

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

Complaint no.: 4617 of 2023  
Date of filing of complaint: 10.10.2023  
Date of order: 01.05.2025

Rippudaman Singh

**Complainant**

**R/o:** - 501, Memphis Tower, Omaxe, The  
Nile, Sohna Road, Sector-49, Gurugram-  
122018

**Versus**

Lotus Realtech Private Limited

**Respondent**

**Regd. office at:** C-502, Nirvana Country,  
Coutyard, Sector-50, Gurugram-122001

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Harshit Batra (Advocate)

Complainant

Shri J.S. Dahiya (Advocate)

Respondent

**ORDER**

1. This 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 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	"Lotus Elise, Sector- 99, Dwarka Expressway, Gurugram.
2.	Project area	12.031 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	<b>70 of 2011 dated 22.07.2011 valid till 21.07.2015</b>
5.	Name of licensee	Shivanandan Buildtech Private Limited
6.	RERA Registered/ not registered	Registered vide no. 71 of 2019 dated 25.11.2019 valid up to 30.09.2021
7.	Unit no.	G802, Plot no. G-19, 8 <sup>th</sup> Floor, Tower/Block-G (As per page no. 40 of the complaint)
8.	Area admeasuring	2450 sq. ft. (Super Area) (As per page no. 40 of the complaint)
9.	Allotment letter	17.07.2013 (As per page no. 33 of the complaint)
10.	Date of execution of apartment buyer's agreement	01.08.2013 (As per page no. 23 of the complaint)
11.	Date of tri-partite agreement	28.09.2013 (As per page no. 83 of the complaint)
12.	Possession clause	<b>3.1</b> <i>That the Developer shall, under normal condition, subject to force majeure, complete construction of Tower/Building in which the said flat is to located with 4 years of</i>

		<p><i>the start of construction or execution of this agreement whichever is later as per plans and specifications seen and accepted by the flat allottee (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the developer may consider necessary or may be required by any competent authority to be made in them or any of them.</i></p> <p>(As per page no. 47 of the complaint)</p>
13.	Date of start of construction	31.01.2014 (As per details on form A to H)
14.	Due date of possession	31.01.2018 <b>(Note:</b> Due date to be calculated 4 years from the date of construction i.e., 31.01.2014, being later)
15.	Payment Plan	Construction linked plan
16.	Total sale consideration	Rs.1,40,47,164/- (including IFMS, Administrative charges, Labour Cess etc.) (As per statement of accounts on page no. 11 of the reply)
17.	Amount paid by the complainant	Rs.1,08,04,431/- (As per receipt information on page no. 66-78 of the complaint)
18.	Occupation certificate /Completion certificate	13.12.2022 (As per page no. 9 of the reply)
19.	Offer of possession	09.01.2023 (As per page no. 29 of the reply)
20.	Indemnity deed cum undertaking	15.06.2023 (As per page no. 40 of the reply) (Inadvertently mentioned as 11.06.2023 in POD dated



		01.05.2025)
21.	Possession letter	15.06.2023 (As per page no.40 of the reply)

### **B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
  - I. That the complainant is a law-abiding and hardworking citizen of country residing at 501, Memphis Tower, Omaxe, The Nile, Sohna Road, Sector 49, Gurugram who had booked a residential unit in the real estate project of the respondent known under the name and style of "LOTUS ELISE" at Sector 99, Dwarka Expressway, Gurugram.
  - II. That around 2012, the respondent was blazoning itself as one of the supreme real estate developers in the market, expansion with his projects. It predominantly advertised and assured of its fine development status, speedy procurement of the necessary licenses and permissions required from the competent authority for its group housing development, timely delivery of possession without any delays and the stellar quality of its developments.
  - III. That the respondent was principally selling the idea of a supreme living in the future surrounded with a number of amenities like open green area, swimming pool, club etc. and harped on the aspirations of the complainant to get such a dream home. That the complainant was made to believe that the proposed residential units of the respondent are reserving fast owing to the gigantic future benefits being perceived by the many prospective allottees.
  - IV. That believing upon the said assurances and representations of the respondent, the complainant booked a unit in the project of the

