

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

Complaint no.: 3156 of 2024

Date of decision:- 06.08.2025

1. Priya Ojha

2. Rajiv Ranjan Ojha

Both R/o: - House no.-346, Shaheed
Bhagat Singh Apartments, Pocket-3,
Sector-14, Dwarka, Opposite N.S.I.T Dwarka,
South West Delhi-110078.

Complainants

Versus

M/s. Deluris Buildtech India Pvt. Ltd.

Regd. office: H & O House, D-64, Defence Colony,
New Delhi-110024.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Gaurav Rawat (Advocate)

Ankur Berry (Advocate)

Complainants

Respondent

ORDER

1. The present complaint dated 09.07.2024 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Zara Rossa"
2.	Location of the project	Sectore-112, Bajghera, Gurugram.
3.	Project area	5.0065 acres
4.	Nature of project	Affordable Group Housing Colony
5.	RERA registered	Registered Vide registration no. 82 of 2017 Dated-23.08.2017
6.	DTCP License	License no.07 of 2016 Dated-28.06.2016
7.	Allotment letter	01.03.2018 (As on page no. 33 of complaint)
8.	Unit no.	07, floor-18 th , tower no. -3

		(As on page no. 33 of complaint)
9.	Unit area	539.3 sq.ft. [Carpet Area] 50 sq.ft. [Balcony Area] (As on page no. 33 of complaint)
10.	Agreement For Sale	31.08.2018 (As on page no. 56 of complaint)
11.	Possession clause	As per the Affordable Housing Policy 2013 <i>The projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.</i>
12.	Date of obtaining environmental clearance	30.11.2017 (As per the details provided by the promoter on the HRERA's website)
13.	Date of building plans approvals	17.06.2017
14.	Due date of possession	30.05.2022 (30.11.2021 + 6 months on account of covid-19)
15.	Sales consideration	Rs.21,82,200/- (As per S.O.A dated 19.05.2024 at page no. 51 of complaint)
16.	Amount paid by the complainant	Rs.22,80,400/- (As per S.O.A dated 19.05.2024 at page no. 51 of complaint)
17.	Occupation certificate	14.05.2024

		(As on page no. 52 of reply)
18.	Offer of possession	19.05.2024 (As on page no. 49 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
- I. That is with reference to the Affordable Housing Project called "Zara Rossa" in a land parcel admeasuring a total area of approximately on the 5.00625 acres of land, under the license no. 07 of 2016 dated 28.06.2016, issued by DTCP, Haryana, Chandigarh, situated at Sector 112, Gurugram, Haryana.
 - II. In 2016, the respondent issued an advertisement announcing an Affordable Housing Project called "Zara Rossa" situated at Sector 63A, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project.
 - III. Relying on various representations and assurances given by the respondent and on belief of such assurances, the complainants booked a unit in the project by paying an booking amount towards the booking of the said unit bearing no. 7, Tower-3, Floor-18, in Sector 112, Gurugram having carpet area measuring 539.3 sq. ft and balcony area 50 sq.ft. to the respondent on 23.02.2018 and the same was acknowledged by the respondent.
 - IV. That the respondent confirmed the booking of the unit to the complainants vide provisional allotment letter dated 01.03.2018, providing the details of the project, confirming the booking of the unit dated 23.02.2018, allotting a unit no. 7, Tower-3, Floor-18, admeasuring carpet area measuring 539.3 sq. ft and balcony area 50sq. ft. in the

aforesaid project for a total sale consideration of the unit i.e. Rs.21,82,200/-.

