

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

**Complaint no.:** 4719 of 2024  
**Date of filing:** 08.10.2024  
**Date of order:** 21.08.2025

Uponder Phaugat

**R/o:-** House No. 3948, Sector-23, Gurugram, Haryana-122017.

**Complainant**

Versus

M/s Pareena Infrastructures Private Limited

**Regd. Office at:-** C7A, 2<sup>nd</sup> Floor, Omaxe City Centre Mall, Sohna Road, Sector-49, Gurugram, Haryana.

**Also at:** Flat no.2, Palms Apartment, Plot no.13B, Sector-6, Dwarka, New Delhi-110075.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Anand Dabas (Advocate)

Shri Prashant Sheoran (Advocate)

**Complainant**

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

2. The particulars of the project, the details of 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. N.	Particulars	Details
1.	Name and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Residential
3.	Project Area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 Valid up to 11.03.2029
5.	Name of licensee	M/s Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered</b> GGM/419/151/2020/35 of 2020 dated 16.10.2020 Valid up to 11.03.2024
	RERA Extension no.26 of 2024	RC/REP/HARERA/GGM/35 dated 11.12.2024 Valid upto 11.03.2025
	Further Extension u/s 7(3) of the Act, 2016	RC/REP/HARERA/GGM/35 of 2020/7(3)/655/2025/07 dated 28.03.2025 Valid upto 10.03.2029
7.	Unit no.	T-3/802 on 8 <sup>th</sup> Floor, Tower-3 (As per page no.16 of the complaint)
8.	Unit area admeasuring	1997 sq. ft. (As per page no.16 of the complaint)
9.	Date of execution of flat buyer's agreement	06.04.2014 (As per page no.14 of the complaint)
10.	Possession clause	<b>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is to be located with 4 years of the start of construction or execution of this agreement whichever is later...</b> <b>and</b> <b>5.1 In case within a period as provided hereinabove, further extended by a</b>



		<p>period of 6(six) months if so required by the developer, if the developer is unable to complete construction of the said flat as provided ...</p> <p style="text-align: right;"><b>[Emphasis Supplied]</b></p> <p>(As per page no. 27 &amp; 30 of the complaint)</p>
11.	Date of start of construction (excavation)	<p>16.10.2014</p> <p>(as mentioned in demand letter dated 05.02.2016 at page 22 of reply)</p>
12.	Due date of possession	<p><b>16.04.2019</b></p> <p>[16.10.2018 + grace period of 6 months]</p> <p>(Note: Due date to be calculated 4 years from the date of start of construction i.e., 16.10.2014, being later.)</p>
13.	Total sale consideration	<p>Rs.1,20,41,924/-</p> <p>(As per summary of payments on page no. 39 of the complaint)</p>
14.	Amount paid by the complainant-allottee	<p>Rs.1,28,01,125/-</p> <p>(As mentioned in applicant ledger dated 17.08.2024 at page no.56 of complaint)</p>
15.	Occupation certificate/ completion certificate	<p>13.12.2022</p> <p>(As per page no.7 of reply in CR/5762/2023, also as confirmed by the counsel for the respondent during the proceedings.)</p>
16.	Offer of possession	<p><b>14.12.2022</b></p> <p>(at page 5 of the complaint as apprised by the counsel of the respondent)</p>
17.	Credit note given by the respondent on account of TDS and Against Scheme	<p><b>Rs.6,42,176/-</b></p> <p>[Rs.5,24,216/- against scheme + Rs.1,17,960/- against TDS]</p> <p>(as details mentioned in applicant ledger at page 56-59 of complaint)</p>

**B. Facts of the complaint:**

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

- i. That the project named "Coban Residence", which is the subject matter of present complaint, is situated at Sector-99A, Village Gopalpur, Gurugram,

Haryana. Therefore, the Authority possesses the jurisdiction to try and decide the present complaint. That the above-mentioned project consists of residential units, and the respondent is the developer of the aforesaid project and have developed, sold, and marketed the aforesaid project.

