

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

Complaint no.: 5363 of 2023
Date of complaint: 13.12.2023
Date of order: 19.08.2025

Sanjeev Kumar

R/o: - Ward no. 8, Fatwaria Mohalla, Near
Devi Mandir, Pana Hindyan, VPO Beri, Distt.
Jhajjar, Haryana

Complainant

Versus

M/s Lotus Realtech Pvt. Ltd.

Regd. Office: 501, Block-C, Nirvana Courtyard,
Nirvana Country, Sector-50, Gurugram-
122018, Haryana

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Shri Mukesh Sharma (Advocate)
Shri J.S. Dahiya (Advocate)

**Complainant
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 thereunder or to the allottee as per the agreement for sale executed *inter se*

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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 and location of the project	"Lotus Elise Sector 99 Gurugram"
2.	Nature of the project	Group Housing Complex
3.	DTCP license no.	70 of 2011 dated 22.07.2011 valid up to 21.07.2015
4.	RERA Registered/ not registered	Registered vide registration number 71 of 2019 dated 25.11.2019 valid up to 30.09.2021.
5.	Unit no.	H - 402 4 th floor (As per page no. 18 of the complaint)
6.	Unit area admeasuring	2075 sq. ft. (super area) (As per page no. 18 of the complaint)
7.	Allotment letter	08.10.2013 (As per page no. 18 of the complainant)
8.	Date of execution of flat buyer's agreement	10.10.2013 (As per page no. 25 of the complaint)
9.	Possession clause	3. POSSESSION <i>3.1 That the developer shall, under normal condition, subject to force majeure, complete construction of tower/building in which the said flat is to be located with 4 years of the start of construction or execution of the agreement whichever is later.....</i> (Emphasis Supplied) (As per page no. 34 of the complaint)
10.	Due date of possession	10.10.2017 (calculated from the date of execution of buyer's agreement as no date of start of construction is provided by either of the parties)

11.	Payment Plan	Construction linked payment plan
12.	Basic sale consideration	Rs.62,25,000/- (on page no. 27 of the complaint)
13.	Total Sale consideration	Rs.79,97,075/- (on page no. 20 of the complaint)
14.	Amount paid by the complainant	Rs.42,00,000/- (on page no. 10 of the complaint and page 37 of reply to the application)
15.	Occupation Certificate	13.12.2022 (as per offer of possession sent by respondent on page no. 55 of the complaint)
16.	Offer of possession	09.01.2023, 17.01.2023, 27.07.2023 (page 6, 11 and 13 of reply to the application)
17.	Demands vide offer of possession	09.01.2023 (of Rs.75,53,768/-) (page 6 of reply to the application) 17.01.2023 (of Rs.73,47,174/-) (page 11 of reply to the application) 27.07.2023 (of Rs.70,34,443/-) (page 11 of reply to the application)
18.	Cancellation letter	19.03.2024 (page 16 of the reply to the application)
19.	Allotment of subject unit in favor of new allottee (Sandeep Kadian)	03.04.2024 (page 17 of the reply to the application)
20.	Agreement for Sell of subject unit in favor of new allottee (Sandeep Kadian)	20.04.2024 (page 22 of the reply to the application)

B. Facts of the complaint.

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

- i. That the complainants had booked a residential unit/apartment bearing no. H-402, Lotus Elise in a residential project of the respondent in the year 2013. The application form of the complainant was duly accepted by the respondent

in the project namely "Lotus Elise Sector-99, Gurugram, Haryana, India. The project is widely advertised by the developer in all leading newspapers. The project was also referred to as one of the premium residential projects launched by the Builder in Gurugram, Haryana. The builder claimed to be involved in developing various residential projects and had strong presence in the Delhi NCR & Haryana.