- respondent through application form dated 12.05.2012 by paying a booking amount of Rs.7,12,500/- via cheque dated 12.05.2012.
- V. That the complainant was subsequently allotted a 3+1BHK unit bearing no. 802 on 8<sup>th</sup> floor, Tower-G, sector 99, Dwarka Expressway, Gurugram having super area 2450 sq. ft. vide allotment letter dated 17.07.2013.
- VI. That since the booking of the unit, the respondent has miserably failed in living up to his assurances and has resultantly, caused breach of trust, breach of contract, and has undergone unfair trade practices by taking exorbitant amount of money from the complainant, over and above the agreed terms and conditions. That all the promises and assurances by the respondent and its representatives were nothing but a web of false promises in order to trap the innocent allottees and grasp their hard earned money for the personal gain of the respondent.
- VII. That the payment plan of the respondent was structured to cull out exorbitant amount of money from the complainant by mere booking of a unit. That 30% of BSP, 50% EDC & IDC and 50% of FFC were collected before the stage of starting of construction only. The complainant contested against the said plan, however, it was made very clear by the respondent that the booking can only be made through such a plan or not.
- VIII. Through such one sided plan, the complainant was made to pay a sum of Rs.44,14,033/-, i.e., 45% of the BSP before execution of the builder buyer's agreement.
- IX. That after the allotment of the unit in favour of the complainant, a builder buyer's agreement was executed on 01.08.2013 between the



parties. It is pertinent to mention here that the clauses of the agreement dated 01.08.2013 were substantively unfair, harsh, arbitrary and one-sided.

- X. That the complainant had objected against the same, upon which, the respondent threatened the complainant that in case of non-execution of the agreement, the entire amount paid will be forfeited. That is when the complainant underwent the extreme unfair trade practice of the respondent. Since the respondent had already extracted an exorbitant sum of Rs.44,14,033/- from the complainant before the execution of the agreement, the complainant had no other option than to sign on the dotted lines.
- XI. That the respondent has charged an illegal amount of Rs.4,90,000/- on account of PLC whereas no preferential location has been granted to the complainant.
- XII. That the PLC can only be charged and is justified if the unit is preferentially located whereas in the present scenario, the unit is neither preferentially located nor any intimation regarding the same had ever been given to the complainant. Hence, the demand for PLC is bound to be refunded along with interest @MCLR + 2%.
- XIII. That certain charges were reduced by the respondent upon an objection being raised to the same, PLC was one such charge. While in the letter dated 09.01.2023, PLC of Rs.4,90,000/- was noted, however, in the corrected letter dated 17.01.2023, the amount of PLC was reduced to Rs.1,47,000/-. In the light of the fact that the unit is not preferentially located, no PLC whatsoever can be charged.
- XIV. That the complainant, as per the stated payment plan, had provided for timely payments to the respondent as per the demands raised by



the respondent in lieu of the above captioned unit. The complainant in order to buy the unit has paid a full and final amount of Rs.1,08,04,431/-. In addition, the complainant had also paid an amount of Rs.1,88,270/- including IFMS amount of Rs.1,22,500/- and advance maintenance charges up to 31.12.2023.

- XV. That the complainant, in his most *bonafide* conduct, in order to fulfil all his obligations under the agreement and to provide timely payments to the respondent, had also taken a loan of Rs.40,00,000/- from the Bank of Maharashtra with a hope that the possession of the unit shall be provided to them on time.
- XVI. That the loan of the complainant got sanctioned vide sanction letter dated 12.09.2013. That as per the said letter a loan of Rs.40,00,000/- has been sanctioned by the bank having monthly EMI of Rs.40,260/-.
- XVII. That thereby the respondent provided for the letter for the permission of mortgage of the said unit in question and a tripartite agreement dated 28.09.2013 was executed between the complainant, Bank of Maharashtra and the respondent.
- XVIII. That the foremost objective of the loan taken by the complainant is to provide timely payments to the respondent in order to have the timely possession of the unit but unfortunately the respondent failed to provide the same and the possession of the unit was delayed for 6 years 1 month 24 days, which dragged the period of excessive payment of interest of Rs.40,260/- per month to the bank. As on date, the bank loan stands closed.
- XIX. That the respondent had taken a huge amount of Rs.98,25,695/- till 10.09.2015 and had not demanded any further payment till the year 2023. Hence, it is evident from the above acts of the respondent that





the construction of unit was delayed and hence the demands raised by the respondent were not as per the stages of the construction of the project.

