# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| **Complaint no.** | **:** | **2709 of 2024** |
| **Date of filling** | **:** | **11.06.2024** |
| **Date of Pronouncement of order:** | | **11.07.2025** |

**Manjula Naidu**
C/101c, 2nd Floor right side, Panchsheel Vihar behind Vishal Mega Mart, Malviya Nagar, South Delhi, Delhi-110017 **Complainant**

Versus

M/s ILD Millennium Pvt. Ltd.
**Regd. Office at**: - ILD Trade Centre, Sector-47, Sohna Road, Gurugram-122018. **Respondent**

**CORAM:**
Shri Arun Kumar **Chairman**

**APPEARANCE:**

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| Shri Sukhbir Yadav (Advocate) | Complainant |
| Shri Harshit Batra (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 thereunder or to the allottee 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. | Heads | Information |
|---|---|---|
| 1. | Name and location of the project | ILD Spire Greens, Sector 37 C, Gurgaon, Haryana |
| 2. | Nature of the project | Residential group housing project |
| 3. | Project area | 15.4829 acres |
| 4. | DTCP license no. | 13 of 2008 dated 31.01.2008 |
| 5. | Name of license holder | M/s Jubiliant Malls Pvt. Ltd. and 3 others |
| 6. | RERA Registered/ not registered | Registered<br>For 64621.108 sq mtrs for towers 2,6 and 7<br>vide no. 60 of 2017 issued on 17.08.2017 up to 16.08.2018 |
| 7. | Apartment no. | 0315, 3rd floor, Tower-2 |
| 8. | Unit measuring | 1753 sq. ft. |
| 9. | Date of builder buyer agreement | 07.05.2012<br>[page 64 of the complaint] |
| 10. | Possession clause | **10.1 SCHEDULE FOR POSSESION OF THE SAID UNIT**<br>*The developer to complete the construction of the said building/said unit by 31.12.2013 with grace period of six months.* |
| 11. | Due date of possession | 30.06.2014<br>[Grace period is allowed] |
| 12. | Total consideration | Rs. 53,42,465/-<br>[Page 69 of the complaint] |

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|---|---|---|
| 13. | Total amount paid by the complainant | Rs. 32,38,353/- |
| 14. | OC received | N/A |
| 15. | Offer of possession | N/A |
| 16. | Cancellation letter dated | 22.05.2024<br>[Page 114 of the reply] |

## B. Facts of the complaint

3. The complainant has made the following submission: -

i. That in June 2008, the Complainant received a marketing call from the Respondent's office regarding a residential project named "ILD Spire Greens," located in Sector-37C, Gurugram, being developed by the Respondent. The Respondent painted an attractive picture of the project and enticed the Complainant through appealing advertisements. The Respondent's marketing staff highlighted special features of the project such as: design by Design Forum International, three-side open high-rise apartments, amenities like a swimming pool, cycling and jogging tracks, tennis and basketball courts, a clubhouse and mega gym, a plaza, shopping centre, nursery school within the premises, with Euro International School just 1.7 km away and Signature Advanced Super Specialty Hospital 1.8 km away.

ii. Subsequently, the Complainant visited the Respondent's office and the project site along with the Respondent's agent. Convinced by the representations made by the marketing team, she decided to book a unit in the said project.

iii. Relying on the representations and assurances of the Respondent, the Complainant booked a 3BHK+Study unit bearing No. 0315, located on the 3rd Floor of Tower-2A, Block-15, admeasuring 1,753 sq. ft., in the

project "ILD Greens," Sector-37C, Gurugram. The total sale consideration was ₹53,42,465/- (inclusive of BSP, specification charges, EDC & IDC, PLC, parking, club membership, and IFMS) under a construction-linked payment plan. The complainant paid ₹4,00,000/- towards the booking amount via cheque Nos. 331935 and 331936 dated 02.07.2008 and 31.07.2008, respectively. The complainant is also entitled to one open car parking space under this consideration.