- V. That a unit Buyer's Agreement was executed between the complainants and respondents on 31.08.2018. It is pertinent to mention here that the allotment of the unit and agreement has been executed after coming into force of the RERA Act,2016 but respondent failed to fulfil and abide by the provisions of the RERA Act,2016, as the buyer agreement executed has been registered and even it is not as per standard format provided under the Act. Hence, penal action to be initiated against the respondent builder.
- VI. As per clause 7.1 of the buyer's agreement, the respondent undertook to offer possession of the unit within a period of 4 years i.e, 48 months from the date of building plan approval or EC, whichever is later. Therefore, due date of possession comes out to be 30.11.2021 (EC dated 30.11.2017 as per A-H Form).
- VII. As per the demands raised by the respondents, based on the payment plan, the complainants have paid a total sum of Rs.21,71,150/- towards the said unit against total sale consideration of Rs.21,82,200/-.
- VIII. As per clause 4 of the buyer's agreement the respondent had to deliver the possession on or before 30.11.2021. The Buyer's Agreement also entitled the respondent a grace period of 6 months for applying and obtaining the completion certificate/occupation certificate.
- IX. That the payment plan was designed in such a way to extract maximum payment from the buyers *viz a viz or done/completed*. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have

been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.

- X. That during the period the complainants went to the office of respondents several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- XI. That the complainants contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents was never able to give any satisfactory response to the complainants regarding the status of the construction and was never definite about the delivery of the possession.
- XII. That in terms of clause 7.1 of the said buyer's agreement (as already referred above), the respondents were under dutiful obligation to complete the construction and to offer the possession on or before 30.11.2021. That the complainants approached in person to know the fate of the construction and offer of possession in terms of the said Buyer's Agreement, the respondents misrepresented to the complainants that the construction will get completed soon.

- XIII. That the respondents despite having made multiple tall representations to the complainants has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.
- XIV. That the respondent has completely failed to honour their promises and not provided the services as promised and agreed through the brochure, Buyer's Agreement and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- XV. That the complainants after many requests and emails; received the demand letter on account of offer of possession dated 19.05.2024. It is pertinent to note here that alongwith the above said demand letter, the respondent raised several illegal demands on various account totalling to Rs.1,62,398/- which are actually not payable as per the Buyer Agreement.
- XVI. That raising demand letter by the respondent on payment of charges which the plot buyer is not contractually bound to pay, cannot be considered to be a valid demand letter/offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainant as per the Agreement, by the complainant and hence the demand letter is not valid. It is pertinent to mention here that at the time of offer of possession respondent failed to provide the copy of Occupation Certificate of the said unit.
- XVII. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. The allottees raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but

respondent instead of paying the delay possession charges clearly refused to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.

XVIII. That the respondent has been asking for electric meter and electrification charges from the complainants which is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/- hence asking for such a huge amount, when the same is not a part of the Builder Buyer Agreement is unjustified and illegal and therefore needs to be withdrawn immediately. So are the other demands required to be withdrawn, as per details provided above and those which are not a part of the BBA.

XIX. That the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):-

- i. Direct the the respondent to hand over the possession of the said unit with all the amenities and specifications as promised.
- ii. Direct the respondent to get the Conveyance Deed executed.
- iii. Direct the respondents to pay interest on the total amount paid by the complainants at the prescribed rate of interest from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.
- iv. Quash the illegal offer of possession cum demand letter dated 19.05.2024.

- v. Direct the respondents to pay the balance amount due to the complainants from the respondent, before signing the Conveyance Deed.
- vi. Restrain the respondent from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.
- vii. Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- viii. Direct the respondent to provide the committed date of completion of the unit.
- ix. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
- x. Direct the respondent to provide the exact lay out plan of the said unit.
- xi. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.
- xii. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the H VAT, which in any case is not payable by the complainants.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.

