaint on the following grounds:
- i. That the respondents 2 is the land-owning entity of the project in question. It may be pertinent to note that respondent no. 2 is not

the only landowner but there are a total 7 landowner. That a licence bearing number 24 of 2011 dated 24th March 2011 had been obtained by us for setting up a commercial colony of land measuring 3.7187 acres by the respondents 2 along with others landowner which was valid up to 23rd of March 2015. The license issued by the DTCP Haryana; Chandigarh is already on record with the complaint.

- ii. That the landowners, i.e. respondents 2, and the respondent no. 1 had entered into a collaboration agreement dated 24.06.2011 vide Vashika bearing number 8083, registered at the office of Sub Registrar, Gurugram. That this collaboration was executed with ISH Realtors Pvt. Ltd. (later changed to ISHV Realtors Pvt. Ltd.) as the developers through their directors Naveen Gambhir and Pankaj Gambhir. The directors were thereafter changed to Vivek Arora and Prashanta Arora and thereafter a new director Amit Yadav was introduced into the firm.
- iii. That in terms of the said collaboration agreement it was agreed that the said developer shall be obligated and contractually bound to develop the said project by 24.01.2016. That at the time of execution of the collaboration agreement, the said developer had represented that it had reasonable expertise and considerable experience in developing and setting up a commercial complex. It was relying upon these representations that we had entered upon the said collaboration agreement.
- iv. That as per the terms and conditions of the collaboration agreement the developer was liable for getting the requisite

permissions concerning the project. The renewed License is already on record with the complaint. That in fact the said developer had specifically assured us that all the stipulations, obligations, terms and conditions recorded in the agreement or provisions of law, rules, regulations, notifications, by laws applicable to the project or imposed by the competent authorities while granting letter of intent, license, license renewal, sanctioning of zoning plan approval of building plan shall be abide strictly by the developer during the subsistence of the agreement.

- v. That after the renewal of licence the landowners had signed and handed over the documents for change of developer but only for the reasons known to the developer the same was delayed for a long time and finally the change in developer was got done vide memo number LC-1813/JE(RK)/2022/38141 dated 19th December 2022 of DTCP Haryana, Chandigarh. That after the change in developer the developer had further applied for HARERA registration of the project and the same was obtained as registration number 37 of 2023 dated 02.02.2023.
- vi. That it remains an undeniable fact that we have not received even a single rupee from any person alleging himself/herself or itself to be an allottee of any area in the project in question. That we have had no concern with the said complainant, transactional or contractual, at any point of time and further that none of us has made any sales whatsoever out of the area proposed to be developed and none of us have received any amount whatsoever from any person/entity

towards the sale of any area to be developed in terms of the license mentioned in the preceding paragraphs.

- vii. That we have been subject of a preplanned fraud and conspiracy by the said developer. The said developer has kept us entangled last more than 12 years thereby depriving us of our own land as well as the benefits of the license number 24 of 2011. Furthermore, we have suffered huge monetary losses as well. On the other hand, the said developer has not only defrauded us but has also violated the rules and regulations of the honourable authority as well as the said act and those rules set by the Town & Country planning Haryana. That the answering Respondents have no role or responsibility with respect to the development or construction of the above said project.
- viii. That the builder buyer agreement mentioned in the complaint by the complainant had been entered into between the complainant and the respondent no. 1 and no sums/ amounts whatsoever have been received by the respondents 2 from the complainant. That as such, there is no legal or contractual relation between the complainant and the respondents, and the present complaint is bad for misjoinder of parties and is liable to be dismissed qua respondents as there is no privity of contract between the complainant and respondents no.1 and there is no deficiency whatsoever on part of Respondents.
- ix. That the flat/builder buyer agreement is executed between the complainant and the respondent no. 1 which clearly shows that the transaction and commitments made were between them and the

respondents 2 was never party to the sale. Further as prayed by the complainant in his complaint for completion and delivery of the project by the respondent number 2 is not feasible due to the capacity of the respondents 2 and the third-party rights created by the respondent no.1.

- x. In fact, the respondents have also incurred huge losses on account of the inaction and omissions on behalf of respondent no. 1. The respondents have no liability whatsoever towards the complainant and cannot in any way, manner or form be held responsible for the actions/in-actions of respondent no. 1. There is no cause of action raised in respect of respondents as the respondents have never received any amounts whatsoever from the complainant and has no privity of contract with the complainant.
 - xi. Furthermore, the respondents had never published any advertisement in any newspaper inviting any proposal for commercial retail/shops/office/restaurant space by the name "Skyline 109".
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- F. Jurisdiction of the authority**
8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

F.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act of 2016 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.

