

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

Complaint no. :	1887 of 2024
Date of decision:	11.07.2025

1. Sumeet Khurana**2. Anuradha Madhvi Pandeya Khurana**

Address: - 39A, Nakheel Village Compound
Ghirnatha, Riyadh, Kingdom of Saudi Arabia-13242
Also, Flat No.134, New Priyadarshini Apartments
Sector-5, Plot no. 19 Dwarka, Delhi

Complainants

Versus

**1. Ramprastha Promoters and Developers
Private Limited**

Address: - Plot no. 114, sector-44, Gurugram,
Haryana

2. Blue Bell Proptech Private Limited

Address: - C-10, C-Block Market, Vasant Vihar, New
Delhi-110057

3. ICICI Bank

Address: - ICICI Bank HI Square, Plot No.6, Sector 5
Mlu, Dwarka, New Delhi 110075

Respondents**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Ms. Daggar Malhotra

Shri Khush Kakra

Shri Virender Singh

Advocate for the complainants

Advocate for the respondents no. 1

Advocate for the respondents no. 3

ORDER

1. The present complaint dated 15.05.2024 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Skyz, Sector- 37 D
2.	Nature of project	Residential colony
3.	Area of the project	60.5112 acres
4.	RERA registered/ or not	320 of 2017 dated 17.10.2017 valid upto 31.03.2019
5.	Unit no. and area of the unit	403, 4 th floor, tower-B 1750 sq. ft.
6.	Date of builder buyer agreement	10.04.2012 [page 20 of the complaint]

7.	Due date of possession	10.04.2015 [Calculated from the date of bba dated 10.04.2012 as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)]
8.	Total sale consideration	Rs. 71,11,725/- [page 24 of the complaint]
9.	Amount paid by the complainant	Rs. 61,53,325/-
10.	Occupation certificate on	N/A
11.	Possession letter on	N/A

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That the project titled "*Skyz*", situated in Sector 37-D, Village Gadauli Kalan, Gurugram, Haryana, was to be jointly developed by Respondent No. 1, *Ramprastha Promoters and Developers Private Limited*, and Respondent No. 2, *BlueBell Proptech Private Limited*. The Complainants applied for the allotment of a flat in the said project. Pursuant to the application and vide the Apartment Buyers' Agreement/Flat Purchasers' Agreement, the Complainants were allotted Flat No. 403 in Tower/Block-B, having a super area of 1,750 sq. ft., along with one car parking space, for a total sale consideration of Rs. 71,11,725/-.
 - b. That, in the present case, the due date for the handover of possession can be inferred as 10.04.2015. For the purchase of the said unit, the

Complainants availed a home loan from Respondent No. 3. After repayment of a substantial portion of the loan, only a nominal outstanding amount of Rs.49,795/- remains payable at present. That, till date, Respondent No. 1 has received a total sum of ₹62,24,702/- from the Complainants, comprising ₹61,53,325/- plus applicable taxes.

- c. That there has been no regular construction at the project site since 2016. Respondent Nos. 1 and 2 have, on multiple occasions, commenced and thereafter abruptly halted construction at their sole discretion. Furthermore, Respondent Nos. 1 and 2 have repeatedly assured the Complainants that funding for completion of the project was being arranged through the *SWAMIH Investment Fund* ("SWAMIH"). However, no such funding has been secured till date, and the project remains at a complete standstill. On account of this persistent stagnation, the Complainants have been left with no option but to file the present complaint.
- d. That Respondent Nos. 1 and 2 have, through repeated email communications, misled the Complainants into believing that construction would resume shortly, but without any tangible result. Under the pretext of facilitating project completion and with the intention to mislead, Respondent No. 1 obtained from the Complainants a *Comfort Letter* dated 23.11.2020, wherein it was stated that possession of the completed unit would be handed over within 18 months from the date of disbursal of the first tranche from SWAMIH. Clause 2 of the *Comfort Letter* vaguely stipulated that

possession would be delivered by “such” date, without specifying an exact deadline.

- e. In response to concerns raised by various buyers regarding this ambiguity, Respondent No. 1, via email dated 27.11.2020 (enclosing FAQs), unequivocally stated that the first tranche from SWAMIH would be disbursed within one month from the signing of the Comfort Letter—i.e., by 27.12.2020—and that in case of failure, the Comfort Letter would be rendered null and void. Even after the lapse of more than three years from the date of the Comfort Letter, Respondent Nos. 1 and 2 have failed to obtain such funding and have entirely failed to complete construction, revealing their malafide intent from the very inception.
- f. That the terms of the Apartment Buyers’ Agreement therefore remain in full force and effect. Even after the expiry of more than ten years from the original due date of possession, the project is far from completion. That, in light of the foregoing, the Complainants claim entitlement to delay possession charges and accordingly file the present complaint.