- XX. That as per the clause 3.1 of the agreement dated 01.08.2013, the due date of handing over the possession of the unit was 4 years from the start of construction or execution of the said agreement, whichever is later. As the date of start of construction is not provided by the respondent in the agreement nor was the same communicated at any time thereafter, the due date has been computed from the date of execution of the builder buyer's agreement, i.e., 01.08.2013. Hence, the due date comes out to be 01.08.2017, however, the possession was not offered till such date.
- XXI. That due to the delay in providing the possession of the unit to the complainant, the complainant contacted the representatives of the respondent and visited the site of the project in order to know the actual status of the construction of the project but to no avail. The construction of the project was going on in a very slow pace. It is pertinent to mention here that for a long period of time, the respondent has even abundant the project. The complainant has also written various emails to the respondent in order to attend and remove deficiency in services by the respondent.
- XXII. That on 14.12.2022, the complainant received a letter from the respondent stating that the occupation certificate of the project has been received and the possession of the same shall be provided to the complainant shortly however, copy of the occupation certificate was not shared by the respondent.



- XXIII. That the complainant, after receiving the letter dated 14.12.2022 has received the letter for offer of possession dated 09.01.2023 stating that the complainant can take the possession of the unit subject to the payments of all the outstanding dues.
- XXIV. That moreover, when the complainant went to take the physical possession of the unit, the unit was incomplete and not as per the specifications promised in the BBA. That till date, UPVC on the windows/glazing has not been concluded. The respondent has merely sent out an alleged and illegal offer of possession without completing the unit. That it is due to the non-completion of the UPVC that the conveyance deed has not been executed till date.
- XXV. That the respondent has illegally charged an amount of Rs.45,61,331/- by imposing various charges in the alleged offer of possession dated 09.01.2023 including but not limited to Labour Cess, Admin Charges, interest on delayed payments, Electric Meter Connection Charges etc.
- XXVI. That the complainant contacted the respondent and raised a concern regarding all these charges imposed and requested to reduce the said charges and he was already under a burden of payment of EMIs of the loan amount.
- XXVII. The complainant had further sent an email dated 22.01.2023 and 21.02.2023 demanding the delay possession charges from the builder and raising a concern with respect to all the illegal demands raised by the respondent in the offer of possession and also to amicably settle the matter.
- XXVIII. That the respondent after the various requests and telephonic conversations with the complainant has reduced the said amount

from Rs.45,61,331/- to Rs.19,22,658/- in its demand dated 17.01.2023 on account of reduction of wrongly charged GST and interest on delayed payments, partial PLC, and partial cost escalation.

- XXIX. That after a delay of 6 years 1 month 29 days from due date of delivery, the complainant was left with no other option but to take the possession of the said unit under protest therefore, on 15.06.2023, the complainant had taken the physical possession of the unit vide possession letter dated 15.06.2023.
- XXX. That while offering the possession of the unit to the complainant, the complainant once again requested the respondent to pay the delay possession interest. That the respondent, after various requests refused to provide the delay possession interest to the complainant but offered to adjust the same in the total sale consideration of the unit as per the terms and conditions of the agreement. The respondent reluctantly, adjusted a partial amount of Rs.7,00,000/- only as per clause 5.1 of the agreement and not even the full penalty amount and only on that condition had offered the complainant to pay an amount of Rs.9,78,736/- as a full and final settlement of the dues in lieu of Rs.16,78,736/-. Consequently, the complainant had paid total sale consideration of Rs.1,08,04,431/- in order to buy the captioned unit.
- XXXI. That the offer of possession provided to the complainant in the present complaint cannot be considered as the valid offer of possession as the same contains various demands which the respondent is under no obligation to charge.



