

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

Complaint no. : 1719 of 2023  
Date of filing: 09.05.2023  
Date of decision : 13.05.2025

Computer Network and Telecom India Pvt Ltd  
**Regd. Address:** 333, 2<sup>nd</sup> Floor, Sant Nagar, East of  
Kailash, Delhi -110065

**Complainant**

Versus

M/s Ansal Housing Ltd. (Formerly known as Ansal  
Housing & Construction Ltd.)  
**Regd. office:** 15 UGF, Indraprakash, 21,  
Barakhambha Road, new Delhi -110001

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Sh. S S Hooda (Advocate)  
Sh. Amandeep Kadyan (Advocate) along  
with Sh. Dushyant Arora AR

**Counsel for Complainant**

**Counsel for Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/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 provisions 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.	Project name and location	Ansals Heights 86, Sector 86 Gurugram
2.	Project area	12.843 acres
3.	Nature of project	Group Housing Project
4.	RERA registered/not registered	Not Registered
5.	DTPC license no. & validity status	License No. 48 of 2011 dated 29.05.2011
6.	Date of Flat Buyer's Agreement with original allottee	25.09.2012 [pg. 35 of complaint]
7.	Date of transfer of unit in name of complainant	02.04.2014 (pg. 28 of complaint)
8.	Unit No.	C-0401 [pg. 36 of complaint]
9.	Unit area admeasuring	1895 sq. ft. [pg. 36 of complaint]
10.	Possession clause	<b>Clause 31</b> <i>The Developer shall offer possession of the unit any time a period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. Further, there shall be a grace period</i>





		<i>of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i>
11.	Date of commencement of construction	01.10.2013
12.	Due date of Possession	01.10.2017 [Calculated from 01.10.2013 i.e. date of Commencement of Construction being later. Grace period of 6 months allowed being unqualified]
13.	Sale consideration	₹ 67,01,900/- [pg. 36 of complaint]
14.	Total amount paid by the complainant	₹ 36,34,488/- [As per ledger dated 12.02.2019 at pg. 50 of complaint]
15.	Offer of Possession	NA
16.	Occupation Certificate	NA

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
  - a. That the complainants came into contact with Mr. Suman Kirti and Mr. Vinod Kumar who informed the complainant that respondent companies are developing a project "ANSAL HEIGHTS" affordable group housing society situated at Sector-86, Gurugram. Mr. Suman Kirti and Mr. Vinod Kumar also informed the complainant that they have booked a Unit/Flat bearing No.C-0401, having super built up area of 1895 Sq. Ft. situated at Sector-86, Gurugram, in the above said project and the respondent company has also issued an allotment letter in their favour. Mr. Suman Kirti and Mr. Vinod Kumar told the complainant that he has already paid an amount of Rs.23,72,512/- to the company. Mr. Suman Kirti and Mr. Vinod Kumar requested to the complainant to get transfer of this



flat in their name as they are in dire need of money and they cannot afford this unit anymore. Ongoing through the attractive Brochure, the payment plan and assurance given by the officials of the respondent companies and Mr. Suman Kirti and Mr. Vinod Kumar regarding constructing of various projects in Gurugram and other Districts of Haryana within the stipulated period. It was intimated, the rates of the properties, would soar to the great high's and by the reputation of the respondent's company, the complainant decided to buy the said booked residential unit from Mr. Suman Kirti and Mr. Vinod Kumar. The said unit was duly transferred in the name of complainant vide Transfer Letter duly signed by the authorized person of the respondent company and an Agreement to Sell between Mr. Suman Kirti and Mr. Vinod Kumar and complainant was also executed.

- b. The complainants duly paid the settled amount to Mr. Suman Kirti and Mr. Vinod Kumar as mentioned in the agreement to sell executed between Mr. Suman Kirti and Mr. Vinod Kumar and complainant has paid the settled amount to Mrs. Suman Kirti and Mr. Vinod Kumar.
- c. That apart from issuing a payment receipt on different dates, acknowledging the receipt of amount, the respondent company also issued a allotment letter Dated 16.01.2013 carrying the details of unit allotted and also the details of amount to be deposited by the complainants time to time as per payment plan opted by the complainants as per Annexure.
- d. That the complainant deposited the required amount as per the payment plan opted by the complainant according to the Apartment Buyer Agreement, which was executed between the





complainant and the respondent company on 25.09.2012 admitting all the details of terms and conditions of the said agreement as and when it was required by the respondent company.