iv. On 25.08.2008, the Respondent issued a demand letter raising a demand of ₹1,60,860/-, which was duly paid by the complainant through cheque No. 331940 dated 31.08.2008. On 20.01.2009, the respondent issued an "Invitation for Allotment" letter asking the complainant to be present on 02.02.2009 for unit allotment. On 15.04.2009, the respondent issued a demand letter of ₹79,236/-, which was paid by the complainant via cheque No. 331948 dated 24.04.2009. The respondent issued a receipt on 27.04.2009 acknowledging the payment.

v. The complainant continued to make payments as per the agreed payment plan. On 01.07.2009, the Respondent credited the Complainant's account with ₹63,245/- towards a special loyalty discount on payments received up to 30.06.2009. On 19.06.2010, the Respondent sent a letter titled "Intimation of Increase in Area and Call for Second Instalment on Excavation for 3BR+Study Rect (S)" stating that the unit area had increased by 62 sq. ft. The Respondent, without any justification or prior notice, raised a demand of ₹7,32,018/-. The complainant made several telephonic inquiries seeking clarification, but no response was received from the respondent.

vi. The complainant also inquired about the execution of the Builder Buyer Agreement (BBA) as more than two years had passed. Despite timely payments, the Respondent failed to execute the BBA. Moreover, the

respondent collected over 10% of the total sale consideration without executing the BBA or an Agreement to Sell, in violation of Section 13(1) of the RERA Act.

vii. On 24.07.2010, the Respondent sent a letter introducing a "Zero Interest & No EMI till Possession" scheme and mentioned that the project was sanctioned by HDFC, Union Bank of India, and Scotia Bank. The Complainant had availed a home loan of ₹24,32,000/- from Punjab National Bank.

viii. On 21.03.2011 and 29.02.2012, the Respondent raised demands of ₹15,09,298/- and ₹17,80,522/- respectively, through demand notices. After prolonged follow-ups, on 07.05.2012, a pre-printed, arbitrary, unilateral, and ex-facie BBA was executed between the parties. As per Clause 10.1 of the BBA, the possession was to be handed over by 31.12.2013, making this the due date for possession. On 18.07.2012, the Respondent issued another demand letter for ₹18,90,472/-.

ix. The Complainant continued to make timely payments per the agreed plan. As per the Respondent's statement of account, the Complainant has paid ₹33,63,619/- in total. The Complainant ensured that all payments were made on time. However, the Respondent failed to fulfil its obligation by not delivering physical possession of the unit by the due date of 31.12.2013.

x. On 21.10.2023, the Respondent sent a pre-drafted Memorandum of Understanding (MoU) to the Complainant. The terms were unilateral and against the Complainant's legal rights. Hence, the Complainant refused to sign the MoU. The Complainant made several visits to the project site and sales office and had numerous phone calls with the Respondent's representatives, but no satisfactory response regarding possession was ever provided. Since December 2013, the Complainant

repeatedly followed up to get possession of her unit, but the Respondent failed to complete the project or offer possession. The Respondent neither delivered possession by the promised date nor paid any delayed possession compensation.

xi. On 22.05.2024, the Respondent abruptly sent a cancellation letter via email regarding Unit No. 0315. The attached letter was backdated to 22.05.2023. No prior notice of cancellation was issued. The unit was cancelled citing non-payment of ₹17,97,957/-, which was never demanded by the Respondent earlier. The Complainant never received any cancellation notice in 2023, making this cancellation arbitrary and invalid. All prior demands were paid by the Complainant on time, and the Respondent had even issued credit notes. Upon contacting the Respondent, she was told the cancellation could only be withdrawn if she signed the MoU — a condition that is coercive and unjust.

xii. The core grievance of the Complainant is that despite paying over 62% of the total flat cost and being ready to pay any remaining justified dues, the Respondent failed to (i) deliver possession by the agreed date, (ii) pay delayed possession compensation, and (iii) unjustly cancelled the allotment without valid reason or notice.

xiii. The arbitrary cancellation, coercion regarding the MoU, and undue delay have caused mental and financial harassment to the Complainant, making the Respondent liable to compensate her for these actions, which amount to unfair trade practices.

xiv. The above facts clearly establish the Respondent's deficiency in service, breach of contract, and adoption of unfair trade practices, possibly amounting to fraud. The Respondent must be held accountable by this Authority.

