

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

**Complaint no.:** 4084 of 2023  
**Order reserved on:** 21.08.2025  
**Order pronounced on:** 11.09.2025

**Mohammad Akil Ahmad**

**R/o:** - Plot No. 35, Flat No. 401, ZAkir Nagar West, New  
Delhi- 110025

**Complainant****Versus****M/s Sepset Properties Private Limited**

**Regd. Office at:** - 11<sup>th</sup> floor, Paras Twin Towers, Sector-  
54, Golf Course Road, Gurugram, Haryana - 122002

**Respondent****CORAM:****Shri Vijay Kumar Goyal****Member****APPEARANCE:****Shri Gaurav Bhardwaj, (Advocate)****Complainant****Shri Yugantar Chauhan, (Advocate)****Respondent****ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and Regulations made 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Paras Dewes", Sector-106, Gurugram
2.	Nature of project	Group housing colony
3.	RERA registration	Registered 118 of 2017 dated 28.08.2017 Valid up to 31.01.2022 (31.07.2021 + 6 months extension in lieu of Covid-19)
4.	DTCP license	61 of 2012 dated 13.06.2012
	Validity status	12.06.2025
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
5.	Unit no.	05, 18 <sup>th</sup> floor, tower-C (As per BBA page no. 56 of complaint)
6.	Unit admeasuring	1760 sq. ft. (super area)
7.	Allotment letter in favour of original allottee i.e., Mr. Sudhanshu Malhotra	10.01.2013 (Page no. 50 of complaint)
8.	Date of execution of Builder buyer agreement in favour of complainant herein	26.09.2013 (Page no. 53 of complaint)
9.	Tripartite agreement executed between the parties herein and the HDFC Limited	25.05.2021 (Page no. 90 of complaint)
10.	Possession clause	<b>3. Possession</b> <b>3.1</b> Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions. formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, <b>the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an</b>



		<p><b><i>additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser.....</i></b></p> <p><b><i>(Emphasis supplied)</i></b></p> <p>(Page No. 64 of complaint)</p>
11.	Environmental clearance	06.09.2013 (Page no. 23 of reply)
12.	Due date of delivery of possession	26.09.2017 (calculated from the date of execution of BBA being later including grace period of 6 months being unqualified)
13.	Total sale price	Rs.1,07,87,400/- (Page no. 96 of complaint)
14.	Total amount paid by the complainant	Rs.1,19,42,707/- (As per SOA dated 13.08.2021 page no. 95 of complaint)
15.	Maintenance agreement executed between the complainant herein and the maintenance agency	20.04.2021 (Page no. 109 of reply)
16.	Occupation certificate	15.01.2019 (Page no. 20 of reply)
17.	Offer of possession	24.01.2019 (Page no. 143 of reply)
18.	Conveyance Deed executed in favour of the complainant herein	13.08.2021 (Page no. 72 of reply)
19.	Possession certificate issued in favour of complainant herein	13.08.2021 (Page no. 97 of complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- That somewhere around Mid-2012, the respondent advertised about its new project namely "PARAS DEW'S" in Village Daultabad, Sector-106,

District Gurgaon, Haryana. The respondent painted a rosy picture of the project in their advertisement, making tall claims and representing that the project aims to provide exclusive luxury homes featuring the highest design standards and premium amenities.

- b) That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 29.12.2012, the complainant booked a unit in the said project by making a payment of Rs.7,50,000/- against the purchase of the said unit. The complainant purchased the said unit from its erstwhile owner named Mr. Sudhanshu Malhotra. Subsequent to the said purchase, the endorsement has been made in the name of the complainant by the respondent and the complainant has stepped into the shoes of the previous buyer.
- c) That on 10.01.2013, the respondent sent an allotment letter allotting the flat bearing no. 1805, Tower-C, 18th floor measuring 1760 sq. ft. at a basic price of Rs.5250/- per sq. ft. in the residential colony known as 'Paras Dew's', Sector-106, Gurugram. Thereafter, the complainant and respondent executed a builder buyer agreement on 26.09.2013. Further, the complainant took a loan from HDFC bank in order to make the payment of the total sale consideration of the said unit.
- d) That believing on the respondent representation, the complainant kept on making payments as and when demanded by the respondent. Till date the complainant has paid a total sum of Rs.1,19,42,707/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs1,07,87,400/-. As per clause 17(a) of the said buyer's agreement, the respondent proposed to handover the possession of the unit in question within a period of 42 months within an extended period of 6 months from 09.08.2011 i.e. the date of start of construction along with an extended period of 6 months, i.e. by 09.08.2011. However, the respondent failed in handing over possession in accordance with the said agreement. However,



the respondent failed in handing over possession in accordance with the said agreement.