- I. That the present complaint has been filed against the respondent in respect of its Affordable Group Housing project namely, Zara Rossa, situated in the revenue estate of Village Bajghera, Sector-112, Gurugram, Haryana. That the Building plans were approved on 17.06.2017. Further the Environmental Clearance for construction of the project was received on 30.11.2017.
- II. That the complainants after being aware of the residential project of the respondent applied in the said project and deposited the booking amount on terms of the Affordable Housing Policy, 2013. Thereafter the draw of lot was conducted on 23.02.2018 and the complainants' were duly allotted Apartment No. 7 at 18th Floor, Tower-3, having carpet area 539.3 sq. ft and balcony area of 50 sq.ft vide allotment letter dated 01.03.2018. The total sale consideration for the said unit was agreed and defined at Rs.21,82,200/- plus GST(Clause 1.2(iii)), charges for water, gas and other utilities, cess, duties, etc.,
- III. The possession clause though defined by the Affordable Housing Policy was yet clearly defined in Clause 7 of the ABA, to be within 4 years from approval of building plans or grant of environment clearance, whichever is later.
- IV. That as per Clause 10, which defined the General Covenants the clause 10.2 stated "*The Allottee shall pay to the concerned Authority electricity, water and sewerage connection and consumption/service charges and contingency deposit as and when demanded by the authority*". Further as per Clause 10.10 "*The Allottee shall pay to the concerned authority electric meter installation charges/water meter installation charges, security deposit for electric/water meter and their energizing charges, etc*". Thus

the complainants' were liable to pay for electricity connection and usage charges.

- V. That the construction of the tower in which the unit of the complainants' is situated, has been delayed due to force majeure circumstances such as Covid-19. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.02.2020, on account of force majeure condition due to the outbreak of Covid-19 pandemic.
- VI. That the respondent was committed to complete the development of the project. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which adversely affected various industrial, construction, business area even in 2019.
- VII. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got came to stand-still. That it is pertinent to mention herein that such delay was not intentional. It is also submitted that the respondent was bound to adhere with the order and notifications of the Courts and the Government. The details of the ban on construction activities vide various directions of the National Green Tribunals or the Statutory Authorities etc. are highlighted in the table below:

Sr.No.	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
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1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. UOI	08.11.2016 - 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. UOI	09.11.2017 - Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. UOI	18.12.2017 - 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)- EPCA	Press Note - 29.10.2018 and later extended till 12.11.2018	01.11.2018- 12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 - 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)- EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 - 05.11.2019 (5 days)
9.	Supreme Court - 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 - 14.02.2020 (3 months 11 days)

10.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021,	3 months
11.	The Authority vide notification no. 9/3-2020	Due to the outbreak of Covid-19 pandemic extension of 6 months for projects having completion date on or after 25.02.2020	6 Months
	TOTAL		14 Months, 11 Days (Approx.)

- VIII. That as per the table shown hereinabove, the delay caused due to unforeseen circumstances, ought to be considered and calculated, before determination of the date of completion of building. That after considering the above delay, the date of completion of building has to be extended by approximately 14 months, 11 days.
- IX. Further, the possession of the subject unit was to be delivered within 4 years from obtaining approval or building plans or environmental clearance, whichever was later. That the environmental clearance being obtained on 30.11.2017, the period of 4 years would have ended on 30.11.2021, the same being covered within the Notification no. 9/3-2020 dated 26.05.2020, making the due date of possession to be extended 6 months (Covid-19) and 5 months 11 days (environmental restrictions) thus making the due date to be 11.11.2022. Further, the respondent duly applied for occupation certificate on 25.11.2022 and again on 13.07.2023, however the DTCP, Haryana finally issued the Occupation Certificate on 14.05.2024.

- X. That the issuance of Occupation Certificate is dependent on DHBVN clearance. That during the pendency of the project, the DHBVN amended its policy and thus a 33KV Switching station or 33 KV cable line were due to be installed at the project site for procuring the Occupation Certificate. The respondent immediately issued email to all its allottees. The email dated 09.11.2023, shows the bonafide of the respondent in completing the project. That instead of choosing which option was acceptable and making good the demands as raised in terms of the Apartment Buyer's Agreement, the complainants' accused the promoter of raising illegal charges.
- XI. That as per the Apartment Buyer's Agreement, the complainants' had to make timely payments of the instalments as per the payment schedule plan. Thus, the payments schedule show have been as follows:

<i>Due Date</i>	<i>Time of Payment</i>	<i>Date of Payment</i>
16.03.2018	15 days from allotment	16.03.2018
01.09.2018	6 months from allotment	01.10.2018
01.03.2019	12 months from allotment	11.03.2019
01.09.2019	18 months from allotment	11.09.2019
01.03.2020	24 months from allotment	05.03.2020
01.09.2020	30 months from allotment	08.09.2020
01.03.2021	36 months from allotment	11.03.2021

- XII. That the complainants' were consistently late in making all due payments and thus there is a total delay of 70 days in making of the due payments as per the terms of the Apartment Buyer's Agreement. Thus, the complainants' have failed to comply with the terms and conditions and

have neither paid the timely instalments as per the payment schedule plan.