- e. That as per one of the terms and conditions of the said Agreement dated 25.09.2012, it was agreed and settled between the complainant and the respondent company that the possession of the said Unit/Flat shall be handed over to the complainant within the period of 42 months from the date of approval of building plan or on or before 25.02.2016. Hence, from the above said clause as mentioned in Apartment Buyer Agreement dated 25.09.2012, the respondent company was duty bound to handover the physical possession of the above said Unit/Flat to the complainants positively up to 25.02.2016 but till date nothing has been done in that context.
- f. That the complainant without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainants immediately on receipt of letters from the respondent company and in total the complainants paid an amount of Rs. 14,98,851/- which has also been admitted and acknowledged by the respondent's company officials. The Stamp Duty + Registration Charges & Administrative Charges as mentioned in the payment plan is liable to be payable by the complainant and that too at the time of registration of sale deed and possession of the flat.
- g. That from the above said timely payments made by the complainant in the respondent company leaves no iota of doubt that the complainant has been very sincere and honest while



complying with the terms and conditions of the letter of allotment dated 16.01.2013 as well as of Apartment Buyer Agreement dated 25.09.2012 as the same was agreed and settled to be payable at the time of offer of peaceful physical possession complete in all respect of the said Unit by the respondent company.

- h. That instead of admitting their fault/negligence on account of not offering the possession of the said Unit to the complainant without being fit for living, respondents kept on issuing reminders for illegal demand of payment regularly. That the respondent rather had crossed all the limits by keeping aside all the provisions of law of the land and without bothering having any fear of natural justice of law, they kept on sending their illegal demands to the complainant regularly.
- i. That on account of issuance of the above illegal demands regularly, followed by reminders and claiming huge amount without their being any justification leaves no doubt in the minds of the complainants that the respondent being such a type of company which firstly trapped the several innocent home buyer customers like the complainants by showing attractive brochures boosting about the reputation of the respondent company and once the customers like the complainant are trapped in their net, the builder company without having fear of law of land continuously carried on its demands of amount without having any norms leaving the customers, like the complainants to run from pillar to post without their being any fault on their part.
- j. That on account of not completing the construction of the above said Unit allotted to the complainant within the stipulated period of 42 months, the complainant had suffered a huge monetary loss.



The act and conduct of the respondents have also snatched the mental peace of the complainants. The following are the details of monetary losses which had been suffered by the complainant on account of total negligence/carelessness on the part of the respondent.

- k. That, the complainant approached the respondent many times and requested him with folded hands to hand over the physical possession of the said unit/flat. But the respondent did not even bother to respond the buyer and paid no heed to his request. That as the Respondent has failed to discharge his liabilities to complete the project and handover the peaceful physical possession of the allotted unit / space to the complainant within the stipulated time and thus the respondent has cheated the complainant to invest their hard-earned money on believing upon their false assurances. The Respondent in a master minded and scripted way succeeded to their ulterior motive and caused wrongful losses to the complainant for their wrongful gains. Thus, the Respondent has not only breached the trust of the complainant but also in a planned and thoughtful way cheated/ defrauded the complainant. The complainant due to their said illegal acts, conduct and misdeeds, suffered mental agony, sorrow, trauma and apathy. The Respondent involved in the swindling and embezzlement of funds of not only of the complainant but similarly situated innocent people at large. That due to illegal acts and conducts of the Respondent, the Complainant had suffered to great mental agony, physical harassment, financial loss, humiliation, hence the respondent is liable to pay the delay

possession charges and handover the physical possession to the complainant.

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

4. The complainants have sought following relief(s).
  - a. Direct the respondent to handover the physical possession along with the delayed possession charges along with compound interest @24% p.a. to the complainant.
  - b. Direct the respondent to pay the compensation for not providing entrance and interior according to the layout plans as was shown to the complainant.
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.
  - a. That the complainants had approached the answering Respondent for booking a Flat no. D-807 in an upcoming project Ansal Heights, Sector 92, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 03.10.2012 was signed between the parties. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant 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.

- b. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong. 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 complainant belatedly. The complainant has admittedly filed the complaint in the year 2023 and the cause of action accrue on 03.10.2012 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.
- c. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 31 of the agreement. Therefore, the complainant 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.
- d. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for

- e. environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging 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 Complainant.
- f. 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 agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The Respondent 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. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder buyer agreement is clear that there is no



compensation to be sought by the complainant/prospective owner in the event of delay in possession.