- ii. That in the month of August 2012, one of the sales executive of the respondent/builder came into contact with the complainant for selling his residential unit of "Lotus Elise". The complainant had several meetings with the sales executive of the respondent and after several follows-ups by the sales executive, the complainant was enticed and allured to book one residential unit bearing no. H-402, Lotus Elise in tower no. H, 4th floor, admeasuring 2075 Sq. Ft. (Super Area) of the said project. At the time of booking the complainant was informed that the project shall be completed within a period of 48 months and it was the maximum period to hand over the booked unit to the complainant.
- iii. That after making the initial payment, the respondent issued a letter of allotment dated 08.10.2013 along with schedule of payment and price list of the flat for confirming the price of the residential unit of the complainant in the residential project of the respondent namely "Lotus Elise". The respondent clearly mentioned the terms and conditions in the allotment letter dated 08.10.2013.
- iv. That as per the allotment letter dated 08.10.2013 issued by the respondent, it is clearly mentioned in the allotment letter that the allotment is subject to the duly signed apartment buyer agreement on each page otherwise the allotment letter is not valid without duly signed Apartment Buyer Agreement.

Accordingly, on 10.10.2013, the complainant had signed apartment buyer agreement with the respondent.

- v. That the complainant had always paid the installment amount as and when demanded by the respondent. The complainant had paid the total amount of Rs.42,00,000/- to the respondent in the year 2013.
- vi. That at the time of execution of the apartment buyer agreement, the respondent had confirmed that possession would be given to the complainant within 48 months from the executing date of apartment buyer agreement i.e. 10.10.2013 and possession would never be late at any cost. The respondent had confirmed the same condition in apartment buyer agreement, which is mentioned at Para No. 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". So, the complainant had visited the site to verify that whether the construction of Tower-H has been started or not and same has been verified by the complainant that the construction of the Tower-H has been already started as the concerned staff of the respondent had confirmed the same status of Tower - H before signing the apartment buyer agreement. So, the complainant was entitled to receive the possession of his unit/apartment on or before 10.10.2017 from the respondent.
- vii. That after executing the apartment buyer agreement, the attitude of the respondent has been totally changed and started ignoring the complainant. Even the complainant had paid Rs.42,00,000/- in only two months as per the wish of respondent. The respondent has confirmed that the complainant has to pay the further payment upon their demand.

- viii. That thereafter, the complainant inquired several times for the deposition of remaining payment to the respondent as the complainant was expecting the possession within 48 months. But the respondent didn't pay any attention upon the request of the complainant regarding the deposition of the remaining payment and delivery of possession.
- ix. That suddenly after ten years approx., on 12.01.2023 the complainant has received a letter for offer of possession dated 09.01.2023 from the respondent and the complainant was surprised to know that now the respondent is claiming the remaining amount of Rs.75,53,768/- instead of Rs.38,00,000/- approx. Because the total cost of the unit was Rs.80,00,000/- approx. and the complainant had already paid Rs.42,00,000/-.
- x. That again the complainant contacted the respondent and apprised him about the wrong calculation of remaining amount. But the respondent was adamant that the complainant has to pay the amount of Rs.75,53,768/- if he is willing to take the possession of his residential unit bearing no. H-402, Lotus Elise in tower no. H, 4th floor, admeasuring 2075 Sq. Ft. (Super Area) of the project namely "Lotus Elise" situated at sector-99, Gurugram, Haryana.
- xi. That left with no other option the complainant has sent a legal notice through his counsel for resolving of issue and appointment of arbitrator. But again, the respondent was not keen to listen the issues of complainant even the respondent threatened the complainant telephonically that they can cancel the unit of the complainant and would not refund the amount of complainant whatever has been deposited with the respondent.
- xii. That the respondent never replied on the legal notice dated 23.02.2023 till date. Even the respondent is not ready to discuss the matter with the complainant. The complainant is running to pillar to post to resolve his issue

but all the efforts went into veins. The complainant is ready to pay the remaining amount as per the allotment letter.