- e) That after 8 years of builder buyers agreement i.e., 26.09.2013, the possession letter of the allotted unit was issued by the respondent and occupation certificate was issued after so many years even after due date of possession. The respondent fraudulently kept the money of the complainant for so many years and never paid any interest for delay occupation certificate. The complainant after receiving the possession letter approached the respondent project to take the possession but to the utter shock of the complainant the project was nowhere near completion. Thereafter, the complainant contacted the respondent on several occasions regarding development of project and the date of delivery. However, no satisfactory answer was received from the respondent. That subsequently, the complainant kept making calls, requests and through several meetings kept inquiring as to when will the respondent deliver the project but the respondent's representatives never furnished a concrete answer to the same. The complainant time and again contacted the respondents expressing his concern over the delay in project and seeking an explanation from the respondent for the same, but to no avail.
- f) That the complainant vide several emails requested the respondent to handover the possession of the unit after completing the remaining construction of the project and the unit as the project was nowhere habitable till December, 2022 but the respondent failed to make the said project habitable. At the time of handing over of possession, the complainant requested the respondent to make the payment on account of delay possession charges as the project got delayed but the respondent gave false assurance to do the same. The respondent during the said period kept on demanding money and the same was demanded without attaining the stage of construction as per the payment plan but the complainant left

with no other option but to make the payment on time as per demand raised by the respondent.

- g) That while under clause 17(a) of the buyer's agreement, upon delay payment by the allottee, the respondent can charge Rs.5 per sq. ft. per month, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs.5/-per sq. ft. of the super area for the period of delay as per clause 13(a) of the said agreement.
- h) That the respondent highlighted and communicated that it will deliver the said unit to the complainant after completing with specifications and building/site layouts as mentioned in brochure, buyer's agreement, building/site layout plans etc. well within 42 months with an additional grace period of 6 (six) months from the date of execution of this agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to force majeure. But there was an inordinate delay in handing over the possession of the said unit.
- i) That the respondent is liable to pay delayed possession charges for every month of delay at the same interest rate at which he charged interest on account of delayed payment by the complainant. The respondent had made representations and tall claims that the project will be completed on time. The respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the said unit, the respondent had failed in providing the above mentioned several amenities, services as promised by the respondents at the time of execution of the agreement.
- j) That the present complaint has been filed in order to seek interest on the delayed possession along with the other reliefs as mentioned in the Relief clause of the complaint. As per section 11 (4) of the Act. 2016, the promoter is liable to abide by the terms and agreement of the sale. As per

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section 18 of the 2016, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. Accordingly, the complainant is entitled to get interest on the paid amount along with interest at the rate as prescribed by the Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession.

**C. Relief sought by the complainant**

4. The complainant has sought following relief(s):
  - I. Direct the respondents to pay the payment of delay interest charges;
  - II. Direct the respondents to charge delay payment charges at equitable rate of interest.
  - III. Direct the respondent to refund an amount of Rs.5,49,786/- taken on account of extra charges and further directing the respondent not to charge anything beyond builder buyer agreement.
  - IV. Direct the respondent to refund an amount of Rs.82,714/- charged on account of maintenance charges for a period of 01.01.2019 to March 01.01.2023.
5. 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 based on these undisputed documents and submissions made by the complainant.

**D. Reply by the respondent.**

6. The respondent contested the complaint on the following grounds:-
  - a) That the complainant has been himself guilty of not adhering to the payment schedule and had made most of the payment after passing of the respective due dates. The same is not permissible in terms of the Act, 2016 and in view of the same, the complaint merits ought to right dismissal.
  - b) That the complainant approached the authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts

pertaining to the case and by distorting and misrepresenting the actual factual situation with regard to several aspects. The complainant is not consumer and had purchased the subject unit for the purpose of investment. Further, he has not been successful in selling the subject unit at a premium rate in the market and have filed the present complaint to avoid outstanding dues against the subject unit

- c) That the respondent had already obtained the occupancy certificate for towers A and D of the project from the competent authority on 15.01.2019. Thus, no merit in the present complaint or the contention that there has been any delay on part of the respondent since it admittedly the complainant who has defaulted in payment of instalments as per the agreed payment plan.
- d) That the builder buyer agreement dated 26.09.2013 was executed between the parties and unit bearing no. 05, 18<sup>th</sup> floor in tower C, having super area admeasuring 1760 sq. ft., type 3BHK for the basic sale consideration of Rs.1,07,87,200/- was allotted to the complainant. The complainant has opted for construction linked payment plan. Thereafter, the complainant have availed the home loan with the financial institution namely, i.e., HDFC Bank Limited vide application dated 25.05.2021. The financial institution has disbursement a loan amount of Rs.30,00,000/- against the said unit.
- e) That the possession of the subject unit was to be handed over to the complainants in terms of clauses 3.1 and 3.2 of the builder buyer agreement dated 26.09.2013 which clearly provide that subject to the complainant complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due. The respondent proposed to offer the possession of the unit within a period of 51 months (42 month + grace period of 6 month plus 90 days) of the date of execution of the apartment buyer's agreement or date of



obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.