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

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

   i. To pass an order restraining the Respondents from giving effect to the Cancellation Letter dated 22.05.2024, and to further direct that the said cancellation letter be set aside as illegal and void;

   ii. To direct the Respondents to pay delayed possession charges/compensation to the Complainant for the period from the due date of possession until actual handover of the unit after obtaining Occupation Certificate (OC);

   iii. To direct the Respondents to hand over the physical possession of the Complainant's allotted unit, complete in all respects, as per the original specifications and commitments;

   iv. To restrain the Respondents from coercing or compelling the Complainant to execute the Memorandum of Understanding dated 21.10.2023 or any other similar document;

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

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

   i. That the present complaint, so as to bring out mutual obligations and responsibilities of the Respondent as well as the Complainant. That the Complainant is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the Cancellation letter of the unit has been issued by the Respondent Company on 22-05-2024, thus the present complaint stands infructuous.

ii. That the Complainant is in default of their obligations under the Agreement and as such has disentitled himself from claiming any relief under the said Agreement. That the Complainant being interested in the real estate development of the Respondent, known under the name and style of "ILD Spire Greens", situated in Sector - 37C Gurugram [Project] approached the Respondent to purchase the unit and upon their Application for allotment of the Unit was allotted unit no. 0315 on 3rd Floor in Tower 2A, Block I5 admeasuring 1753 Sq. ft. in the Project. The unit was booked by the complainant vide Booking Application form dated 02-07-2008.

iii. That the Respondent sent an "Invitation to Offer Letter" to the complainant on 20-01-2009. The complainant visited the site on 02-02-2009 and after the inspection of the site and thorough due diligence proceed ahead for allotment of the unit. The unit was allotted to the complainant vide Provisional Allotment Letter dated 02-02-2009.

iv. That the Respondent vide letter dated 19-06-2010 intimated the Complainant of increase in area of the unit by 62 sq. ft. It is pertinent to note that the allotment was provisional in nature and in case of increase/decrease of super area, revised price is payable by the allottee. That further it is also stated on Page 2 of the booking application that *sizes are indicative and are subject to 10% variation*. The increased area is under 10% therefore no arbitrary increase has been done by the Respondent Company. The relevant clauses of the Booking form is reiterated as below:

*"Page 2 of the Booking Form*

*Note: Sizes are indicative and are subject to a 10% variation*

> *14. That Allotment made to the Allottee(s) shall be provisional till the execution of sale deed, and the Company shall have the right to effect suitable alteration in the*

*layout plan, if and when found necessary. Such alterations may include change in the Area, Layout Plan, Floor, Block and number of the said unit, and increase/decrease in the area of the said unit. That the opinion of Company's Architects on such changes will be final and binding on the Allottee(s). To implement any such change and if considered necessary a supplementary document, may be executed with the Allottee(s). Further, if there is any increase/decrease in the Super Area of the said unit, revised price will be payable / adjustable at the original rate at which the said unit has been booked for allotment.*
*15. That the specifications of the said unit are subject to change as necessitated during construction. In such an event, material of equally good quality shall be used."*

v. That time and again the Respondent Company conveyed to the Complainant to sign the copy of the Builder Buyer Agreement. The same was delayed by the Complainant because of its ulterior motives. And after multiple reminders the Complainant finally executed the Buyer's Agreement on 07-05-2012. It is pertinent to mention that the BBA was consciously and voluntarily executed and the terms and conditions of the same are binding on the Parties.