G. Findings on the objections raised by the respondent.

G.I. Objection with regard to mis- joinder of respondent no. 2.

12. While filing the complaint the complainant sought relief against Ishv Realtors Private Limited and 7 others being the developers of the project. On failure to fulfil their obligation to complete the project by the due date, the complainant approached the authority seeking relief of possession and delay possession charges the amount received against the allotted unit. A perusal of various documents placed on the record shows that respondents no. 2 is landowner. The buyer's agreement with regard to the allotted unit was executed between the complainant and respondent no. 1. Even after allotment and buyer's agreement, demands for various payments were raised against the allotted unit by respondent no. 1 only. Thus, it shows that there is no privity of contract between respondent no. 2 and the complainant and as such the plea of the respondent no. 2 with regard to misjoinder is valid and thus, would be justified to delete its name from array of party.

H. Findings on the relief sought by the complainant.

- H.I Direct the respondent** Direct Respondents to deliver possession of Commercial Unit/Shop No 60, admeasuring 556 sq ft , located on the First Floor of Commercial Complex known as Platina Street 109 (Previously Skyline 109 Gurgaon), Sector 109, Gurugram.
- H.II Direct Respondents** to pay interest at the prescribed rate on the amount paid to the Respondent amounting to- Rs. 10,67,426/- from the due date of possession, i.e.14.05.2017till handing over of possession of the said unit.
- H.III Direct the Respondents** not to charge any amount from the Complainant not payable under the Buyer's Agreement.

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

*"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give
possession of an apartment, plot, or building, —*

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

14. Clause 15 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

15. POSSESSION

(a) Schedule for possession of the Unit

*That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) **within Four years from the date of this Agreement.** If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient.*

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds



of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. The builder has obviously misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

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

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at

the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

17. The legislature in its wisdom in the subordinate legislation under 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.
18. 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., 09.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
19. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) 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;"

20. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.
21. Also, that the respondent was under a statutory obligation to inform the allottee of any changes made to the sanctioned building plan. However, there is nothing on record to demonstrate that the respondent-builder either intimated the complainant-allottee regarding the revision of the building plan or obtained prior consent thereto. The unilateral and arbitrary modification of the building plan, without the knowledge or consent of the complainant, constitutes a violation of the respondent's obligations under Section 14 of the Real Estate (Regulation and Development) Act, 2016, which mandates that any alteration or addition in the sanctioned plans shall not be carried out without the prior written consent of the concerned allottee(s). Aggrieved by the unauthorized changes, the complainant has approached this Authority seeking delay possession charges and deliver the possession of the unit, as the said modifications are neither acceptable to him nor legally sustainable. Section 14 of the Act is reproduced below for ready reference:

Section 14: Adherence to sanction plans and project specifications by the promoter.

(1).....

(2).....

(i).....

(ii) Any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation: For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

22. In view of the above facts and circumstances, the authority is of the view that in such a situation where the promoter has failed to take consent of the complainant-allottee, he has violated section 14 of the Act.
23. The Respondent is hereby directed to reinstate the originally allotted unit to the Complainant. In the event the said unit is unavailable due to non-availability of unit, the Respondent shall allot an alternate unit of equivalent size, similar location, and identical price as that of the originally booked unit.
24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 14.05.2013. By virtue of clause 15(a) of the buyer's agreement executed between the parties on 14.05.2017, the possession of the subject flat was to be delivered within a period of four years from the date of this agreement. The due date of possession is to be calculated from the date of agreement i.e. 14.05.2013. Therefore, the due date of handing over possession comes out to be 14.05.2017. However, the respondent has failed to handover

possession of the subject apartment to the complainant till the date of this order. 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 notes that the respondent has neither obtained an occupation certificate from the competent authority nor has offered possession of the unit to the complainant.

25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 14.05.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

I. Directions of the authority

26. 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 functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent is hereby directed to reinstate the originally allotted unit to the complainant. In the event the said unit is unavailable due to non-availability, the Respondent shall allot an alternate unit of equivalent size at similar location, and identical price as that of the originally booked unit.

- ii. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 14.05.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from 14.05.2017 till the date of 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 and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the builder buyers' agreement.
- vi. 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 respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



27. Complaint as well as applications, if any, stands disposed off accordingly.
28. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.05.2025



HARERA
GURUGRAM