C. Relief sought by the complainant.

4. The complainant has sought the following relief(s):

- I. Direct the Promoters and Directors of the respondent to declare the Offer of possession dated 09.01.2023 along with Annexure-1 issued by the respondent null and void as the respondent is charging undue amount along with interest in the hide of possession letter from the complainant. The respondent demanded Rs.75,53,768/- in the possession letter dated 09.01.2023 instead of Rs.38,97,074/- approx.
- II. Direct the promoters and directors of the respondent to issue fresh offer for possession along with fresh payment schedule for the residential unit bearing no. H-402, Lotus Elise in tower no. H, 4th Floor, admeasuring 2075 Sq. Ft. In the project namely "Lotus Elise" at Sector-99, Gurugram, Haryana to the complainant as per terms and condition mentioned in the Apartment Buyer Agreement duly executed between the complainant and the respondent.
- III. In case the promoters and directors of the respondent failed to provide the possession of the residential unit booked by the complainant as per the terms and conditions mentioned in the "Apartment Buyer Agreement" then direct them to return the amount paid by the complainant against his confirmed unit along with interest of 18% per annum from 09.09.2013 i.e. The first date from which the complainant started to make payment to the respondent for his booked/confirmed residential unit along with the damages of Rs. 1,00,00,000/- (Rupees One Crore Only) caused to the complainant.
- IV. Restrain the promoters and directors of the respondent from not creating any third-party interest in the residential unit bearing no. H-402, Lotus Elise in tower no. H, 4th Floor, admeasuring 2075 Sq. Ft. (Super Area) booked by the complainant in the project namely Lotus Elise at Sector 99, Village Dhankot, Gurugram, Haryana until settlement of the pending dues between the complainant and respondent.
- V. Direct the promoters and directors of the respondent to surrender their passport with appropriate authority till the settlement of present case and

placed a fixed deposit or Bank Guarantee for the total amount of the claim of the complainant with appropriate authority till settlement of the present case so as to ensure that the interest of the complainant is to be protected.

VI. Award costs to the complainant

D. Reply by the respondent.

5. The respondents have contested the complaint on the following grounds:

- i. That a flat bearing no. H-402 in Lotus Elise in Tower no H, 4th floor measuring 2075 sq. ft. in the project namely Lotus Elite at Sector 99 was allotted to the complainant vide allotment letter dated 08.10.2013 issued by the respondent on payment of sale consideration as per the payment plan and as per the terms and conditions mentioned in the said allotment letter, but the complainant breached and violated the terms and conditions regarding the payment of due instalments on time as per the payment schedule and did not paid the outstanding amount /instalments as and when fell due despite repeated demands and thus after issuance of final letter dated 27.07.2023 the flat was cancelled vide cancellation letter dated 19.03.2024.
- ii. That after cancellation of the flat in the name of the complainant, the respondent had already re-allotted/re-sold the flat in question in favour of third person namely vide allotment letter dated 03.04.2024 and thus the third party i.e. subsequent purchaser had already executed the agreement for sale dated 23.04.2024 who had acquired valuable right qua the re-sold flat to him, but he had not been impleaded as a necessary party and thus the complainant is bad in law which is not impleaded in the present form.
- iii. That since the flat in question in the name of the complainant had already been cancelled on account of non-payment of balance outstanding amount of Rs.75,73,768/- only which includes interest and further the fact that after

cancellation, the flat had already been reallocated/resold to third party, the respondent would refund the total deposited amount to the complainant after reconciliation of accounts as per BBA.

6. All other averments made in the complaint were denied in toto.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the Authority.

8. 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

9. 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.

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

Section 11

(4) The promoter shall-

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

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainant.

F.I. Direct the Promoters and Directors of the respondent to declare the Offer of possession dated 09.01.2023 along with Annexure-1 issued by the respondent null and void as the respondent is charging undue amount along with interest in the hide of possession letter from the complainant. The respondent demanded Rs.75,53,768/- in the possession letter dated 09.01.2023 instead of Rs.38,97,074/- approx.

F.II Direct the promoters and directors of the respondent to issue fresh offer for possession along with fresh payment schedule for the residential unit bearing no. H-402, Lotus Elise in tower no. H, 4th Floor, admeasuring 2075 Sq. Ft. In the project namely "Lotus Elise" at Sector-99, Gurugram, Haryana to the complainant as per terms and condition mentioned in the Apartment Buyer Agreement duly executed between the complainant and the respondent.