vi. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continues to be binding upon the parties thereto with full force and effect.

vii. That subsequent to the Builder Buyer Agreement, a Tripartite Agreement dated 09-05-2012 was executed between Manjula Naidu (Complainant), ILD Millennium Private Limited (Builder) and Dewan Housing Finance Corporation Limited (DHFCL) for a loan amount of Rs. 31,74,271/-.

viii. That the Complainant chose a construction linked payment plan and accordingly raised Demands as per the payment plan duly agreed on by the Complainant. However, the Complainant only paid the initial demands and thereafter defaulted in the timely payment of the instalments. That the Complainant has paid an amount of Rs. 32,38,353/- out of total sale consideration of Rs. 53,42,465 and other charges.

ix. That it is pertinent to note that the Complainant made no payment for 3 years from 2009 to 2012. That thereafter, the Complainant had made no payment after 2012. That it is pertinent to mention that Complainant is a habitual defaulter who has been in default of payments since the very beginning as is evident from the table above, The Complainant had made last payment on 30-06-2012 i.e. 12 years ago and thereafter stopped making the payments. That the Complainant has willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the Respondent. That despite taking the loan for the property, the Complainant failed to pay the disbursed amount to the Respondent.

x. That the Complainant was under the obligation to make timely payments as evident from clause 5 and 8 of the BBA. The relevant clause is reiterated as below:

> *"Clause 5*
> *That the Allottee(s) shall make all payments in time in terms of Schedule of Payments as given in Annexure-C annexed to this Agreement and as may be demanded by the Developer from time to time and without any reminders from the Developer through A/c Payee Cheque(s) / Demand Draft(s) in favour of M/s ILD MILLENNIUM PVT. LTD payable at New Delhi/Delhi.*

xi. That a similar obligation to make the payment against the Unit and the payment of interest in case of non-payment is also as per the Real Estate

(Regulation and Development) Act, 2016, under Sections 19(6) and 19(7). Furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under Clause 11 of the Agreement.

xii. The Respondent faced several force majeure events, including restrictions imposed by judicial authorities on mining, brick kilns, and construction activities due to environmental concerns. Despite these challenges, the Respondent diligently completed the project without passing any additional cost to the Complainant.

xiii. Further, the Covid-19 pandemic severely impacted construction work due to nationwide and state-imposed lockdowns, curfews, and labour shortages. The Haryana RERA also granted a 6-month extension for all projects via its order dated 26.05.2020. Due to these unforeseen events, a total delay of 438 days occurred, which squarely falls under the force majeure clause. In a similar case, Shuchi Sur & Anr vs. M/s Venetian LDF Projects LLP (Complaint No. 3890 of 2021), the Hon'ble Authority granted relief acknowledging such delays. Accordingly, the Respondent is entitled to the benefit of the extended timeline.

xiv. However, the Complainant remained in continuous default of 12 years. That in 2023, the Respondent shared a Memorandum of Understanding (**"MOU"**) vide letter dated 21-10-2023, 07-11-2023, and 19-01-2024 to the Complainant requesting to sign and execute the same. The complainant paid no heed to the letters and as a result failed to sign the Memorandum of Understanding [MOU] dated 21-10-2023 which is an essential part of the Resolution plan to be submitted to HRERA Gurugram.

xv. That on 22-05-2024 the cancellation letter was sent by the Respondent to the Complainant, since the complainant has been a regular defaulter. The demand of Rs. 17,97,957.00 was pending since very long time and

the complainant failed to sign the MOU which was a part of the resolution plan to be submitted to HRERA. Letter dated 07-11-2023, 21-10-2023, and 19-01-2024 was sent by the Respondent Company to get the MOU signed and executed by the complainant; however, all of them have been ignored by the complainant.