- f) That the present complaint is not maintainable since not only the complainant in breach of the builder buyer agreement, and also in violation of the Act, 2016 and the Rules, 2017 has filed this complaint. Section 19 lays down the rights and duties of the allottees and sub-clause (6) of Section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. The complainant has breached all these provisions by making a huge delay in making the payments as per the time specified in the agreement. The respondent further submitted that the complainant/allottee also under the right-duty, as per section 19(10) of the Act, 2016 to take possession of the allotted unit as the respondent company has obtained the occupation certificate on 15.01.2019 and the respondent has been offered the possession vide letter dated 24.01.2019. The respondent has brought to the notice of the Authority that the complainant and the respondent have also execute the conveyance deed on 13.08.2021. Thereafter, the complainant has also executed the maintenance agreement with the maintenance agency on 20.04.2021.
- g) That the respondent has suffered due to the breaches committed by the complainant since the said respondent has continued with the construction of the apartment despite the complainant not paying the complete consideration. Due to the failure of the complainant in paying the complete consideration, the respondent has suffered immense monetary hardship.
- h) That the Hon'ble Supreme Court, through an order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi-NCR region,

affecting the respondent's project which led to a significant reduction in construction activity for a considerable period. Similar stay orders were also issued in the preceding years, 2017-2018 and 2018-2019, resulting in long-term halts in construction activities. The pandemic of Covid-19 also had devastating effect on the worldwide economy, particularly on the industrial sector, including the real estate sector, which is heavily dependent on its labour force. Government-imposed lockdowns resulted in a complete stoppage of all construction activities in the NCR area until July 2020. The labour force employed by the respondent was forced to return to their hometowns, leading to a severe shortage of labour. The respondent has been unable to employ the necessary labour for the completion of the project.

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 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.
9. The respondent has filed the written submissions on 01.09.2025, which is taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority**

10. 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**

11. 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**

12. 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)(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.*

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 force majeure.**

14. The respondent-promoter raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 03.05.2013 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 06.09.2017 which is way before the abovementioned orders. 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 wrong.

15. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

16. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 06.09.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

**F.II Objection regarding the complainant being investor.**

17. The respondent has taken a stand that the complainant is the investor and not consumer, 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. The respondent also submitted that the preamble of the Act states that the Act is enacted to



protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. 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;"*

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred 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 promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

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

**G.I Direct the respondents to pay the payment of delay interest charges;**

**G.II Direct the respondents to charge delay payment charges at equitable rate of interest.**

19. 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.

20. The original allottee namely Mr. Sudhanshu Malhotra booked a unit in the project of the respondent namely i.e., "PARAS DEWS" situated in sector- 106, Gurugram. Vide allotment letter dated 10.01.2013, the original allottee allot a unit bearing no. 05, tower-C, 18<sup>th</sup> floor, admeasuring super area of 1760 sq. ft. Thereafter, the original allottee sale the subject unit to the complainant herein. The complainant herein and the respondent company has entered into an apartment buyer's agreement on 26.09.2013 for the unit no. 05, tower-C, 18<sup>th</sup> floor in the project of the respondent namely, "PARAS DEWS" admeasuring super area of 1760 sq. ft. for an agreed basic sale consideration of Rs.1,07,87,400/- against which complainant paid an amount of Rs.1,19,42,707/-. The occupation certificate of the project was obtained by the respondent/promoter on 15.01.2019 and thereafter, possession of the allotted unit on 24.01.2019 and ultimately leading to execution of conveyance deed of the same on 13.08.2021.
21. The Authority observes that the present complaint is barred by limitation or not as the occupation certificate was received on 15.01.2019 and offered the same on 24.01.2019. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 24.01.2019. The present complaint seeking delay possession charges and other reliefs was filed on 04.09.2023 which is 4 years 7 months and 11 days from the date of cause of action. It is also observed that the Hon'ble Supreme Court in its order dated **10.01.2022 in MA NO. 21 of 2022 of *Suo Moto Writ Petition Civil No. 3 of 2020*** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. In the present matter, the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 10.02.2024. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.