F.III In case the promoters and directors of the respondent failed to provide the possession of the residential unit booked by the complainant as per the terms and conditions mentioned in the "Apartment Buyer Agreement" then direct them to return the amount paid by the complainant against his confirmed unit along with interest of 18% per annum from 09.09.2013 i.e. The first date from which the complainant started to make payment to the respondent for his booked/confirmed residential unit along with the damages of Rs. 1,00,00,000/- (Rupees One Crore Only) caused to the complainant.

F.IV Restrain the promoters and directors of the respondent from not creating any third-party interest in the residential unit bearing no. H-402, Lotus Elise in tower no. H, 4th Floor, admeasuring 2075 Sq. Ft. (Super Area)

booked by the complainant in the project namely Lotus Elise at Sector 99, Village Dhankot, Gurugram, Haryana until settlement of the pending dues between the complainant and respondent.

12. The factual matrix of the case reveals that an allotment letter was issued by the respondent in favor of complainant on 08.10.2013 allotting a unit no. H - 402 4th floor admeasuring 2075 sq. ft. Further, a builder buyer agreement was executed between the parties on 10.10.2013 for the subject unit for a total sale consideration of Rs.79,97,075/- against which the complainant has paid Rs.42,00,000/-.
13. Herein, the complainant contends that the respondent in buyers' agreement has confirmed that the possession of the subject unit would be delivered within 48 months from the date of buyer's agreement. However, the respondent after 10 years has sent offer of possession to the complainant on 12.01.2023 raising demand of Rs.75,53,768/- instead of Rs.38,00,000/-
14. The respondent, on the other hand, submits that the complainant failed to adhere to the agreed payment schedule and defaulted in timely payments. On account of breach of the terms and condition, the respondent has cancelled the allotment of the complainant vide cancellation letter dated 19.03.2024, after issuing a final demand on 27.07.2023 and has further re-allotted the unit to a third party through an agreement to sell dated 23.04.2024
15. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid or not in the eyes of law?"
16. The Authority finds the cancellation by the respondent to be unfair and invalid. Firstly, the total sale consideration of the subject unit as agreed between the parties was Rs.79,97,075/- and the complainant has already paid Rs.42,00,000/- against the subject unit. However, vide offer of possession dated

27.07.2023 the respondent has raised demand of Rs.70,33,443/-. Vide offer of possession dated 09.01.2023, 17.01.2023 and 27.07.2023 respondent has raised a demand of Rs.21,26,579/- as delay payment interest along with other charges. The respondent has not placed on record any demand letters or documentary evidence showing when such demands were raised and whether the complainant failed to comply with the same. In the absence of such proof, the demands of such delayed payment interest are unsustainable.

17. Further, the respondent has raised a demand of Rs.41,479/- towards the Labour cess. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, the issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as **"Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited"** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

18. The respondent has also raised a demand of Rs.1,14,789/- towards Fire Fighting Charges. However, as per Annexure I of the buyer's agreement dated 10.10.2013 the agreed Fire Fighting charges were only Rs.62,250/-. Additionally, the respondent raised a demand of Rs.1,25,000/- towards Power

Backup charges, which were not part of the sale consideration as per the agreement as per the Annexure I.

19. Further, the respondent has raised demand of Rs.3,11,250/- towards cost of escalation. The Authority notes that the delay in possession was caused by the respondent's failure to hand over the unit on time, leading to increased escalation costs. It would be unjust to attribute such costs to the complainant. Accordingly, the imposition of escalation charges is not justified and cannot be charged to the complainant.
20. Thus, the above-mentioned charges raised by the respondent vide offer of possession dated 17.01.2023 are unsustainable, arbitrary, and lacks justification.
21. Furthermore, as per the clause 3 of the buyer's agreement dated 10.10.2013, possession was to be delivered within four years from the date of start of construction or execution of the agreement whichever is later i.e., by 10.10.2017. However, the respondent obtained the occupation certificate only on 13.12.2022 and possession was thereafter offered on 09.01.2023, 17.01.2023 and 27.07.2023 constituting a delay of over five years beyond the agreed timeline. Despite this inordinate delay, the respondent has neither adjusted nor paid any interest to the complainant for the delayed period.
22. In light of the above observations, the cancellation of the subject unit is held to unjustified and invalid for being bad in eyes of law as the demands raised at the time of offer of possession were arbitrary and unjustified.
23. It is further noted that after cancelling the allotment of the complainant, the respondent re-allotted the unit to a third party, without first addressing the complainant's objections on the levied charges vide offer of possession and has also by not refunded the amount paid by the complainant after cancelling the unit on 19.03.2024. In fact, the respondent continues to enjoy the benefit of the