- ii. That in the year 2013, the respondent, through its agents approached the complainant with an offer to buy a residential apartment in its above-mentioned project for a basic sale price of Rs.98,79,159/-. Accordingly, the complainant paid a sum of Rs.8,50,000/- vide cheque no. 77083 dated 22.01.2013.
- iii. That the respondent arranged the visit of its representatives with the complainant wherein they also assured the complainant that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and it would hand over the residential apartment. Relying upon those assurances and believing them to be true, the complainant booked a residential apartment bearing no. T3/802 in the aforementioned project having a super area of 1997 sq. ft. at the rate of Rs.4947/- per sq. ft. It was assured and represented to the complainant by the Respondent that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on time and accordingly, the complainant had paid Rs.20,49,096/- as part payment in respect of the total sales consideration for the aforementioned apartment.
- iv. That the respondent no.1 assured the complainant that it would execute the builder buyer agreement at the earliest and maximum within one week. However, the respondent did not fulfill its promise and have not executed the agreement as agreed by it.
- v. Thereafter, the complainant requested the respondent to allot the promised shop and to execute the required agreement for the same, however, the



respondent ignored the request of the complainant and did not execute the required agreement for some time. Upon the regular follow ups of the complainant, the respondent had executed the apartment buyer agreement dated 06.04.2014 allotting the aforesaid apartment in favor of the complainant.

- vi. That thereafter, the respondent started raising the demand of money instalments from the complainant, which was duly paid by the complainant as per agreed timelines and the complainant fulfilled all the demands on time. The complainant as on today has paid Rs.1,28,01,125/- towards the sale consideration of the unit. In accordance of clause 1.2(b)(vii), the complainant is entitled to a "timely payment rebate" (TPR) of Rs.110/- per sq. ft. for the area of the unit on basic sale price of the unit. The respondent has denied this rebate to the complainant even though all the payments were done on or before the due dates and thus, liable to pay a sum of Rs.2,19,670/- on this account to the complainant.
- vii. Further vide a letter dated 27.10.2016, the respondent acknowledged the timely payments by the complainant and promised to provide a loyalty bonus of Rs.5,99,100/- (@ Rs.300/- per square feet). this promise was also not fulfilled and only seven instalments out of eight were adjusted against the total payments done by the complainant. That the respondent has not paid a sum of Rs.74,888/- on account of loyalty bonus as promised and are liable to make a payment of Rs.74,888/- to the complainant on this account.
- viii. That the project developed by respondent falls under the category of residential apartment and as per clause 3.1 of the said apartment buyer agreement, the date of possession with respect to the said unit was promised within 4 years + 6 months from the date of execution of the agreement and the proposed date of possession comes out to be 06.10.2018.

- ix. That on 14.12.2022, the representatives acting on behalf of the respondent issued an email to the complainant with an offer of possession wherein a final demand was raised, which was paid within the due date by the complainant. In the same communication it was informed that it would take 45 days after the final payment, to make the said apartment ready for final handover after which a possession letter would be provided. However, even after multiple follow ups and visits to the site, the said unit was not finished. Finally, after multiple requests, a written confirmation was received via email dated 13.06.2024 that the unit is ready for physical possession.
- x. That on 11.10.2023, the representatives acting on behalf of the respondent issued an email to the complainant stating that the subject unit of the complainant is ready for its physical handover and possession however the respondent begin demanding the complainant to come forward and submit an indemnity bond only then, he shall be provided with the possession of his unit. Thereafter, even after several clarifications and deliberations among both the parties, the respondent did not provide the actual physical handover of the possession of the subjected unit of the complainant.
- xi. That the complainant replied to aforesaid email dated 11.10.2023 vide his email dated 16.10.2023 whereby deficiencies in the unit were informed to the respondents and it was stated that before proceeding for physical handover, all these deficiencies must be made good. However, the respondent deliberately did not reply to the email dated 16.10.2023.
- xii. That on 13.06.2024, the representatives acting on behalf of the respondent issued another email to the complainant stating that the subject unit of the complainant is ready for its physical handover and possession however, the respondent begin demanding the complainant to come forward and submit an indemnity bond only then, he shall be provided with the possession of his unit.