22. That the complainant intend to continue with the project and is seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 18(1) Proviso reads as under:

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

(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."**

*(Emphasis supplied)*

23. Clause 3.1 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

**3.1** .....provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, **the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals.** The commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser.

24. **Admissibility of delay possession charges at prescribed rate of interest:-**

The complainant is seeking delay possession charges, 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, ibid. 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."

25. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid 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.
26. 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., 11.09.2025 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
27. 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:

***"(z) "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;"*

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent which is the same as is being granted to them in case of delayed possession charges.
29. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent no.1 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 42 months with an additional grace period of 6



months from the date of execution of the agreement (26.09.2013) or date of obtaining all license or approvals for commencement of construction, whichever is later. The builder buyer agreement was executed between the parties on 26.09.2013 whereas the environmental clearance certificate was obtained by the respondent on 06.09.2013. Therefore, the date of execution of apartment buyer's agreement being later, the due date of possession was calculated from the date of apartment buyer's agreement. Accordingly, the due date of possession comes out to be 26.09.2017. Occupation certificate was granted by the concerned authority on 15.01.2019 and thereafter, the possession of the subject flat was offered to the complainants on 24.01.2019. 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 physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 26.09.2013 to hand over the possession within the stipulated period.

30. Section 19(10) of the Act obligates the allottees 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 15.01.2019. The respondent offered the possession of the unit in question to the complainants only on 24.01.2019, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 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 possession is in habitable condition.

31. 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 delay possession charges at prescribed rate of the interest @ 10.85% p.a. w.e.f. 26.09.2017 till the expiry of 2 months from the date of offer of possession (24.01.2019) which comes out to be 24.03.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**G.III Direct the respondent to refund an amount of Rs.5,49,786/- taken on account of extra charges and further directing the respondent not to charge anything beyond builder buyer agreement.**

**G.IV Direct the respondent to refund an amount of Rs.82,714/- charged on account of maintenance charges for a period of 01.01.2019 to March 01.01.2023.**

32. The above-mentioned relief 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.
33. In the above mentioned relief sought by the complainant the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed accept for the statutory rights under the Act of 2016. The complainants could have asked for the claim before the conveyance deed got executed between the parties.
34. Moreover, the clause 4 of the conveyance deed dated 11.08.2021 is also relevant and reproduced hereunder for ready reference:

- 4. That the Vendee has already taken the possession of the said Apartment after having inspected and fully satisfied himself/herself/themself/itself and confirms that the construction of the said Apartment of the Group Housing Complex has been carried out on a part of the Said Land with clear title and in accordance with the sanctioned plans and the agreed specifications and are in good order and condition. The actual and physical possession of the said Apartment has already been delivered to the Vendee and the Vendee hereby confirms having taken the possession thereof. The Vendee further confirms that before taking over physical possession of the said Apartment the Vendee has inspected/checked and verified all material aspects and has**





*no complaints/claims in this regard including but not limited to Carpet Area of the said Apartment, all amenities, quality of construction, workmanship, specifications of the said Apartment and installations thereof, materials, fittings and fixtures used and/or provided there in and all services rendered and/or to be rendered and **that the Vendee has no objection, complaint or claims with respect to same.** The Vendee has satisfied himself/herself/themselves/itself that the constructions as also various installations in the said Apartment being an integral part of the licensed Group Housing Complex has/have been provided in accordance with the sanctioned drawings and specifications and are in good order and condition. Further, **the Vendee confirms and agrees that he/she/they/it shall not claim any compensation or without the payment of any charges on the ground that the infrastructure required for the Group Housing Complex is not yet complete and/or the construction of the permissible/permitted additional Floors/blocks are yet to be completed, and/or on any other ground whatsoever in as much as the Vendee accepts and acknowledges that Group Housing Complex is a planned and phased development to be undertaken over a period of time in various blocks / segments / constituents / parts / phases. The Vendee assures the Vendor that he /she/they/it shall not raise any objection or make any claim against the Vendor in respect of any item of work which may be alleged to have been and/or not have been carried out or completed and/or for any other reason whatsoever and such claim and / or objection, if any, shall be deemed to have been waived by the Vendee."***

35. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

#### **H. Directions of the Authority**

36. 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 delay possession charges to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession, i.e., 26.09.2017 till the date of offer of possession (24.01.2019) plus two months i.e., 24.03.2019, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be

paid to the complainants 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- III. The respondent shall not charge anything from the complainant which is not part of the agreement.

37. Complaint as well as applications, if any, stand disposed off accordingly.
38. File be consigned to registry.

**Dated: 11.09.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
GURUGRAM