XIII. That the complainants have not made the complete payment of the total sale consideration. The total sale consideration is Rs.21,82,200/-, of which the complainants have paid Rs.21,71,150/-.

XIV. That respondent have raised demand letters strictly as per the payment schedule plan and the respondent reserves its right to impose penal interest along with due service taxes, thereupon.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. 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

8. 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

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. 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 complainants at a later stage.

F. Findings on objections raised by the respondent:

F.1 Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal imposed ban on the construction activities, Environment Pollution (Prevention & Control) Authority, Delhi Pollution Control Committee(DPCC), Haryana State Pollution Control Board/Environment Pollution (prevention & Control Authority)-EPCA, Orders of Hon'ble Supreme Court, due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the

respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the allotment letter was issued by the respondent to the complainants on 01.03.2018. The 'Agreement For Sale' was executed between the parties on 31.08.2018. As per clause 1(iv) of the Affordable Housing policy, 2013, the due date for completion of project was 4 years from the date of approval of building plans or grant of Environmental Clearance, whichever is later. The building plans approvals were obtained from the concerned authorities on 17.06.2017 and the Environmental Clearance has been obtained on 30.11.2017. The due date in terms of Clause 1 (iv) of the Affordable housing Policy, 2013 , is calculated 4 years from the date of Environmental Clearance, being later, comes out to be 30.11.2021. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.02.2020, on account of force-majeure condition due to the outbreak of Covid-19 pandemic. The respondent is seeking the benefit of Covid-19, and in lieu of the notification of the Authority dated 26.05.2020, the benefit of the same is granted to the respondent. Thus, the due date comes out to be 30.05.2022 i.e., 30.11.2021 plus 6 months grace period on account of Covid-19. The respondent have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the

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environment pollution, but these were for a short period of time. The event of demonetization was in accordance with government policy and guidelines. Therefore, the Authority is of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of a contract. In the instant complaint, the due date of handing over of possession comes out to be 30.05.2022 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builder. Thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities without any pre-conditions.

G.II Direct the respondent to execute the conveyance deed for the complainant's unit.

G.III. Direct the respondent to pay delayed possession interest at the prescribed rate from the due date of possession till the actual date of possession (complete in all respects with all amenities)

14. In the present complaint, the complainants booked a unit in the project of the respondent namely "Zara Rossa" situated at Sector-112, Village-Bajghera, Gurugram. The allotment was made in favour of the complainants on 01.03.2018 and thereafter, the Agreement For Sale was executed between the complainants and the respondent on 31.08.2018. As per Clause 1(iv) of the Affordable Housing Policy, 2013, the respondent had to hand over possession of the unit to the complainant within a period of 4 years from the date of sanction of Building plans or grant of

Environmental Clearance, whichever is later. The due date is calculated 4 years from the date of Environmental Clearance being later. Also, a period of six months is granted to the respondent in lieu of the notification of the Authority dated 26.05.2020 due to the Covid-19 outbreak. Thus, the due date of possession comes out to be 30.05.2022.

15. The complainants intend to continue with the project and are seeking possession and delay possession charges along with interest on the amount paid. 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.

"Section 18: - Return of amount and compensation

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

.....

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

16. Clause 1(iv) of the Affordable Housing policy, 2013 provides for due date of possession and is reproduced below:

Clause 1(iv)

All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the „date of commencement of project“ for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project.

[Emphasis supplied]

17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of four years from the date of sanction of building plans or grant of Environmental Clearance, whichever

is later. In the present matter, the Environmental Clearance was obtained on 30.11.2017, the period of four years is calculated from the date of obtaining the E.C, being later. Accordingly, the grace period of six months shall be allowed to the promoter on account of Covid-19.

