

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

Date of Order:

21.08.2025

NAME OF THE BUILDER		EMAAR MGF LAND LIMITED	
PROJECT NAME		"COLONNADE"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1430/2024	Apurv Sud V/S Emaar MGF Land Limited	Sh. Abhinav Arora Advocate for complainant Sh. Dhruv Rohtagi Advocate for respondent
2.	CR/1431/2024	Apurv Sud V/S Emaar MGF Land Limited	Sh. Abhinav Arora Advocate for complainant Sh. Dhruv Rohtagi Advocate for respondent

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Colonnade" (Commercial Colony) being developed by the same respondent/promoter i.e., Emaar MGF Land Limited. The terms and

conditions of the application for the provisional allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delayed possession charges along with interest and others.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in a table below:

Project Name and Location		Emaar MGF Land Limited at "Colonnade" situated in Sector-66, Gurugram	
Occupation Certificate: 31.03.2022			
Complaint No., Case Title	CR/1430/2024 Apurv Sud V/S Emaar MGF Land Limited	CR/1431/2024 Apurv Sud V/S Emaar MGF Land Limited	
Reply status	13.08.2024	14.09.2023	
Unit no.	CHC R-02-006, 2 nd floor [As per page no. 54 of the complaint]	CHC R-02-007, 2 nd floor [As per page no. 54 of the complaint]	
Area admeasuring	181.14 sq. ft. (super area) [As per page no. 54 of the complaint]	365.14 sq. ft. (super area) [As per page no. 54 of the complaint]	
Date of execution of buyer's agreement	12.10.2016 [As per page no. 28 of the complaint]	12.10.2016 [As per page no. 28 of the complaint]	
Due date of handing over of possession	August, 2020 [Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.] (Inadvertently mentioned as February, 2020 in proceedings of the day dated 24.07.2025)	August, 2020 [Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.] (Inadvertently mentioned as February, 2020 in proceedings of the day dated 24.07.2025)	

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Date of cancellation	17.01.2024 [As per page no. 134 of the reply]	17.01.2024 [As per page no. 138 of the reply]
Total Consideration / Total Amount paid by the complainant	TSC: Rs.16,35,466/- (As per SOA dated 31.07.2024 on page no. 103 of the reply) AP: Rs.9,03,613/- (As per SOA dated 31.07.2024 on page no. 103 of the reply)	TSC: Rs.30,67,934/- (As per SOA dated 31.07.2024 on page no. 105 of the reply) AP: Rs.18,04,917/- (As per SOA dated 31.07.2024 on page no. 105 of the reply)
The complainants in the above complaint(s) has sought the following reliefs: <ol style="list-style-type: none"> 1. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement. 2. Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession. 3. Direct the respondent to set aside the cancellation of unit notice and also to not create any third party rights on the said unit. 4. Direct the respondent to accept the further amount due from the complainant. 5. Direct the respondent not to charge any penalty/ interest from the complainant. 6. Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant. 7. Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval. 		
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)		

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the

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promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1430/2024 titled as Apurv Sud V/S Emaar MGF Land Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Colonnade", Sector 66, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	2.25 acres
4.	DTCP license no.	163 of 2008 dated 19.08.2008 valid up to 18.08.2020
5.	Name of licensee	Logical Developers Pvt. Ltd
6.	RERA Registered/ not registered	156 of 2017 dated 28.08.2017 valid up to 31.01.2028
7.	Unit no.	CHC R-02-006, 2 nd floor (As per letter of offer of possession dated 14.07.2023 on page no. 54 of the complaint) (Note: As per letter of offer of possession unit no. has been revised to CHC R-02-006, 2 nd Floor from CHC R-FF-006, First Floor)
8.	Unit area admeasuring	181.14 sq. ft. (Super area) (As per letter of offer of possession dated 14.07.2023 on page no. 54 of the complaint)