- xiii. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said unit, which amounts to unfair trade practice, which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said unit by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said unit on the basis of its false and frivolous promises and representations about the delivery timelines aforesaid commercial project.
- xiv. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his residential apartment on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments.
- xv. That the cause of action accrued in favor of the complainant and against the respondent in April 2014 when the complainant had booked the said unit and it further arose when respondent failed /neglected to deliver the said unit on the agreed date. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not handed over the possession of the unit as agreed.
- xvi. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

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

4. The complainant has filed the present complaint for seeking following relief(s):
- Pass an order to direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.1,28,01,125.25/-

towards the sale consideration paid by the complainant as sale consideration of the said unit from the date of payment till the date of delivery of possession.

- ii. Pass an order to direct the respondent to pay a sum of Rs.2,19,670/- along with prescribed rate of interest on account of "timely payment rebate" (TPR) to the complainant in accordance of clause 1.2(b)(vii) of the builder buyer agreement.
  - iii. Pass an order to direct the respondent to handover the vacant and peaceful possession of the residential unit allotted to the complainant.
  - iv. Pass an order to direct the respondent to executed the conveyance deed in favor of the complainant in respect of the residential apartment.
  - v. Any other relief/ order or direction which this Hon'ble Authority may deems fit and proper considering the facts and circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 present complaint on the following grounds:
- i. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residence" at sector 99A.
  - ii. That the complainant's claims regarding delayed construction and non-completion of the project are based on an incorrect and incomplete understanding of the facts. The delays in the project were primarily due to force majeure events, which were beyond the control of the respondent. Additionally, the complainant's consistent failure to make timely payments, as stipulated by the terms of the agreement, contributed significantly to the delays.



- iii. The complainant has consistently failed to make the payments in accordance with the agreed timelines, and on several occasions, the amounts paid were insufficient. This has resulted in a breach of the terms outlined in the agreement. The demand letters corresponding to these payments are annexed herewith as Annexure-R1 for the reference. Furthermore, the complainant has erroneously claimed entitlement to the Timely Payment Rebate (TPR). It is important to note that the complainant would only be eligible for the TPR if he had adhered to the agreed payment schedule, particularly with regard to the timely payment of the initial 40% of the total amount due towards the unit. As the complainant has failed to fulfill this crucial requirement, he is not entitled to the TPR, and his claim in this regard is without merit. The respondent has always acted in accordance with the terms and conditions of the agreement, and it is the complainant's failure to meet the payment obligations that has led to the present situation. The complainant's attempt to seek a rebate under these circumstances is unjustified and should not be entertained. Below is a list of defaults in payment for the initial 40% of the payment.

S. n.	Demand stage	Amount demanded	Demand date	Due date	Payment made	Date of payment	Status
1.	On start of excavation	12,69,680	01.10.14	15.10.14	12,69,680	16.10.14	Late payment
2.	On completion of stilt floor roof	9,43,545	05.02.16	25.02.16	9,00,000	24.02.16	Insufficient Payment
3.	On completion of 6 <sup>th</sup> floor roof slab	9,60,500	08.09.16	28.09.16	8,94,719 + 6,467 + Credit note - 59,315	27.09.16 24.10.16	Late payment

- iv. It is submitted that despite repeated reminders and emails sent by the respondent, the complainant has consistently failed to submit the required indemnity bond and has not come forward to take possession of the unit. The respondent has made several offers for possession, but the complainant has not taken any steps to complete the necessary formalities or to take possession. While the respondent has acted in good faith and offered

possession on multiple occasions, it is the complainant's failure to respond or act in a timely manner that has led to delays.