- XXXII. That as noted above, it is crystal clear that the respondent is under no obligation to collect all these charges from the complainant and hence, the offer of possession dated 09.01.2023 and 17.01.2023 provided by the respondent shall be considered illegal on the part of the respondent.
- XXXIII. That due to deficiency in services after offering possession of the unit by the respondent and full and final payments on the part of complainant, the respondent failed to provide the unit with all the amenities as assured at the time of booking, therefore, the complainant wrote various emails to the respondent stating the deficiency in the services on part of the respondent and charging of high amount of maintenance charges.
- XXXIV. That the complainant, in any manner whatsoever, has waited for a substantial amount of time has lost faith in the *bonafide* conduct of the Respondent. The complainant stands well within his rights in claiming the delay possession charges till the actual handover of the unit.
- XXXV. That in light of the above facts, the Hon'ble Authority is requested to provide delay possession charges for the amount that the complainant has paid till date along with the interest by the respondent.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to provide delay possession charges to the complainant at the prescribed rate from due date of possession, i.e., 01.08.2017 till date of actual handing over the physical possession of the allotted unit.

- ii. Direct the respondent to complete the unit as per the specifications of the builder buyer's agreement including providing of UPVC as per the specifications provided under the agreement.
  - iii. Direct the respondent to execute the conveyance deed.
  - iv. Direct the respondent to refund the illegally charged PLC amount with interest.
  - v. Direct the respondent refund the Labour Cess charged with interest.
  - vi. Direct the respondent refund the Electrification Charges charged with interest.
  - vii. Direct the respondent refund the cost escalation charged with interest.
  - viii. Direct the respondent refund the Club Membership charges charged with interest.
  - ix. Direct the respondent refund the Fire Fighting Charges charged with interest.
  - x. Direct the respondent to provide the amenities as assured in the brochure at the time of booking of the said unit.
5. 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.

**D. Reply by the respondent:**

6. The respondent has contested the complaint on the following grounds:
- I. That the complaint filed by the complainant is not maintainable in the present forum as all the disputes regarding the payment of balance outstanding amount of Rs.45,61,331/- payable by the complainant as shown in the offer of possession letter dated



09.01.2023 subsequently revised to Rs.33,77,693/- with another offer of possession letter dated 17.01.2023 has already been mutually settled amicably out of the court with the sweet will of the parties after which revised offer of possession letter was issued vide which the complainant was asked to deposit the settlement amount of Rs.11,67,006/- (Rs.9,78,736/- payable to Ms. Lotus Realtech Pvt. Ltd. and Rs.1,88,270/- to Pavitra Facility Management LLP.

- II. That in pursuance to this mutual settlement, the complainant had deposited the settled amount of Rs.9,78,736/- with the answering respondent vide cheque dated 10/03/2023 at the time of taking the possession of the allotted flat. It is thus clear that the answering respondent had already reduced the balance outstanding amount from Rs.33,77,693/- to Rs.11,67,006/- after waiving a sum of Rs.22,10,687/- in view of mutual settlement arrived at between the parties at the time of taking the possession of the allotted flat. It is only due to this reason that the complainant submitted the acknowledgment letter dated 15.06.2023 and executed the Indemnity-Cum-Undertaking dated 15.06.2023 stating therein that all the payments have been settled and paid up to his satisfaction and that nothing is due for payment from either sides. However, the answering respondent reserve their right to recover this sum of Rs.22,10,687/- from the complainant in the event delay possession charges are allowed to him despite the fact that the matter in dispute regarding outstanding balance amount had already been amicably settled outside the court.
- III. That the complainant is not entitled to the delay possession charges as he had already taken the possession of the unit as per the

possession letter dated 15.06.2023 and possession certificate dated 15.06.2023 stating therein that the construction and finishing of the said allotted apartment are in terms of the buyer's agreement dated 01.08.2013.