xvi. That the Respondent has rightfully cancelled the unit of the Complainant as the Complainant not only defaulted in payment of instalment but also failed to execute the MOU. That the same amounts to the breach of the obligation as per the Clause 12 of the BBA. Thus, the Respondent is within his rights to cancel the MOU.

xvii. That the right of the Respondent to validly cancel / terminate the Unit arises also from the Model RERA Agreement which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.

xviii. At this stage, it is pertinent to note that Section 19(7) uses the word 'shall' while noting the payment by the Complainant in cases of default. The legislature, acting in its utmost wisdom, had made the payment of the applicable interest mandatory, which, under no circumstance whatsoever, be escaped by the Complainant. The literal rule of interpretation needs to be applied in such a case according to which, the law has to be read 'as it is' and a judge has to consider what the statute says 'literally', i.e., its simple plain meaning without any ambiguity as the words themselves best declare the intention of the legislature. That after termination of the Unit, the Complainant has no right/lien over the same and the prayer of the Complainant cannot be considered.

xix. That it is pertinent to note that this Hon'ble Authority has adjudicated similar issues of termination / cancellation and has upheld the same noting the default on part of the Complainant. For instance, in the matter

of **Rahul Sharma Vs Roshni Builders Private Limited, MANU/RR/0975/2022**, the Ld. RERA Authority, Gurugram, had noted that the respondent had issued reminders, pre-cancellation letter and the last and final opportunity letter to the Complainant. The Respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.

xx. That accordingly, after termination of the allotment of the unit of the Complainant, the Complainant has been left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the Complainant, solely due to the default of the Complainant, the Respondent is well within their right to forfeit the earnest amount along the delayed payment interest till the date of termination and other non-refundable amount including the statutory dues paid against the unit.

xxi. That the facts and circumstances of the present case reveal that the Complainant is not eligible for possession of the unit or any delay possession charges. The allotment of the Complainant stands cancelled, thus, the present claim against the Respondent-Company is infructuous. Hence, the complaint is liable to be dismissed.

xxii. Without prejudice to the rights of the Respondent in the above-stated contentions, Interest, if any, has to be calculated only on the amounts deposited by the Allottees/Complainant towards the basic principal amount of the Unit in question and not on any amount credited by the Respondent, or any Payment made by the Allottees/Complainant towards Delayed Payment Charges (DPC) or any Taxes/Statutory payments etc.

7. 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 complainant.

## 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)(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.

## F. Findings regarding relief sought by the complainant.

F.I To pass an order restraining the Respondents from giving effect to the Cancellation Letter dated 22.05.2024, and to further direct that the said cancellation letter be set aside as illegal and void;

F.II To direct the Respondents to pay delayed possession charges/compensation to the Complainant for the period from the due date of possession until actual handover of the unit after obtaining Occupation Certificate (OC);

F.III To direct the Respondents to hand over the physical possession of the Complainant's allotted unit, complete in all respects, as per the original specifications and commitments;

F.IV To restrain the Respondents from coercing or compelling the Complainant to execute the Memorandum of Understanding dated 21.10.2023 or any other similar document;

12. The Complainant submits that she was allotted Unit No. 0315, located on the 3rd Floor of Tower-2, pursuant to the execution of a Builder Buyer Agreement (BBA) dated 07.05.2012, under a Construction Linked Payment Plan. In compliance with the agreed terms, the Complainant duly paid a sum of Rs. 32,38,353/- towards the total sale consideration of Rs.53,42,465/-. As per Clause 10.1 of the BBA, the Respondent was contractually obligated to deliver possession of the allotted unit by 31.12.2013, with a grace period of six months. Accordingly, the final due date for delivery of possession was 30.06.2014. Despite repeated follow-ups, the Respondent failed to its contractual obligation of handing over timely possession.