18. **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."

19. 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.
20. 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., 06.08.2025 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 06.08.2025, the same was inadvertently recorded as 11.10%]

21. 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;"

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
23. On consideration of the documents available on record and submissions made 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. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 30.11.2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.05.2022. The respondent has obtained the Occupation Certificate from the competent authorities on 14.05.2024 and thereafter offered the possession of the subject apartment to the complainants on

19.05.2024, which is delayed than the due date of possession of the unit. 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 stipulated period.

24. 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., 10.90% p.a. from the due date of possession 30.05.2022 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
25. The complainants are also seeking physical possession of the unit. The Occupation certificate has been obtained by the respondent from the competent authorities on 14.05.2024 and thereafter, the offer of possession has been made by the respondent to the complainants on 19.05.2024. The respondent is directed to handover possession of the unit to the complaint within 30 days of this order. Also, in terms of Clause 17(1) of the Act, 2016, the respondent is directed to execute registered Conveyance Deed in favour of the complainant within a period of 60 days from this date and the complainants is directed to pay the registration charges, stamp duty, requisite fees, as applicable.

G.IV. Quash the illegal offer of possession cum demand letter dated 19.05.2024.

G.V. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the H VAT, which in any case is not payable by the complainants.

26. The complainants have sought a relief of quashing the illegal offer of possession cum demand letter dated 19.05.2024 stating that the respondent has charged certain illegal charges. The respondent has charged certain charges for example:- IFSD, Labour Cess, Deposit for DHBVN , Advance Electricity Consumption Deposit, Property ID Charges, Administration Charges, Meter connection charges, External Electrification Charges, Dual Fuel DG Conversion Set, the Authority is of the view that certain charges in the said offer of possession cum demand letter are illegal, cannot be charged and the same are as detailed below:

• **IFSD Amounting to Rs.15,000/-**

27. IFSD (Interest Free Security Deposit) is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security. The same is a onetime deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners is formed.. IFSD needs to be transferred to association of owners (or RWA) once formed.

28. In the opinion of the authority, the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must always keep

the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFSD, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act

• **Labour Cess amounting to Rs.15,359/-**

29. 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, this 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.
30. 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, no demand of labour cess can be raised upon the complainants and any amount thus raised is completely arbitrary and the complainants 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.

• **Advance Electricity Consumption Deposit amounting to Rs.4,500/-**

• **Deposit required for DHBVN amounting to Rs.12,201/-**

• **Meter connection Charges amounting to Rs.6,070/-**

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31. With respect to the electricity connection charges there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. These connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to his unit before making payment under the relevant head. In case of bulk supply of electricity, the concerned department/agency releases connection with certain terms and conditions of bulk supply and these are to be abided by the allottee. The allottee is also asked to give undertaking not to apply directly to any other electric supply company in his individual capacity for additional load of electricity other than being that provided through bulk supply arrangement. In this case, apart from bearing proportionate charges for bulk supply of electricity connection to the project, the allottee has also to bear the individual meter connection expenditure from the bulk supply point to his unit.

31. Accordingly, the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis

on account of electricity connection depending upon the area of the flat allotted to the complainants vis-à-vis the area of all the flats in this particular project. The complainants will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head.

• **Property Id Charges amounting to Rs.1,500/-**

32. The respondent can charge the said charge as the same is payable at the time of execution of the Conveyance Deed in favour of the complainants.

• **External Electrification Charges amounting to Rs.73,511/-**

33. The respondent has made a demand of Rs.73,511/- on account of External Electrification Charges. It is pertinent to mention that it is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.

34. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021.

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• **Duel Fuel DG Conversion Set amounting to Rs.1,663/-**

35. The DTCP has issued a clarification dated 31.01.2024 with regard to Clause 4(v) of the Affordable Group Housing Policy, 2013 in respect of the mandatory services to be provided by the colonizer/developer free of cost by the developer/colonizer in affordable housing colonies. Accordingly, the following clarification has been issued regarding the services for which maintenance/use/utility charges can be collected by the colonizer/developer from the allottees in Affordable Group Housing Colonies.