- g. That the answering Respondent has clearly provided in clause 37 the consequences that follow from delayed possession. It is submitted that the Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram. That admittedly, the Complainant had signed and agreed on Builder Buyer Agreement dated 11.04.2012. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- h. That the perusal of the Builder Buyer Agreement at page 3 would show that the proposed party to be impleaded i.e M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal Heights, Sector 92 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: "The Developer has entered into an agreement with the Confirming Party 3 i.e M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid." That, while filing the present complaint, the Complainant has not arrayed M/s Samyak Project Pvt. Ltd. having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi - 110020 as a party to the complaint. That M/s Samyak Projects Pvt. Ltd is a very necessary and proper party to be arrayed to the Complaint for proper, fair and transparent disposal of the present case. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the

respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.

7. Copies of all the relevant documents have been filed and placed on 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 authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

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

**Section 11**

.....

**(4) The promoter shall-**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the*



*agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.1. Objection regarding delay due to force majeure circumstances**

12. The respondent has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Flat Buyer's Agreement' was executed between the parties on 25.09.2012. As per clause 31 of the Flat Buyer Agreement, the due date for offer of possession of the unit was 42 months from the date of execution of the Agreement or 42 months from the date of obtaining all the required sanctions and approvals necessary for commencement of construction,



whichever is later, along with a grace period of six months over and above the said period. The period of forty-two months is calculated from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months from 01.10.2013 comes out to be 01.04.2017. Further, an unqualified grace period of six months has been agreed between the complainant and the respondents to be granted to the respondents over and above the said 42 months. The same is granted to the respondent, being unqualified. Thus, the due date of possession comes out to be 01.10.2017. Since, a grace period of six months has already been granted to the respondent, any further grace would amount to undue advantage in favour of the respondents. The respondent has submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, but these were for a short period of time and are the events happening every year. The respondents were very much aware of these events and thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

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

13. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat 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)** decided on 06.12.2017 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 agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

**G.I. Direct the respondent to handover the physical possession along with the delayed possession charges along with compound interest @24% p.a. to the complainant.**

16. In the present matter the complainant was allotted unit no. C-0401, admeasuring 1895 sq. ft. in the project "Ansal Heights 86" Sector 86 by the respondent-builder for a sale consideration of ₹61,01,900/- and they have paid a sum of ₹36,34,488/-. A buyer's agreement was executed with the original allottees on 25.09.2012. Thereafter, the unit was transferred in the name of complainant vide letter dated 02.04.2014.





17. As per the BBA, M/s Resolve Estate Pvt. Ltd. assigned their entire rights, entitlements and interest in the land and the resultant FSI of the entire project to Optus Corona Developers Pvt. Ltd. Further the Optus Corona Developers Pvt. Ltd. assigned its entire rights, entitlements and interest in the land and the resultant FSI of the entire project to entered into a separate agreement whereby the development and marketing of the project was to be done by the Samyak Projects Pvt. Ltd. Again M/s Samyak Projects Pvt. Ltd. vide a separate agreement transferred its rights to develop and construct the said project in terms of the license/permissions granted by the DTCP, Haryana to the respondent.
18. The counsel for the respondent on 21.11.2024 has stated at bar that the reply has been wrongly filed and the said project has not been handed over to M/s Samyak Projects Pvt. Ltd. and hence, need not to be impleaded as party.
19. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by the respondent. The complainant intends to continue with the project and are seeking delay possession charges interest on the amount paid. 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:

***"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. -  
in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;  
or*

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*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)*

20. Clause 31 of the BBA provides for handing over of possession and is reproduced below:

**"Clause 31**

*The Developer shall offer possession of the unit any time a period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."*

21. **Due date of possession and admissibility of grace period:** As per clause 31 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of within 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months is calculated from the date of commencement of construction i.e., 01.10.2013 being later. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 01.10.2017. The occupation





certificate for the project has not yet been obtained from the competent authority.

22. **Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. 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]***

*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.*

23. 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.
24. 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., 13.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. 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—*

*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 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;"*

26. 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 them in case of delayed possession charges.
27. 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. By virtue of clause 31 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 01.10.2017. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
28. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the allotment letter. Accordingly, it is the failure of the respondent/promoter to fulfil its



section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the said relief.

#### **H. Directions of the authority**

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 01.10.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, 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.
- b. The respondent is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate.
- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- d. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- e. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- f. The respondent shall not charge anything which is not the part of BBA.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2025

**HARERA**  
**GURUGRAM**