13. The Complainant further submits that she complied with the payment schedule and ensured timely remittance of all dues under the BBA. However, instead of fulfilling its obligation to deliver possession, the Respondent, after an inordinate delay, sent a pre-drafted Memorandum of Understanding (MoU) on 21.10.2023, unilaterally attempting to modify the agreed possession timeline and other contractual terms. The Complainant submits that the said MoU was one-sided, prejudicial, and not in consonance with the

BBA. Therefore, she rightly refused to sign the MoU as it violated her contractual and statutory rights.

14. Subsequently, the respondent, vide cancellation letter dated 22.05.2024, unilaterally cancelled the unit allotment without issuing any demand notice, reminder, or pre-cancellation intimation, thereby violating principles of natural justice. It is also noteworthy that as of the said date, the Respondent had not obtained the Occupancy Certificate (OC) from the competent authority, as required under the Real Estate (Regulation and Development) Act, 2016.

15. The complainant has continued to make payments in good faith. As per the statement of account provided by the respondent, the complainant has already paid a total sum of Rs.32,38,353/- evidencing substantial compliance with the agreed payment plan. The Complainant denies receiving any such demand letters post 2012, except for HVAT demand raised on 11.03.2016 and 01.04.2017, and reiterates that no valid or timely notice was issued prior to the cancellation.

16. In response, the Respondent has alleged that the Complainant defaulted on her payment obligations under the BBA. It is the Respondent's case that multiple reminder-cum-demand letters were issued to the Complainant seeking clearance of outstanding dues, and that upon non-compliance, the cancellation letter dated 22.05.2024 was lawfully issued. The Respondent has contended that the Complainant has breached the terms of the BBA by failing to make timely payments as per the stipulated schedule.

**Now, the question before the Authority is whether cancellation vide letter dated 22.05.2024 is valid in the eyes of law or not?**

17. Upon consideration of the overall facts, documents placed on record, and submissions made by both parties, the Authority observes that the complainant was allotted the subject unit vide BBA dated 07.05.2012. As per

Clause 10.1 of the Builder Buyer Agreement (BBA) dated 07.05.2012, possession of the said unit was to be handed over to the complainant by 30.06.2014. The complainant has paid a sum of Rs.32,38,353/- towards the total sale consideration of Rs. 53,42,465/-, which constitutes approximately 60% of the agreed consideration under the BBA.

18. It is observed that the Respondent issued a demand letter dated 29.02.2012, pursuant to which the Complainant made the requisite payment on 30.06.2012. Thereafter, no further demand letters were issued by the Respondent with respect to any alleged outstanding dues.

19. The only subsequent communication from the Respondent was a demand pertaining to HVAT charges raised on 11.03.2016 and 01.04.2017, as referred to at Page 20 of the Respondent's reply. No demand was made thereafter towards the sale consideration under the Builder Buyer Agreement (BBA). However, on 21.10.2023, the Respondent forwarded a Memorandum of Understanding (MOU) to the Complainant, seeking its execution. The said MOU contained terms that altered the original date of possession as agreed under the BBA.

20. It is important to note that no prior intimation, demand notice, or pre-cancellation letter was issued to the Complainant regarding any alleged outstanding payments. In the absence of any such reminders or formal demand notices, the unilateral cancellation of the unit by the Respondent is deemed to be invalid, arbitrary, and without due process.

21. In view of the foregoing, the Authority is of view that the cancellation letter dated 22.05.2024 is void ab initio, being contrary to law and principles of natural justice, and is therefore hereby set aside. The respondent is directed to reinstate the unit originally allotted to the complainant under the BBA. In the event the originally allotted unit is not available, the respondent shall offer an alternate unit of the same size, in a similar location, and at the same

price as originally booked by the complainants under the Builder Buyer Agreement dated 07.05.2012, within a period of 60 (sixty) days from the date of this order.