- IV. That the complainant in his letter dated 15.06.2023 addressed to the answering respondent clearly stated that he is left with no claim, demand or grievance of any nature against the company for the said apartment and all liabilities of the company are hereby discharged/satisfied.
- V. That the complainant had also executed an Indemnity-cum-Undertaking dated 15.06.2023 stating therein that he confirms that he shall have no claims or demands of any nature whatsoever now or anytime in future against the company in respect of or in relation to the unit/apartment.
- VI. That the complainant is estopped by his act and conduct to file this complaint for claiming the delay possession charges in view of the execution of the Indemnity-cum-Undertaking dated 15.06.2023 because it has been declared in clause 16 by the complainant himself that he undertake, agree and acknowledge that all payment, charges and/or penalties in terms of the buyer's agreement payable to him have been paid/settled by the company to his fullest satisfaction and if otherwise he hereby waive all of his right to receive such payment, charges and or penalties from the company. It has been declared in clause 18 by the complainant that he hereby agree and undertake that as on execution date hereof, he is left with no claims or liabilities whether monetary or otherwise against the company and also undertake not to raise any claim or demand in this regard



against the company. It has been declared by the complainant in clause 22 that he shall not raise any claim or dispute whatsoever monetary or otherwise against the various charges already deposited with the company before or at the time of taking over the physical vacant possession of the unit/apartment.

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.

**E. Jurisdiction of the authority:**

8. 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 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.*

9. 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.

**F. Findings on objections raised by the respondent:**

**F.I Objection regarding the complaint being barred by estoppel.**

10. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of indemnity-cum-undertaking dated 15.06.2023, the complainant is now estopped from raising these belated claims/demands as he himself had acknowledged and accepted in clause 16 and 18 that all claims are settled to his full satisfaction and shall not raise any claim or demand in this regard against the respondent-company. The clause 16 and 18 are reproduced below for ready reference:

16.

*"That I/We undertake, agree and acknowledges that all payment, charges and/or penalties in term of buyer agreement payable to me/us and if otherwise I/we hereby waives all of my/our right to receive such payment, charges and/or penalties from the company."*

18.



*That I/we hereby agree and undertake that as on execution date hereof, I/we Left with no claims or liabilities, whether monetary or otherwise the company and also undertake not to raise any claim or demand in this regard against the company."*

11. The Authority observed that though the indemnity-cum-undertaking has been executed on 15.06.2023 but as per proviso to section 18 of the Act of 2016, if the 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. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was 31.01.2018 but the same was offered on 09.01.2023 after a delay of more almost 5 years. Therefore, the complainant is entitled for delay possession charges for the delayed period as statutory right of the complainant-allottee as per the provisions of section 18 of the Act of 2016. Thus, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

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

- G.I Direct the respondent to provide delay possession charges to the complainant at the prescribed rate from due date of possession, i.e., 01.08.2017 till date of actual handing over the physical possession of the allotted unit.
12. 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."*

13. Clause 3.1 of apartment buyer's agreement dated 01.08.2013 provides for handing over of possession and is reproduced below:

**3.1**

*That the Developer shall, under normal condition, subject to force majeure, complete construction of Tower/Building in which the said flat is to located with 4 years of the start of construction or execution of this agreement whichever is later, as per plans and specifications seen and accepted by the flat allottee (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the developer may consider necessary or may be required by any competent authority to be made in them or any of them.*

*(Emphasis supplied)*

14. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 years from the date of start of construction i.e., 31.01.2014 being later. Therefore, the due date of handing over of possession comes out to be 31.01.2018.
15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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 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.*

16. 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.

17. 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., 01.05.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
18. The definition of term 'interest' as defined under section 2(zd) 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:

*"(zd) "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;"*
19. 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 them in case of delayed possession charges.
20. The counsel for the respondent vide proceedings of the day dated 01.05.2025 draws attention of the Authority to the undertaking given by the complainant stating that he will not claim any delayed possession charges and other reliefs, whatsoever while signing the aforementioned deed dated 15.06.2023 (inadvertently mentioned as 11.06.2023 in POD dated 01.05.2025) and thus the complainant is not entitled for any

delayed possession charges. However, the father of the complainant present in person during the proceedings mentioned that indemnity bond was signed under duress wherein the respondent was in a dominant position and there is delay in handing over of possession and thus the complainant is entitled for delayed possession charges and execution of conveyance deed.