36. The Authority is of the view that the clarification regarding services for which maintenance/use/utility charges can be collected by the colonizer/developer from the allottees in the Affordable group Housing Colonies has already been given by the DTCP vide its office order dated 31.01.2024 in Clarification No. PF-27A/2024/3676. The respondent is directed to charge in lieu of the above said clarification and the other charges, if any that has been demanded in the offer of possession shall not be levied by the respondent.

• **Administration Charges of an amount of Rs.15,000/-**

37. The Authority is of the view that a nominal amount of up to Rs.15,000/- may be charged by the promoter - developer for any expenses which it may have incurred for facilitating transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

38. Thus, the respondent is directed to raise the demands in the manner as discussed above and the amount charged in excess from the complainants is to be refunded back to the complainants, if any.

G.VI Direct the respondents to pay the balance amount due to the complainants from the respondent, before signing the Conveyance Deed.

39. The respondent is directed to provide an updated Statement of Account to the complainants, after adjusting the interest on the delayed possession and thereafter, if anything is left to be paid/refunded back to any of the parties, the same shall be done.

G.VII. Restrain the respondent from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.

40. The respondent is directed not to raise nay demands for payment under any head, which is not part of the Buyer's Agreement.

G.VIII. Direct the respondent to provide the committed date of completion of the unit.

41. The respondent has obtained Occupation certificate from the concerned authorities on 14.05.2024 and offered possession of the unit to the complainants on 19.05.2024. The Authority is of the view that after the Occupation certificate is granted to the respondent, the unit stands complete and thus, the present relief becomes redundant.

G.IX Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.

42. The respondent is directed to handover possession of the unit to the complainants within 30 days of this order.

G.X Direct the respondent to provide the exact lay out plan of the said unit.

43. As per clause 11(3)(a) of the Act, 2016, the respondent is under an obligation to provide the information regarding the sanctioned plans,

layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority. Clause 11(3)(a) is reiterated below:

Clause 11

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

44. Thus, the respondent is directed to provide the details regarding the layout of the unit to the complainants, in terms of Clause 11(3)(a) of the Act, 2016 within a period of ten days of this order.

G.XI. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.

45. The complainants have sought the relief regarding restraining the respondent from charging maintenance charges for a period of 12 months or more before giving actual possession of the unit. In the present complaint, the respondent has obtained the occupation certificate on 14.05.2025 from the competent authority and thereafter, intimated about the same to the complainants on 19.05.2025. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plants, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making

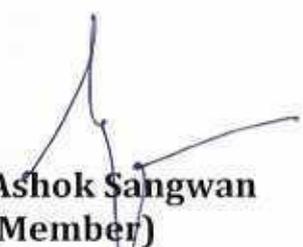
available various facilities. Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding maintenance charges after offering possession of the unit.

H. Directions of the authority

40. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10.90% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 30.05.2022 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. The respondent is directed to issue a fresh , updated Statement of Accounts to the complainants after adjustment of the delayed possession charges within a period of 30 days of this order and thereafter, if anything is left to be paid/refunded back to any of the parties, the same shall be paid.
 - iii. The rate of interest chargeable from the allottees/complainants by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - iv. The respondent is directed not to charge the following charges i.e., External Electrification Charges, Labour Cess.

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- v. The respondent is directed to execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 60 days of the order.
 - vi. The respondent is directed to handover possession of the unit to the complainants within 30 days of clearing the outstanding dues, after issuance of the fresh Statement of Accounts, if any.
 - vii. The respondent is directed to provide the details regarding the layout of the unit to the complainants, in terms of Clause 11(3)(a) of the Act, 2016 within a period of ten days of this order.
 - viii. The respondent shall not charge anything from the complainants which is not the part of the agreement.
41. Complaint stands disposed of.
 42. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 06.08.2025