F.II To direct the Respondents to pay delayed possession charges /compensation to the Complainant for the period from the due date of possession until actual handover of the unit after obtaining Occupation Certificate (OC);

F.III To direct the Respondents to hand over the physical possession of the Complainant's allotted unit, complete in all respects, as per the original specifications and commitments;

22. 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."*

23. Clause 10.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

> ***"10.1. SCHEDULE FOR POSSESSION:***
> *"The developer to complete the construction of the said building/said unit by 31.12.2013 with grace period of six month*

24. **Admissibility of grace period:** The respondent promoter had proposed to hand over the possession of the apartment by 31.12.2013 further extension for a period of six months. Grace period is allowed as unqualified. Therefore, the due date of handing over of possession comes out to be 30.06.2014 including grace period of six months.

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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. 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 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.

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., 11.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

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., 11.10% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

30. 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 section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of record that a Builder Buyer Agreement was executed between the parties on 07.05.2012, whereby the Respondent undertook to deliver possession of the booked unit by 31.12.2013, with a grace period of six months, thereby making the extended possession due date 30.06.2014. Upon perusal of the facts and documents on record, the Authority is of the considered view that there has been a delay on the part of the Respondent in offering physical possession of the subject unit. Such delay constitutes a failure on the part of the Promoter to fulfil its contractual obligations and statutory responsibilities under the Builder Buyer Agreement dated 07.05.2012.

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 to delayed possession at prescribed rate of interest i.e. 11.10% p.a. w.e.f. 30.06.2014 till the date of valid offer of possession or the date of actual handing over whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules.

F.IV To restrain the Respondents from coercing or compelling the Complainant to execute the Memorandum of Understanding dated 21.10.2023 or any other similar document.

32. The Complainant has submitted that the Respondent is attempting to compel the execution of a Memorandum of Understanding (MOU) dated 21.10.2023, which is neither contemplated nor incorporated under the terms and conditions of the Builder Buyer Agreement (BBA) executed between the parties.

33. Upon perusal of the material on record and after hearing the parties, it is observed that the MOU dated 21.10.2023 does not form part of the contractual obligations under the BBA. No provision under the BBA authorizes the Respondent to require or demand execution of any such additional document. Any attempt to coerce or compel the Complainant to sign such a document amounts to an act beyond the scope of the agreement and cannot be permitted.

34. Accordingly, the Authority direct the Respondent is restrained from compelling, coercing, pressuring, or otherwise inducing the Complainant to execute the Memorandum of Understanding dated 21.10.2023 or any other similar document, as the same is not part of the Builder Buyer Agreement and is not contractually binding.

## G. Directions of the Authority

35. 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 letter dated 22.05.2024 issued by the respondent is hereby set aside. The respondent is directed to re-instate the allotted unit of the complainant as per the terms and conditions of the Builder Buyer

Agreement (BBA) dated 07.05.2012. In the event that the originally allotted unit is no longer available, the respondent shall offer an alternate unit of the same size, in a similar location, and at the same price as per the original BBA dated 07.05.2012 within a period of 60 days from the date of this order.

ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest @11.10% p.a. for every month of delay from the due date of possession i.e., 30.06.2014 till the date of valid offer of possession or actual handing over of the unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

iii. Further the Respondent is hereby directed to hand over possession of the subject unit/property to the Complainant after obtaining occupation certificate from the competent authority, as mandated under Section 11(4)(b) of the Act and the complainant to take the possession accordance with Section 19(10) of the Real Estate (Regulation and Development) Act, 2016.

iv. The arrears of such interest accrued from 30.06.2014 till the date of order by the authority shall be paid by the respondent/promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.

v. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, within a period of 30 days from the date of this order.

vi. Upon receipt of the revised statement of account, the complainant is directed to remit the outstanding dues, after adjustment of the delay

possession charges, within a period of 30 (thirty) days from the date of such receipt.

vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

viii. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.

36. Complaint as well as applications, if any, stands disposed off accordingly.

37. File be consigned to registry.

Dated: 11.07.2025

**(Arun Kumar)**
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram