

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

Complaint no. :	2398 of 2024
Order reserved on:	04.07.2025
Date of Pronouncement :	01.08.2025

Brijesh Kumar

Meera

Both Residence of : H.No. 233, Village Samalkha
Near Post Office, Southwest Delhi-110037**Complainants**

Versus

M/s Tulsiani Construction and Developers Pvt. Ltd.

Address: - N-3, Green Park Main New Delhi-110016**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Complainant in person

Complainants

Shri Himanshu Singh (Advocate)

Respondent

ORDER

1. The present complaint dated 22.05.2024 has been filed by the complainants under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name of the project	EASY HOMES, Sector-35, Sohna, Gurugram, Haryana
2.	Nature of the project	Affordable Group Housing Scheme
3.	RERA Registered/ not registered	Registered vide registration no. 144 of 2017, dated 28.08.2017
4.	License no. and validity	69 of 2014 dated 25.07.2014
5.	Unit no.	D-405, 5 th floor, T-4, Type-1BHK [Page 29 of complaint]
6.	Unit area admeasuring	340.46 sq. ft. [Page 29 of complaint]
7.	Date of booking	17.10.2019 [Page 27 of complaint]
8.	Date of allotment	22.10.2019
9.	Date of Flat buyer's Agreement	18.02.2020 [Page 23 of complaint]
10.	Date of Commencement	Not available
11.	Possession clause	5.1.1. The company shall sincerely endeavour to complete the construction and offer the possession of the said unit within a period of forty-eight (48) months from the date of receiving of environment clearance or sanction of building plans whichever is later. [Page 47 of complaint]
12.	Environment clearance	28.12.2015
13.	Building plan approval on	16.06.2015

14.	Due date of possession	28.12.2019 [Calculated from the date of EC]
15.	Total sale consideration	Rs.15,60,590/-
16.	Amount paid by the complainant	Rs.15,60,590/- [Page 13 of complaint]
17.	Occupation certificate /Completion certificate	Not available
18.	Notice of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - i. That the Complainant(s) are law-abiding citizens and residents of India, who, with the dream of owning a home in a serene environment equipped with all modern amenities—as promised by the Respondent under a "world-class" project—applied for a residential flat under the *Affordable Housing Scheme*.
 - ii. The Complainant(s) booked a flat in the project titled "**Easy In Homes**", situated at Sector 35, Sohna, Gurugram, Haryana, by making a booking/application on 17.10.2019, and deposited their hard-earned money towards the said booking. This project is being developed under License No. 69 of 2014, issued by the Competent Authority, Department of Town and Country Planning, Government of Haryana.
 - iii. The booking was registered vide Booking Request No. 4905 dated 17.10.2019. Subsequently, a Welcome Letter / Allotment Letter was issued by the Respondent on 22.10.2019, confirming the allotment of Unit No. D-405, 5th Floor, Tower T-4, a 1 BHK flat with

two-wheeler parking (as per Clause 2.19 of the Builder Buyer Agreement).

- iv. The allotment was made through a draw held on 20.10.2019. The unit admeasures 340.46 sq. ft. of carpet area, priced at Rs. 3,600/- per sq. ft., and 84.71 sq. ft. of balcony area, priced at Rs. 500/- per sq. ft. A Builder Buyer Agreement (BBA) was duly executed between the Complainant(s) and the Respondent on 18.02.2020. As per Clause 35 (5.1.1) of the BBA, the Respondent undertook to deliver possession within 48 months from the date of commencement of the project. However, the Complainant(s) have not been informed of the exact commencement date, and thus humbly request this Hon'ble Authority to ascertain the same from the Respondent.
- V. The total price of the unit, as per Clause 2.3 of the BBA, is Rs. 15,60,590/- (Rupees Fifteen Lakh Sixty Thousand Five Hundred Ninety only). The Complainant(s) have made payment of the total amount as and when demanded by the Respondent. Despite fulfilling their obligations under the agreement, the Respondent has raised an arbitrary and illegal demand for "Equalization Charges" amounting to Rs. 1,61,982/- + GST Rs. 79,877/-, totaling Rs. 2,41,859/-, which is against the principles of the Affordable Housing Policy, and is unreasonable, arbitrary, unethical, and illegal.
- vi. The Complainant(s) approach this Authority with hope and trust in the principles of justice and equity, seeking appropriate relief in accordance with law.

C. The complainants are seeking the following relief:

4. The complainants have sought following relief(s):
 - a. Direct the respondent to deliver the physical possession of the unit along with delay possession charges.
5. The present complaint was filed on 22.05.2024 in the Authority. That the Respondent has failed to file its written statement/reply despite being granted sufficient opportunities. Advocate Himanshu Singh appeared on behalf of the Respondent on 04.07.2025. The Respondent was previously granted opportunities to file its defence on **20.12.2024**, **04.04.2025**, and again on **04.07.2025**. However, no reply has been filed till date. Accordingly, the right of the Respondent to file its defence is hereby struck off.
6. 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. The case now proceed on merits shall based on the complainant submission.

E. Jurisdiction of the authority

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.1 Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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

Section 11

.....

- (4) The promoter shall-
- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to deliver the physical possession of the unit along with delay possession charges.

11. In the present complaint, the complainants intend 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."

12. Clause 5.1.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

5.1.1 Time of handing over the Possession

5.1.1. The company shall sincerely endeavour to complete the construction and offer the possession of the said unit within a period of forty-eight (48) months from the date of receiving of environment clearance or sanction of building plans whichever is later.

(Emphasis Supplied)

13. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.

14. The legislature in its wisdom in the subordinate legislation under 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.
15. 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., 01.08.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
16. **Rate of interest to be paid by the complainants in case of delay in making payments-** 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;"*
17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/ promoter

which is the same as is being granted to the complainants in case of delayed possession charges.

18. Upon consideration of the documents available on record and the submissions made by the parties, the Authority is satisfied that the Respondent is in contravention of the provisions of Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, by failing to hand over possession of the allotted unit within the stipulated time. As per Clause 5.1.1 of the Builder Buyer Agreement executed between the parties on 18.02.2020, the possession of the subject flat was to be delivered within 48 months from the date of receiving environmental clearance or sanction of building plans, whichever is later. In the present case, the date of environmental clearance is 28.12.2015, which is the later. Accordingly, the due date for handing over possession is computed as 28.12.2019.
19. In view of the above, the Respondent non-compliance with the mandate under Section 11(4)(a) read with the proviso to Section 18(1) of the Act stands established. Consequently, the Complainant is entitled to interest for every month of delay in possession from 28.12.2019 until the date of valid offer of possession, plus a further period of two months after obtaining the Occupation Certificate from the competent authority, or until actual handing over of possession, whichever is earlier, in accordance with Section 18(1) of the Act, read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
20. Furthermore, in terms of Section 17(1) of the Act, the Respondent is obligated to hand over physical possession of the allotted unit to the Complainant. Accordingly, the Respondent is directed to hand over possession of the subject unit, as per the specifications mentioned in the

Builder Buyer Agreement, after obtaining the Occupation Certificate from the competent authority.

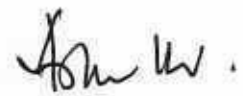
H. Directions of the Authority

21. 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 function entrusted to the authority under section 34(f):

- i. 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., 28.12.2019 till valid offer of possession plus two months after obtaining OC from the competent authority 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.
- ii. The arrears of such interest accrued from 28.12.2019 till the date of order by the authority shall be paid by the 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.
- iii. The complainant is also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. 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(zb) of the Act.

- v. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.
22. Complaint as well as applications, if any stands disposed of accordingly.
23. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.08.2025