- v. Moreover, it is important to note that certain force majeure events beyond the control of the respondent have contributed to delays in the possession process. Therefore, it is unfair for the complainant to now claim that the respondent is solely responsible for any delay in possession, as the complainant's failure to take the necessary steps has played a significant role. The complainant's allegations regarding the delay should be disregarded, as they are a result of both their own inaction and external factors beyond the respondent's control.
- vi. That the prescribed period of 4 years is however subject to force majeure circumstances. It is submitted that there were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondent, which directly impeded the ability and even the intention of the respondent to continue with the development and construction work of the said project. It will be detailed hereinafter that on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed.
- vii. That the total number of days for which despite of their being an absolute willingness on the part of respondent, respondent could not raise construction; totals to 141 days. The details of these notifications, judicial orders et cetera are:
- Delay in construction due to various orders/ restrictions dated 07.04.2015, 08.11.2016, 19.07.2017, 07.11.2017, 29.10.2018, 24.07.2019 & 11.10.2019 passed by National Green Tribunal, New Delhi and other competent authorities for protecting the environment of the country.
  - Ban in construction due to various court orders as well as government guidelines.
  - The major outbreak of Covid-19.



- viii. That completion of the project shall be considered as 4 years after addition of force majeure circumstances. The date of grant of environmental clearance which was granted on 15.03.2016. Thus, from the above detailed 141 days should be added to the period of 4 years. Similarly on account of corona virus pandemic HRERA granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01.04.2021 to 30.06.2021. That even Town and Country Planning extended the period of 6 months from 01.03.2020 to 30.09.2020 and further 2 months from 01.04.2021 to 31.05.2021 and imposed moratorium for the period qua all the real estate projects for all purpose and intents as stipulated in those notifications and the present project is squarely covered under said notifications and is entitled for benefits provided in said notifications.
- ix. That whenever construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/MCG/Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to resume construction activity. It is submitted that whenever construction activity remains in abeyance for a longer period of time, then the time required to gather resources and re-commence construction; also became longer, which further wasted considerable time. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.
- x. That letter dated 27.10.2016 was given as loyalty bonus but same cannot be claimed as matter of right. That the complainant has failed to make payments in accordance with the agreed timelines and has been in default since the beginning. That, pursuant to Clause 1.2(b)(vii), the complainant is

not entitled to the timely payment rebate as he failed to make the initial 40% payment within the agreed or specified time. Therefore, the respondent is not liable for the timely payment rebate. Additionally, the loyalty bonus provided by the respondent was offered as a goodwill gesture in recognition of the relationship between the complainant and respondent. However, due to the complainant's failure to make payments within the agreed time, the final installment was not credited to the complainant's account and respondent is entitled to revert already credited amount.

- xi. It is denied that the respondent deliberately did not reply to the email dated 16.10.2023. That there were no deficiencies in the aforementioned unit as claimed in the email. Furthermore, once the occupancy certificate for the unit has been obtained by the promoter, it signifies that the unit is in a habitable condition. The allegations made by the complainant in the aforementioned email are entirely baseless.
  - xii. That the complainant has failed to sign and submit the indemnity bond and other documents demanded by the documents despite receiving multiple reminders. This failure on the part of the complainant has resulted in a delay in the handover of possession. That respondent only requested to issue indemnity bond never refused to hand over possession. That indemnity bond can be modified and the one which was shared was only for reference.
7. All other averments made in the complaint were denied in toto.
8. 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 submissions made by the parties.