C. The complainants are seeking the following relief:

- 4. The complainants have sought following relief(s):
 - a. Direct Respondent Nos. 1 and 2 to provide a definite and binding date for completion of construction and handing over of possession and further direct them to hand over possession of the said unit to the Complainants accordingly along with delay possession charges.

D. Reply filed by respondents No. 1

5. The respondent no.1 has made the following submissions in the reply:
- a. At the very outset, it is respectfully submitted that the present Complaint is not maintainable, and this Authority lacks the jurisdiction to entertain the same, as there exists no cause of action against the Respondent No. 1. The Complainant has filed the present Complaint inter alia seeking possession of Unit No. B-403 in the project "SKYZ," situated at Ramaprastha City, Sector 37-D, Gurugram, along with interest thereon. The Respondent No. 1 expressly reserves the right to supplement, amend, or elaborate upon these submissions at a later stage. Nothing contained herein shall be deemed to constitute a waiver of any rights, claims, defences, or contentions available to the Respondent No. 1 in law, equity, or under contract.
 - b. The subject project, titled "SKYZ," is a residential real estate development consisting of multi-storied apartments. The Respondent No. 1 has duly complied with the terms of the Apartment Buyer's Agreement dated 10.04.2012. The delay in handing over possession has occurred solely due to reasons entirely beyond the control of the Respondent No. 1 and therefore cannot be attributed to any negligence or default.
 - c. Clause 15(a) of the Agreement stipulates an indicative timeline for delivery of possession, which is expressly subject to Clause 31 relating to Force Majeure. A conjoint reading of these provisions makes it clear that the date for possession was only a tentative estimate and not an absolute commitment. Clause 17(a) of the

Agreement specifically provides that, in case of delay beyond the indicative period, the Complainant would be entitled to compensation at the agreed rate of Rs. 5/- per sq. ft. of the Super Area per month. The Complainant accepted and consented to this arrangement at the time of execution of the Agreement and has never objected to its thereafter.

d. The delay in completion of the project was due to several unforeseen and uncontrollable circumstances, despite the Respondent No. 1's best efforts, including:

- o Delay in obtaining approvals from multiple authorities;
- o Acute labour shortage caused by the implementation of government schemes such as NREGA and JNNURM;
- o Acute water scarcity in NCR, aggravated by the Hon'ble Punjab & Haryana High Court's order dated 16.07.2012 prohibiting use of groundwater for construction and mandating reliance on limited recycled water;
- o Administrative restrictions including the Deputy Commissioner's order dated 01.09.2012 enforcing the above ban.

These factors squarely fall within the ambit of Force Majeure as contemplated under Clauses 15(b)(i) and 31 of the Agreement.

e. It is settled law that, in contracts relating to construction and immovable property, time is ordinarily not of the essence unless expressly provided. Reliance is placed on:

- o *Bangalore Development Authority v. Syndicate Bank* (2007) 6 SCC 711;

- o *N. Srinivasa v. Kuttukaran Machine Tools Ltd.* (2009) 5 SCC 182. In the present case, the Agreement clearly demonstrates that time was not of the essence for delivery of possession. The term “proposed to hand over possession” used in Clause 15(a) confirms that the timeline was tentative.
- f. The Respondent No. 1 has not derived any benefit from the delay; rather, it has suffered cost escalations and financial burden. The baseless allegations of diversion of funds are denied in toto. Without prejudice, it is submitted that the liability of the Respondent No. 1, if any, is restricted to the compensation expressly agreed upon under the Agreement. The inflated claim for interest or additional compensation made by the Complainant is wholly untenable.

E. Reply filed by respondents No. 3

- 6. The respondent has contested the complaint on the following grounds:
 - a. It is humbly submitted that the mandate of the Real Estate (Regulatory and Development) Act, 2016 (“RERA”) is to protect the interest of homebuyers against delays and defaults by errant developers. The present complaint arises from the alleged default of Respondent Nos. 1 and 2 in the timely construction and handover of the project. However, the Complainant has wrongly impleaded ICICI Bank Ltd. as Respondent No. 3, despite not seeking any relief against it. The relationship between the Complainant and Respondent No. 3 arises solely from a home loan agreement, which has no nexus whatsoever with the builder.
 - b. It is submitted that this Authority lacks jurisdiction to issue any directions or orders to any person or entity that is not a “promoter,”

“real estate agent,” or “allottee” within the meaning of RERA. Respondent No. 3, being a lender, does not fall within any of these categories. Accordingly, the complaint is liable to be dismissed against Respondent No. 3 on the ground of misjoinder of parties, as its domain of services is wholly distinct from that of Respondent Nos. 1 and 2. Furthermore, any contractual relationship between the Complainant and Respondent No. 3 has ceased to exist, thereby eliminating any cause of action.