21. 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 to 31.01.2018 but the offer of possession was made on 09.01.2023. 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 allottees shall be paid, by the promoter, interest for every month of delay from the date of possession i.e., 31.01.2018 till offer of possession (09.01.2023) after obtaining occupation certificate plus two months i.e., 09.03.2023 or actual taking over of possession i.e., 15.06.2023, whichever is earlier at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Since the period of offer of possession plus two months is being earlier, the complainant is entitled for delayed possession charges from 31.07.2018 to 09.03.2023.

**G.II Direct the respondent to complete the unit as per the specifications of the builder buyer's agreement including providing of UPVC as per the specifications provided under the agreement.**

22. The complainant is seeking relief of completing the unit as per specifications of the buyer's agreement including UPVC as per



specifications provided under the agreement. The Authority while going through the apartment buyer's agreement dated 01.08.2013 has observed that Annexure IV on page no. 58 of the complaint specifically provides that the windows/glazing and doors will be consisting UPVC and hence, the respondent is directed to complete the unit as per specifications provided as per Annexure IV of the buyer's agreement.

**G.III Direct the respondent to execute the conveyance deed.**

23. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

24. The possession of the subject unit has already been offered after obtaining occupation certificate on 09.01.2023 and the same was taken by the complainant on 15.06.2023. So, the respondent is directed to get the conveyance deed executed within a period of two months from the date of this order.

**G.IV Direct the respondent to refund the illegally charged PLC amount with interest.**

**G.V Direct the respondent refund the Labour Cess charged with interest.**

**G.VI Direct the respondent refund the Electrification Charges charged with interest.**

**G.VII Direct the respondent refund the cost escalation charged with interest.**

**G.VIII Direct the respondent refund the Club Membership charges charged with interest.**

**G.IX Direct the respondent refund the Fire Fighting Charges charged with interest.**

**G.X Direct the respondent to provide the amenities as assured in the brochure at the time of booking of the said unit.**

25. The above sought relief(s) by the complainant are taken together being inter-connected.



26. The Authority has gone through the apartment buyer's agreement dated 01.08.2013 and observed that as per summary of dues(Annexure-I) on page no. 55 of the complaint, along with basic sale consideration of Rs.93,10,000/-, Preferential Location Charges(PLC) of Rs.4,90,000/-, External Development charges(EDC)/ Internal Development charges(IDC) of Rs.9,08,950/-, Fire Fighting Charges of Rs.73,500/-, Parking Charges of Rs.4,25,000/-, Club Membership fee of Rs.1,00,000/- and IFMS of Rs.1,22,500/- is forming part of the total sale consideration. However, the complainant in the facts of the complainant pleaded that the unit of the complainant ceased to be preferentially located.
27. First of all the buyer's agreement is a pre-RERA agreement and after going through the pleadings of the complainant and relevant clauses of apartment buyer's agreement dated 01.08.2013, the Authority has observed that the afore-mentioned charges are specifically agreed between the parties, thus the respondent can charge as per the agreed terms of the buyer's agreement dated 01.08.2013.

**H. Directions of the authority:**

28. 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 respondent is directed to pay delay interest to the complainant against the paid-up amount at the prescribed rate i.e. 11.10% p.a. for every month of delay from the due date of possession i.e., 31.01.2018 till offer of possession (09.01.2023) after obtaining occupation certificate plus two months i.e., 09.03.2023, being earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.



- ii. The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainant within 2 months from the date of this order.
- iii. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.
- iv. 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, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

29. Complaint stands disposed of.

30. File be consigned to registry.

*V.I. 3*

**(Vijay Kumar Goyal)**

**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.05.2025