**E. Jurisdiction of the authority**

9. 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**

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

**E.II Subject-matter jurisdiction**

11. 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.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Objections raised by the respondent:****F.I. Objection regarding force majeure circumstances**

13. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. Firstly, the Authority has gone through the possession clause of the agreement and observed that the respondent-promoter proposes to handover the possession of the allotted unit within 4 years from the date of start of construction or date of execution of buyer's agreement, whichever is later." In the present case, the buyer's agreement was executed between the parties on 06.04.2014 and the date of start of construction is 16.10.2014 (as mentioned in demand letter dated 05.02.2016 at page 22 of reply), So the due date is calculated from the date of start of construction, being later, which comes out to 16.10.2018, It is further provided that as per clause 5.2 of agreement that the promoter is entitle to a grace period of six (6) months. Therefore, the said grace period of 6 months is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh, in ***Appeal No. 433 of 2022 titled as Emaar MGF Land Limited Vs Babita Tiwari and Yogesh Tiwari***, wherein it has been held that if the allottee wishes to continue with the project, it means he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement. Therefore, the due date of handing over of possession comes out to be 16.04.2019 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no



period over and above grace period of 6 months can be given to the respondent-builders. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

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

- G.I. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.1,28,01,125/- towards the sale consideration paid by the complainant as sale consideration of the said unit from the date of payment till the date of delivery of possession.**
- G.II Direct the respondent to handover the vacant and peaceful possession of the residential unit allotted to the complainant.**
- G.III Any other relief/ order or direction which this Hon'ble Authority may deems fit and proper considering the facts and circumstances of the present complaint.**

14. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. In the present complaint, vide letter of provisional allotment dated 27.11.2013, the complainant was provisionally allotted a unit bearing no.802 at 8th floor in tower-T3, admeasuring area of 1997 sq. ft. super area. However, the buyer's agreement was executed on 06.04.2014 inter-se parties for the unit bearing no.802 at 8th floor in tower-T3, admeasuring area of 1997 sq. ft. super area for total sale consideration of Rs.1,20,41,924/- against which the complainant-allottee has paid an amount of Rs.1,28,01,125/- (includes Rs.6,42,176/- credit note given by the respondent against the scheme and TDS) till December, 2022, which constitutes more than the total sale consideration. The complainant has opted for construction linked payment plan. In the present complaint the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

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

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

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

16. Clause 3.1 and 5.1 of the buyer's agreement dated 06.04.2014 provides the time period of handing over possession and the same is reproduced below:

3.1 That the developer shall, under normal conditions, subject to force majeure, **complete construction of tower/building in which the said flat is to be located with 4 years of the start of construction or execution of this agreement whichever is later...**

5.1 In case within a period as provided hereinabove, **further extended by a period of 6(six) months, if so, required by the developer, if the developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement...**

**(Emphasis Supplied)**

17. **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, she shall be paid, by the promoters, 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.

18. 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.

19. 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%.



20. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant Section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. 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 her in case of delayed possession charges.

22. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 4 years from the start of construction or execution of agreement, whichever is later. The builder buyer agreement was executed between the parties on 06.04.2014 whereas construction (excavation) was started by the respondent is 16.10.2014. Therefore, the date of start of construction, being later, the due date of possession was calculated from the date of start of construction. Accordingly, the due date of possession comes out to be 16.10.2018. It is further provided in agreement that the promoter is entitle to a grace period of six (6) months. Therefore, the said grace period of 6 months is allowed in terms of order dated 08.05.2023 passed by the Hon'ble

Haryana Real Estate Appellate Tribunal, Chandigarh, in ***Appeal No. 433 of 2022 titled as Emaar MGF Land Limited Vs Babita Tiwari and Yogesh Tiwari***, wherein it has been held that if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided to the agreement. Therefore, the due date of handing over of possession comes out to be 16.04.2019 including grace period of 6 months. The occupation certificate was granted by the concerned authority on 13.12.2022 and thereafter, the possession of the subject unit was offered to the complainant on 14.12.2022 through email. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer the possession of the subject unit to the complainant-allottee and there is failure on part of the respondent-promoter to fulfil its obligation and responsibilities as per the buyer's agreement 11.12.2013 to handover the possession within the stipulated period.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.12.2022. The respondent offered the possession of the unit in question to the complainant only on 14.12.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 month's time from the date of offer of possession. These two months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents



including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking of possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (14.12.2022) which comes out to be 14.02.2023.