complainants' funds while reselling the units to a third party. This amounts to deriving unlawful gains from two different parties for the same unit and clearly constitutes an unfair trade practice.

24. As already observed above, the respondent has already created third-party rights on the subject unit by executing an agreement to sell dated 20.04.2024. Therefore, the subject unit cannot be reinstated. Accordingly, the respondent is liable to offer an alternative similarly situated unit of the same size to the complainant at the same rate, in accordance with the agreed terms of the agreement dated 10.10.2013.

25. Admissibility of delay possession charges at prescribed rate of interest:

Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(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.

26. The legislature in its wisdom in the subordinate legislation under the 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.

27. 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., 19.08.2025 is

8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

28. 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;"*

29. Therefore, interest on the delay payments from the complainants 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.

30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act. The builder buyer agreement dated 10.10.2013 was executed between the parties. As per Clause 3 of the agreement, possession of the subject unit was to be delivered within four years from the date of start of construction or execution of the agreement whichever is later. Accordingly, the due date for handing over possession comes 10.10.2017 calculated from the date of execution buyers' agreement in absence of actual date of start of construction. However, the respondent offered possession on 09.01.2023,

17.01.2023 and 27.07.2023 which was beyond the agreed timeline and, subsequently, the unit was cancelled on 19.03.2024. As previously elaborated, the said cancellation was found to be issued in bad faith. Therefore, it stands established that the respondent/promoter failed to fulfil its contractual obligations as per the agreement by not delivering timely possession.

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 complainants are entitled for delay period interest at prescribed rate of the interest @ 10.85% p.a. w.e.f. due date of possession i.e., 10.10.2017 till actual handing over of possession or offer of possession plus two months of the alternative unit, whichever is earlier, as per Section 18(1) of the Act of 2016 read with rule 15 of the rules.

F.V Direct the promoters and directors of the respondent to surrender their passport with appropriate authority till the settlement of present case and placed a fixed deposit or Bank Guarantee for the total amount of the claim of the complainant with appropriate authority till settlement of the present case so as to ensure that the interest of the complainant is to be protected.

32. The relief sought for directing the promoters/directors of the respondent to surrender their passports and to furnish a fixed deposit/bank guarantee equivalent to the claim amount cannot be allowed, as appropriate directions are already being passed in the present complaint.

F.VI Award costs to the complainant.

33. The complainant is also seeking relief w.r.t. compensation. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be

adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

H. Directions of the Authority.

34. 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):

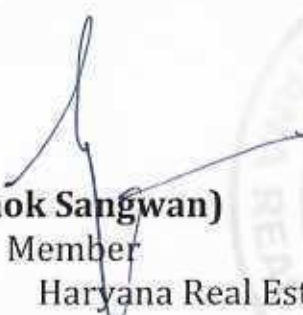
- i. The cancellation issued being bad in the eyes of law is hereby set aside. The respondent is liable to offer the possession an alternative and similarly situated unit as per specifications of original BBA dated 10.10.2013 at the same rate at which the unit was earlier purchased as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % p.a. w.e.f. due date of possession i.e., 10.10.2017 till actual handing over of possession or offer of possession plus two months of the alternative unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of

delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent shall not charge anything which is not the part of the buyer's agreement.

35. Complaint as well as applications, if any, stand disposed off accordingly.

36. Files be consigned to registry.



(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 19.08.2025



(Arun Kumar)

Chairman

HARERA
GURUGRAM