- c. The scope of functioning of Respondent No. 3 falls entirely outside the jurisdictional purview of this Hon'ble Authority. The Complainant has failed to disclose any independent cause of action against Respondent No. 3. In light of the above, it is prayed that this Authority be pleased to delete Respondent No. 3 from the array of parties and/or dismiss the complaint as against Respondent No. 3 for lack of jurisdiction and absence of cause of action.
 - d. It is further submitted that Respondent No. 3, ICICI Bank Ltd., is in no way concerned with the present complaint, except to the extent that it sanctioned and disbursed a home loan strictly in accordance with the terms and conditions of the Home Loan Agreement and the Tripartite Agreement.
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.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

9. 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 complete territorial jurisdiction to deal with the present complaint.

F.II Subject-matter jurisdiction

10. 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.

11. 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.

G. Objections regarding force majeure

- G.I. The Respondent-Promoter has contended that the construction of the tower, in which the unit of the Complainants is situated, was delayed on account of force majeure circumstances, including orders passed by the Hon'ble National Green Tribunal (NGT) directing stoppage of construction activities, as well as delays in obtaining statutory approvals from multiple authorities. However, the said plea is devoid of merit. It is respectfully submitted that the directions of the Hon'ble NGT imposing a ban on construction in the NCR region were operative only for a limited period and cannot reasonably be attributed as a cause for the prolonged delay in the completion of the project. Therefore, the reliance placed by the Respondent on such temporary restrictions is wholly misconceived and unsustainable.

12. It is a settled principle of law that no party can be permitted to take advantage of its own wrong. Hence, the Respondent-Promoter cannot claim leniency or seek exemption from liability on the basis of the aforesaid reasons, particularly when the Complainants have suffered

undue hardship due to the failure of the Respondent to deliver possession within the agreed timeframe.

H. Findings on the relief sought by the complainants.

H.1 Direct the respondent nos. 1 and 2 to provide a definite and binding date for completion of construction and handing over of possession and further direct them to hand over possession of the said unit to the Complainants accordingly along with delay possession charges.

13. In the present complaint, the complainants intend to continue with the project and is 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."*

14. **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.

15. 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.
16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 11.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
17. **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;"

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.
19. On consideration of the documents available on record and the submissions made by the parties regarding contravention of the provisions of the Act, the Authority is satisfied that the respondents are in contravention of Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 10.04.2012. The Buyer's Agreement was executed between the parties on 10.04.2012, and the due date of possession is to be calculated as three years from the date of agreement, i.e., 10.04.2015. However, the respondents have failed to hand over possession of the subject apartment to the complainants till the date of this order. Accordingly, it is established that the respondents/promoters have failed to fulfil their obligations and responsibilities under the agreement to hand over possession within the stipulated period.
20. Accordingly, the non-compliance with the mandate contained in Section 11(4)(a) read with the proviso to Section 18(1) of the Act on the part of respondents No. 1 and 2 is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from the due date of possession, i.e., 10.04.2015, until a valid offer of possession plus two months after obtaining the occupation certificate from the competent

authority, or the actual handing over of possession, whichever is earlier, in terms of Section 18(1) of the Act, 2016 read with Rule 15 of the Rules. Respondent No. 3 is merely a lender and does not satisfy the definition of a "promoter" under Section 2(zk) of the Act. Consequently, no relief is made out against Respondent No. 3 (Bank/Financial Institution).

I. 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 casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- a. The respondent/promoter No.1 & 2 is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 10.04.2015 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- b. The arrears of interest accrued from 10.04.2015 till the date of this order shall be paid by the promoter to the allottee(s) within a period of 90 days from the date of this order. Thereafter, interest for every month of delay shall be paid by the promoter to the allottee(s) on or before the 10th day of the subsequent month, in accordance with Rule 16(2) of the Rules.
- c. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- d. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the builder buyers' agreement.
 - e. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
22. Complaint as well as applications, if any, stands disposed off accordingly.
23. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.07.2025

HARERA
GURUGRAM