

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

Complaint no. : 3107 of 2024
Date of order : 30.07.2025

1. Sudha Chak
2. Sanjay Kumar Chak

Both R/o: House no. 982-B, Ground Floor,
C2 Block, Palam Vihar, Gurugram.

Complainants

Versus

M/s Anand Divine Developers Private Limited.
Office at: - 711/92, Deepali, Nehru Place,
New Delhi-110019.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Seema (Advocate)
Harshit Batra (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/allottees 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 of the project	"ATS Triumph"
2.	Location of the project	Sector 104, Village- Dhanwapur, Gurugram
3.	Nature of the project	Group Housing Colony
4.	Project area	14.093 acres
5.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited
6.	HRERA registered/ not registered	Not registered
7.	Allotment letter	23.10.2017 (As on page no. 49 of reply)
8.	Date of execution of Buyer's Agreement	25.10.2017 (As on page no. 26 of complaint)
9.	Unit no.	6062, Floor-6th, Tower/Building No.- 06 (As on page no. 27 of complaint)
10.	Super Area	3150 sq.ft. (As on page no. 27 of complaint)
11.	Possession Clause	<i>As per clause 18 of the agreement: Time of handing over possession</i> <i>Barring unforeseen circumstances and force majeure events as stipulated hereunder, possession of the said apartment is proposed to be, offered by the company to the allottee on or before 30 September 2018, from the date of</i>

		<i>this agreement hereinafter referred to as "Stipulated date", subject always to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other charges as stipulated herein or as may be demanded by the Company from time to time in this regard.</i> [Emphasis supplied] (As on page no. 35 of complaint)
12.	Due date of delivery of possession	30.09.2018
13.	Sales consideration	Rs. 1,82,33,700/- (As on page no. 29 of complaint)
14.	Total amount paid by the complainant	Rs. 2,21,36,453/-
15.	Tri-partite Agreement	27.10.2017 (As on page no. 72 of reply)
16.	Occupation Certificate	28.05.2019 (As on page no. 88 of reply)
17.	Offer of possession	30.05.2019 (As on page no. 91 of reply)
18.	Possession certificate	07.03.2024 (As on page no. 93 of complaint)
19.	Letter from complainant to respondent requesting for allotment of store against the pending work in the unit	23.02.2024 (As on page no. 100 of complaint)
20.	Allotment letter for "store"	11.03.2024 (As on page no. 97 of complaint)
21.	Conveyance deed	07.05.2024 (As on page no. 113 of complaint)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the complainants are aggrieved allottees who had, on 02.09.2017, booked a Flat bearing No. 6062 on 6th Floor in Tower no. 6 of the project of the respondent namely, "ATS Triumph" located at Dwarka Expressway, Sector 104, Gurugram, Haryana. The possession of the said

apartment was proposed to be offered by the respondent to the allottee on or before 30.09.2018.

- II. That the respondent delayed the possession of the apartment by more than 5 years, in contravention of the terms and conditions of the agreement as well as understanding between the parties. As per Clause 18 of the Agreement, the possession of the flat was to be handed over to the complainants on or before 30.09.2018, with the only condition being timely payment of dues by the complainants.
- III. That the complainant received the Offer of Possession on 30.05.2019 from the respondent, requesting to clear the entire outstanding dues on or before 21.06.2019 and informing that the respondent will take approximately 90 days to complete the apartment on receipt of entire payment including TDS and a written request for final finishing.
- IV. That the complainant cleared all the outstanding dues within the time specified in the letter. Upon payment of the aforesaid amount, the payment obligations of the complainant prior to grant of possession, stood satisfied. Though the complainant made all the payments, the respondent failed to deliver possession of the flat as per the promised timeline.
- V. That the complainant repeatedly followed up with the respondent's officials regarding the status of their Flat. But with every communication with the respondent, complainant received a new timeline.
- VI. That the complainants have made timely payment of all amounts payable by them to the respondent under the Agreement, and are thus, in compliance with all of their obligations thereunder. However, the respondent has failed in its obligation to deliver possession of the Flat within the time frame.

- VII. That due to wrong interpretation of the offer of letter of possession, the complainant wrongly made the payment of the TDS to the respondent and later stage, deposited the TDS with the concerned department as well but the respondent never returned the excess amount despite repeated request from the complainant.
- VIII. As per Clause 19 of the Agreement, any delay in handing over possession by the respondent entitles the complainants for compensation at the rate of 10 % per annum to the allottee on the amount already paid.
- IX. Accordingly, the complainant is filing the present complaint seeking interest for the delay in handing over possession as well as compensation for failure to comply with the terms of the Agreement. It is further submitted that as per Section 17 (1) of the Act, the promoter shall execute a registered conveyance deed in favour of the allottee. Accordingly, the complainant is filling the present complaint seeking execution of registered conveyance deed of Store No. 18, Type "A" in Tower No. 06 (Stilt), which was offered as compensation in lieu of the unfinished work in the flat .
- X. That the price used for calculation of unfinished work for compensation is much below the current market prices. The respondent unethically overcharged the GST at the rate of 12% against the government notified rate of 05%. Even respondent website also mentions the GST as 5%. The complainant seeks the refund of overcharged GST of 7% along with interest from the date of the payment.
- XI. That the cause of action for the present complaint first arose on 30.09.2018, when the possession was not granted by the respondent. The cause of action thereafter arose on 11.03.2024 when the respondent allotted the store without conveyance deed to the complainant. The Cause of action has continued till the date of filling of this complaint. The