24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 10.85% p.a. w.e.f. 16.04.2019 till the expiry of 2 months from the date of offer of possession (14.12.2022) which comes out to be 14.02.2023 as per provisions of Section 18(1) of the Act read with rule 15 and Section 19(10) of the Act.

25. Further, as per Section 19(10) of the Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainant is obligated to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months. Also, the respondent shall handover the possession of the allotted unit as per specifications of the buyer's agreement entered into between the parties.

**G.IV Direct the respondent to executed the conveyance deed in favor of the complainant in respect of the residential apartment.**

26. The complainant is seeking direction to respondent to execute the conveyance deed of the allotted unit in favour of the complainant. The respondent has offered the possession dated 14.12.2022 of the subject unit in question. Whereas the possession was offer after obtaining of occupation certificate on 13.12.2022 as per clause 4.3 of the agreement dated 06.04.2014, the respondent shall prepare and execute along with allottee(s) a conveyance

deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment.

27. It is to be further noted that Section 11 (4) (f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.

28. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17(1) of the Act provide for transfer of title.

29. As occupation certificate of the unit has been obtained from the competent authority on 13.12.2022, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the conveyance deed of the allotted unit in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

**G.V Direct the respondent to pay a sum of Rs.2,19,670/- along with prescribed rate of interest on account of "timely payment rebate" (TPR) to the complainant in accordance of clause 1.2(b)(vii) of the builder buyer agreement.**

30. In the present complaint, the complainant is claiming benefit of Rs.2,19,670/- on account of "timely payment rebate" to be given to the him, in accordance of clause 12(b)(vii) of the buyer's agreement dated 06.04.2014.

31. It has been observed by the Authority, that as per clause 12(b)(vii) (b) and (d) of the buyer's agreement dated 06.04.2014, the complainant-allottee is entitled for timely payment rebate "TPR" @Rs.110/- per sq. ft. for the area of





the unit, only in the case, if the allottee make all the payments of all the due instalments, within the specified time, for the initial 40% amount of basic sale price. It is further observed by the Authority that as per clause 12(b)(vii) (c) of the buyer's agreement dated 06.04.2024, it is also agreed between parties that in case, if the allottee has defaulted and delayed even any single payment for the initial 40% amount of basic sale price, the allottee is not entitled for any amount/ credit note on account of timely payment rebate even for the previous instalments.

32. In the present complaint, neither the complainant nor the respondent, have provided the demand letters w.r.t demands raised for the initial 40% of basic sale price, by which it can be determined that what is the due date for the said payment and the said payment was made by the complainant well within time or not. Therefore, due to lack of documents on record, the Authority cannot deliberate the issue w.r.t entitlement of allottee for time payment rebate in terms of buyer's agreement dated 06.04.2014.

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

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

- i. The respondent is directed to pay interest to the complainant against the actual amount paid by him from his own pocket at the prescribed rate of 10.85% per annum for every month of delay from the due date of possession (including grace period of 6 months) i.e., 16.04.2019 till offer of possession (i.e., 14.12.2022) plus two months i.e., 14.02.2023, as per Section 18(1)(a) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of the 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, *ibid*.

- ii. 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 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(zd) of the Act.
  - iii. The respondent is directed to handover the physical possession of the allotted unit to the complainant complete in all aspect of buyer's agreement.
  - iv. The respondent is further directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant.
  - v. The respondent-promoter shall not charge anything from the complainant which is not the part of buyer's agreement.
34. Complaint stands disposed of.
35. File be consigned to registry.

Dated: 21.08.2025

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory  
Authority, Gurugram