		(Note: As per letter of offer of possession area of the unit has been revised to 181.14 sq. ft. from the earlier area of 183 sq. ft.)
9.	Allotment letter	22.04.2015 (As per page no. 22 of the complaint)
10.	Date of buyer's agreement	12.10.2016 (As per page no. 28 of the complaint)
11.	Possession clause	16. POSSESSION (a) Time of Handing over the possession: (i) The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession") (As per page no. 42 of the complaint)
12.	Date of start of construction	29.05.2017 (As per page no. 50 of the complaint)
13.	Due date of possession	August, 2020 (Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.) (Inadvertently mentioned as February, 2020 in proceedings dated 24.07.2025)

14.	Total sale consideration	Rs.16,35,466/- (As per SOA dated 31.07.2024 on page no. 103 of the reply)
15.	Amount paid by the complainant	Rs.9,03,613/- (As per SOA dated 31.07.2024 on page no. 103 of the reply)
16.	Payment request letter	08.05.2017, 28.06.2017, 20.07.2017 & 10.04.2019 (As per page no. 99-102 of the reply)
17.	Reminder letter	03.05.2019 & 24.08.2023 (As per page no. 96-97 of the reply)
18.	Occupation Certificate	31.03.2022 (As per page no. 113 of the reply)
19.	Offer of possession	14.07.2023 (As per page no. 54 of the complaint)
20.	Final notice letter	09.10.2023 (As per page no. 96 of the reply)
21.	Cancellation notice	17.01.2024 (As per page no. 134 of the reply)

B. Facts of the complaint:

8. The complainant has made the following submissions:

- I. That the complainant is a law abiding citizen of India and currently residing at Flat No. 58, Palm Grove Apartment, Plot No. F-5, F Block, Sector 50, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301.
- II. That the respondent company announced the takeover of the commercial colony project "Colonnade" from "Baani The One" in 2012, located at Sector 66, District Gurugram, Haryana, under license no. 153 of 2008 issued by DTCP, Haryana, Chandigarh.
- III. That the complainant initially booked a unit from Baani Group, which was later transferred to the respondent and the same has been confirmed by the respondent on 22.04.2015.

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- IV. That relying on representations and assurances by the respondent, the complainant was allotted a unit in the project on 22.04.2015, confirmed via email of provisional allotment.
- V. That the builder buyer's agreement was executed between the complainant and the respondent on 22.05.2016, with a commitment to hand over possession by December 2019, as per clause 16 (a) (i) of the BBA.
- VI. That the complainant made timely payments towards all demands raised by the respondent between the time of booking and in 2019.
- VII. That the respondent failed to deliver possession by the agreed-upon date and did not provide reasons despite multiple attempts by the complainant to contact them.
- VIII. That after sending a representation dated 11.05.2023, demanding refund/interest/compensation and damages, there was no response from the respondent.
- IX. That the respondent suddenly offered possession to the complainant without addressing concerns regarding project delay and lack of communication.
- X. That the respondent demanded Rs.7,33,460/- contrary to the agreed payment plan, without addressing the complainant's objections.
- XI. That despite attempts to contact the respondent, they continued to demand further payments without addressing the complainant's concerns.
- XII. That upon inquiry, the respondent informed the complainant that their unit had been cancelled arbitrarily vide notice dated 17.01.2024.



- XIII. That the carpet area was never disclosed to the complainant and the location and floor of the unit were changed without prior approval, leading to financial loss and disappointment.
- XIV. That the complainant paid PLC charges of Rs.700/- per sq. ft. which became futile due to the changes in the layout and the floor made by the respondent. The demands for delayed payment, maintenance charges, and other fees were imposed arbitrarily, causing harassment to the complainant.
- XV. That the respondent failed to provide satisfactory response regarding the status of the agreement, construction progress, and delivery of possession despite repeated inquiries by the complainant.
- XVI. That the complainant was not permitted to visit the construction site despite several requests, leading to loss of time and money invested.
- XVII. That due to the respondent's actions, the complainant approached the Hon'ble Authority seeking redressal of grievances and relief.
- XVIII. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.



- XIX. That the complainant is the one who has invested his life-savings in the said project and are dreaming of a unit for themselves and the respondent has not only cheated and betrayed him but also used his hard-earned money for their enjoyment.
- XX. The complainant after losing all the hope from the respondent company, having his dreams shattered of owning a shop & having basic necessary facilities in the vicinity of the Colonnade project and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance.
- XXI. That the present complaint is within the prescribed period of limitation. The complainant has not filed any other complaint before any other forum against the respondent and no other case is pending in any other court of law. Hence, the present complaint.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent to set aside the cancellation of unit notice and also to not create any third party rights on the said unit.
 - ii. Direct the respondent to accept the further amount due from the complainant.
 - iii. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.
 - iv. Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession.

- v. Direct the respondent not to charge any penalty/ interest from the complainant.
- vi. Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant.
- vii. Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.

D. Reply by the respondent:

10. The respondent has contested the complaint on the following grounds:

- a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 12.10.2016, as shall be evident from the submissions made in the following paras of the present reply.
- b. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the possession was offered to the complainant on 14.07.2023. The complainant has refrained from taking the possession of the unit in question due to his own selfish motives, based on incorrect facts, interpretation and to avoid payment of outstanding dues against the unit in question.
- c. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the

disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.

- d. That the complainant had approached the respondent and expressed an interest in booking a commercial unit in the commercial complex developed by the respondent known as "Colonnade". Prior to making the booking, the complainant conducted extensive and independent enquiries with regard to the project and it was only after he was fully satisfied about all aspects of the project, he took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- e. That thereafter the complainant vide an application form, applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no FF-006, admeasuring 183 sq. ft., in the project vide provisional allotment letter dated 22.04.2015. The complainant consciously and willfully opted for an Installment payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favor. The complainant further undertook to be bound by the terms and conditions of the application form/allotment letter.
- f. That thereafter, buyer's agreement dated 12.10.2016 was executed between the complainant and the respondent for unit 'CHC-R-FF-



006' whereas it was specifically mentioned in the annexure 5 of the buyer's agreement that the 1st floor plan was approved as a 2nd floor in the building plan, leading to change in nomenclature. According to the approved building plans there were some revisions/modifications leading to the change in nomenclature of the floors from Lower Ground Floor (LGF), Upper Ground Floor (UGF), First Floor (FF) and Second Floor(SF) to Ground Floor (GF), First Floor(01), Second Floor(02) and Third Floor(03), respectively. Therefore, only the nomenclature of floor has been changed, the location of the units as well as physical level of the units remains same. It is pertinent to note that the delay in signing the buyer's agreement was solely attributable to the complainant, who had to be sent numerous reminders for the execution of the buyer's agreement.

- g. That the complainant was irregular in payment of instalments. The respondent was constrained to issue reminders and letters to him, requesting to make payment of demanded amounts. Payment request letters, reminders etc. were sent to the complainant by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainant to timely discharge their outstanding financial liability but to no avail. Statement of account correctly maintained by the respondent in due course of its business depicting delay in remittance of various payments by the complainant.
- h. That the complainant is not an "allottee" but an Investor who has booked the unit in question as a speculative investment, in order to earn rental income/profit from its resale. The unit in question has

been booked by the complainant as a speculative investment and not for the purpose of self-use. Therefore, no equity lies in favour of the complainant.

- i. That the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 16 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the unit would be handed over within 42 months from August 2016 or date of start of construction, whichever is earlier, plus grace period of 4 months. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. The complainant has defaulted in timely remittance of the instalments and hence the date of delivery of possession is not liable to be determined, in the manner, sought to be done by the complainant. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. The filing of the present complaint is nothing but an abuse of the process of law.
- j. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 10.12.2021 subsequently submitted composition fee vide letter dated 18.02.2022. Occupation

Certificate was thereafter issued by the concerned statutory authority in favour of the respondent on 31.03.2022. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- k. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the

scope of the Buyer's Agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- l. That the complainant was offered possession of the unit in question through letter of offer of possession dated 14.07.2023 to take the possession. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. However, the respondent credited a sum of Rs.51,445/- as delay compensation to the complainant and Rs.23,997/- on account of anti-profiting, which was duly accepted by the complainant without any demur or protest. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
- m. That the complainant has filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in

order to make it succumb to their unjust and illegitimate demands. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

11. 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:

12. The objection raised by the respondent regarding rejection of complaint on ground of subject matter 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.

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

F. Finding on objections raised by the respondent:

F.1 Objection regarding the complainant being investor.

14. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer and he has paid a total price of Rs.9,03,613/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

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

16. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties 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."

17. 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."

18. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to set aside the cancellation of unit notice and also to not create any third party rights on the said unit.

G.II Direct the respondent to accept the further amount due from the complainant.

19. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

20. In the instant complaint, the unit of the complainant was cancelled by the respondent vide cancellation notice dated 17.01.2024 on account of

non-payment of outstanding dues. The counsel for the respondent vide proceedings of the day dated 24.07.2025 that the respondent is willing to reinstate the unit and handover the possession after payment of outstanding amount along with interest on delayed payments. The counsel for the complainant also confirmed during the proceedings dated 24.07.2025 that the complainant is also willing to take the physical possession of the allotted unit and to pay the outstanding amount after adjustment of delayed possession charges.

21. In view of the above-stated facts, the cancellation notice dated 17.01.2024 is set-aside and the respondent is directed reinstate the allotted unit of the complainant within a period of 30 days from the date of this order.

22. The respondent is further directed to issue a revised SOA after the adjustment of delayed possession charges. The complainant is directed to the outstanding amount, if any, after the adjustment of delayed possession charges in next 30 days from the date of issuance of revised SOA. The interest on outstanding amount towards the complainant/allottee shall be levied by the respondent-promoter at an equitable rate of interest.

G.III Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.

G.IV Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession.

G.V Direct the respondent not to charge any penalty/ interest from the complainant.

23. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

24. 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."

25. Clause 16(a) of buyer's agreement dated 12.10.2016 provides for handing over of possession and is reproduced below:

a) Time of Handing over the possession:

(i) The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession")

26. 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 42 months from August, 2016 with grace period of 4 months. Thus, the due date of possession comes to June, 2020. But as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, a grace period of six months has been allowed by the Authority. Therefore, the due date of possession comes to August, 2020.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the 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.

28. 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.
29. 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., 21.08.2025 is @ 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. 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.
31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
32. 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 is August, 2020 but the offer of possession was made on 14.07.2023. 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 due date of handing over the possession i.e., August, 2020 till offer of possession (14.07.2023) after obtaining occupation certificate plus two months i.e., 14.09.2023 at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.VI Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant.

G.VII Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.

33. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

34. The Authority has gone through the apartment buyer's agreement dated 12.10.2016 and observed that as per payment plan (Annexure-III) on page no. 73 of the reply total sale consideration includes basic sale consideration, Preferential Location Charges(PLC), External Development charges(EDC), Internal Development charges(IDC) and IFMS. In clause 2.2(d) of the buyer's agreement, it is mentioned that due to change/revision in layout/building plan if the unit ceases to be preferentially located, then the respondent company shall be liable to refund/adjust the amount of PLC without interest. The respondent has mentioned in the facts of the complaint that the complainant has paid an

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amount of Rs.700/- sq. ft. as PLC charges which became futile due to changes in the layout and the floor made by the respondent.

35. 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 12.10.2016, 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 12.10.2016.

H. Directions of the Authority:

36. Hence, the authority hereby passes this order and issue 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 of 2016:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. August, 2020 till 14.07.2023 i.e., expiry of 2 months from the date of offer of possession (14.09.2023). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of delayed possession charges.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of

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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.

- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by *Hon'ble Supreme Court* in *Civil Appeal Nos. 3864-3889/2020* decided on **14.12.2020**.

37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

38. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

39. Files be consigned to the registry.

V.I. 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.08.2025