cause of action is a continues one and continue to subsist and will subsist till the time relief as sought is granted.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a) Direct the respondent to make payment of interest for delay in handing over possession at 10% per annum on the amount of Rs.2,21,36,453/-.
 - b) Direct the respondent to execute and register the Conveyance Deed of the store no. 18 in tower no. 6 in Type A stilt, which was allotted against the pending work of the apartment.
 - c) Direct the respondent to refund the amount of Rs.1,82,338/- along with interest as overpaid by the complainant after offer of possession due to wrong interpretation of the letter.
 - d) Direct the respondent to refund the overcharged GST at the rate of 12% against the notified rate of 5% along with interest.
 - e) Direct the respondent to pay Rs.15,00,000/- for the incomplete work.
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 in September 2017, the complainant being interested in the real estate development of the respondent under the name and style "ATS TRIUMPH" situated in Sector 104, Gurugram, Haryana applied for the allotment of the residential apartment in the project of the respondent.
 - II. Thereafter, vide allotment letter dated 23.10.2017 unit bearing no. 6062, Tower No. 06, 6t Floor, admeasuring 292.64 sq. mt. (3150 sq. ft.) was allotted to the complainant on the basis of the tentative layout plan.

- Subsequently, a Builder Buyer Agreement dated 25.10.2017 was executed between the complainant/allottee and the respondent.
- III. It is pertinent to mention that the Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties. That the complainants chose a subvention payment plan and a Tripartite Agreement was executed between the complainant, respondent and the financial institution on 27.10.2017.
- IV. That the respondent has completely obliged by its responsibilities as per the said Agreement and there remains no non-compliance on part of the respondent. The respondent completed the project and received Occupation certificate on 28.05.2019. Thereafter, validly issued letter of possession along with the demand in favour of the complainant on 30.05.2019. That the respondent vide reminder letters dated 03.07.2019, 02.08.2019 and 12.09.2019 requested the complainants to clear the pending dues and take the possession of the flat.
- V. That it is important to note that the respondent has completely obliged with all its obligation and made complete payments as per subvention scheme. The respondent has made payment of Pre-EMI and gave credit to the complainants of Rs. 1,16,423/- towards Pre-EMI paid by them. Finally, the complainants, vide letter dated 23.02.2024 made request for the allotment of store admeasuring 374 sq. ft. amounting to Rs.12,00,751/- in the project in place for the requirements mentioned in Annexure II of the Agreement.
- VI. It is pertinent to note that the complaints at their own free will agreed for the allotment of the store. That vide letter dated 11.03.2024, the complainants were allotted Store No. 18, Type A, in Tower No. 6 (Stilt) ad measuring 374.34 sq. ft.

VII. In lieu of the same, a settlement letter was executed between the parties on 07.03.2024 and a No-dues letter in favour of the complainant was issued. It is pertinent to note that as per the terms of the settlement letter, the complainant undertook not to initiate any future litigation in against the respondent. The relevant clause is reiterated as below:

"Clause 3

That I/We also assure and affirm that no litigation is either pending or will be initiated in future w.r.t. the aforesaid unit against the Company/Developer, namely, M/s. Anand Divine Developers Pvt. Ltd or its Directors/Employees after execution of this settlement letter/no dues certificate."

VIII. That thereafter, the complainant agreed to take the physical handover of the unit and was finally, handed over the flat on 07.03.2024. After the handing over of the possession, the complainants undertook to carry out the interior fit-outs, works/internal finishes.

IX. That on 07.05.2024, the Conveyance Deed was executed between the parties which being the end to all the rights and obligations between the parties. That during the execution of the Conveyance deed, the complainant admitted that the possession was taken over by him only after the complete satisfaction of the specification, fitting and fixture and fixture and had also clarified that no claim, whatsoever raised in the future.

X. The complaint is barred in light of the Settlement Letter dated 07.03.2024 wherein the complainants have waived their right to file the present complaint

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 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)(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;

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 on the objections raised by the respondent.

- F.I Objection regarding end to all the rights and obligations between the parties after the execution of the Conveyance deed.**

12. The respondent has raised an objection that post execution of the Conveyance Deed between the parties, the complainants cannot seek delayed possession charges.

• Whether the complainants can claim delayed possession charges after execution of the conveyance deed?

13. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 07.05.2024 and the transaction between the parties stands concluded upon the execution of conveyance deed.

14. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainants are barred from asserting any interest in light of the circumstances of the case.

15. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

16. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
17. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

18. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as *Varun Gupta V/s Emaar MGF Land limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

19. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

G. Findings on the relief sought by the complainants:

G.I. Direct the respondent to pay interest for delay in handing over possession of at 10% per annum on the amount of Rs.2,21,36,453/- paid by the complainant to the respondent under the agreement.

20. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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."

(Emphasis supplied)

21. As per Clause 18 of the Buyer's Agreement (in short, the agreement) dated 25.10.2017 the promoter has proposed to hand over the possession of the

said unit on or before September 2018. Therefore, the due date of possession comes out to be 30.09.2018.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

23. 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.
24. 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., 30.07.2025 is **8.90%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.90%**. [Note: vide proceedings dated 30.07.2025, the rate of interest was inadvertently mentioned as 11.10% instead of 10.90% , the same being a clerical mistake is rectified]
25. 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:

"(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;"*
26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Authority has observed that the Buyer's Agreement was executed on 25.10.2017 between the complainants and the respondent. The possession of the subject unit was to be offered by 30.09.2018. The Occupation Certificate in respect of the subject unit was granted to the respondent by the competent authorities on 28.05.2019 and thereafter, the respondent offered possession of the unit to the complainants on 30.05.2019. The respondent has failed to handover possession of the subject unit on the due date and also thereafter till 07.03.2024. The respondent has failed to handover possession of the unit despite receiving Occupation Certificate and receiving all the timely payments. The unit was handed over to the complainants only on 07.03.2024 i.e., after a delay of more than 4 years from the date the offer for possession was made to the complainants. The complainants have been chasing the respondent from time and again, seeking possession of the unit. The Authority would like to emphasize on an email dated 26.07.2022

whereby the respondent has itself admitted that the unit is not complete.

The content of the said email same is reiterated below:

"Dear Sir,

Greetings!!

Refer to the trail email and subsequent to our telecon held, we completely understand your concern on the readiness of the unit.

*We are working on the same **and will inform you on the timelines/completion of the unit.***

*We would request your cooperation on the same. **We will surely complete your unit and deliver the unit to you.***

Enclosed are the Payment Receipts for your reference.

In regards of the Property tax, Kindly contact Mr. tilak Rajput at (mobile no.)

Should you need any further clarifications, feel free to get in touch with us at the below mentioned number.

Thanks and regards

Divya Negi

Sr. Manager Customer Relations Department.

[Emphasis supplied]

27. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the Buyer's Agreement dated 25.10.2017 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 28.05.2019, offered possession to the complainants on 30.05.2019, possession was handed over to the complainants on 07.03.2024 and the Conveyance Deed was executed on 07.05.2024.

28. 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 is entitled to delay possession charges at rate of the prescribed interest @ 10.90% p.a. w.e.f. 30.09.2018 till the date of actual handing over of possession i.e., 07.03.2024 as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Direct the respondent to execute and register the Conveyance Deed of the store no. 18 in tower no. 6 in type A stilt, which was allotted against the pending work of the Apartment.

29. The complainants are seeking execution of Conveyance Deed of Store no. 18 , type "A" in tower No.-06 which was offered as compensation in lieu of unfinished work in the unit.
30. The Authority observes that vide letter dated 23.02.2024, the complainants requested the respondent for allotment of a store admeasuring 374 sq.ft. amounting to Rs.12,00,751/- in the project in lieu of the furnishing works as mentioned in the Annexure II of the Agreement. Vide letter dated 11.03.2024, the complainants were allotted Store no. 18, type-A, in Tower no. 06 (Stilt) admeasuring 374.34 sq.ft .
31. The Authority is of the view that the said allotment of the store in the stilt areas is void as it's a part of the Common Areas and thus the same cannot be primarily allotted to anyone. The store was allotted to the complainants in lieu of the finishing works that were to be carried by the respondent, establishing the fraudulent conduct of the respondent. The complainants are free to seek compensation in this regard before the Adjudicating Officer.

G.III. Direct the respondent to refund the amount of Rs.1,82,338/- along with interest of 10% as overpaid by the respondent after Ofefr of Possession due to wrong interpretation of the letter.

G.IV Direct the respondent to refund the overcharged GST at the rate of 12% against the notified rate of 5% along with interest.

32. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek 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: -

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

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 10.90% for every month of delay on the amount paid by the complainants from the due date of possession i.e., 30.09.2018 till the actual handing over of possession i.e., 07.03.2024 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

34. Complaint stands disposed of.

35. File be consigned to the registry

Dated: 30.07.2025

(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM