

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

Complaint no.: 2688 of 2022

Date of filing: 09.06.2022

Date of order: 29.07.2025

1. Mr. Anuj Mehta

2. Mr. Ankur Mehta

Both R/o: - D-145, New Rajinder Nagar,
New Delhi-110060

Complainants

Versus

M/s Corona Buildcon Pvt. Ltd

Corporate Office: - G-96, Lower Ground Floor,
Saket, New Delhi – 110017

Respondent

CORAM:

Shri Arun Kumar

Shri Ashok Sanwan

**Chairman
Member**

APPEARANCE:

Shri Garvit Gupta (Advocate)

Shri Ishaan Dang (Advocate)

**Complainants
Respondent**

ORDER

1. This complaint has been filed by the complainant/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.	Particulars	Details
1.	Name of the project	"Corona Gracieux" Sector 76, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	16.819 acres
4.	DTCP License no. & validity status	16 of 2010 dated 16.02.2010 Valid up to 15.02.2025
	Name of licensee	Sh. Suraj Mal, Sh. Amrit Lal SS/O Sh. Khubi Ram and others
5.	RERA Registered / not registered	Not - Registered
6.	Unit No.	1503 15 th floor in tower-C (Annexure C-2 page no. 71 of complaint)
7.	Unit admeasuring	1550 sq. ft. (Annexure C-2 page no. 71 of complaint)
8.	Provisional allotment Letter in favor of original allottee i.e., Mr. Nitin Dua	18.10.2010 (page no. 71 of complaint)
9.	Date of execution of buyer's agreement in favor of original allottee i.e., Mr. Nitin Dua	01.09.2011 (Page no. 73 of the complaint)
10.	Endorsement in favor of the present complainant i.e., Anuj Mehta and Ankur Mehta	23.04.2012 (Page no. 92 of the complaint)
11.	Intimation for transfer letter by respondent to complainants	28.04.2012 (Page no. 148 of the complaint)
12.	Possession clause	23. POSSESSION OF THE SAID APARTMENT <i>Based upon the preset plans and estimates and subject to all the description the developer contemplates to complete the construction of the said building / apartment within 36 months from the start of construction, subject to timely payment by the</i>

		<i>allottees.....</i> <i>However, under normal circumstances, a grace period of 6 months is available to the builder before applying any such penal compensation payable to the allottees.</i> <i>(Page no. 79 of the complaint)</i>
13.	Date of construction	25.03.2011 (Applicant ledger at page 140 of the complaint)
14.	Due date of delivery of possession	25.09.2014 (Calculated from date of start of construction plus six months grace period being unqualified)
15.	Total sale consideration	Rs.56,92,650/- (As per the buyer's agreement on page 75 of the complaint)
16.	Total amount paid by the complainant	Rs.61,20,855/- (As per applicant ledger dated 23.09.2014 from page 141 to 146 of the complaint)
17.	Legal notice for refund by complainant	05.05.2022 (page 149 of complaint)
18.	Request letter by respondent to the licensee i.e. M/s Nine Developers Ltd. for submission of application of OC	14.12.2016, 02.03.2017 (page 38-39 of application for dismissal of complaint)
19.	Occupation certificate	Applied on 27.07.2017, but not obtained till date. (page 40 of application for dismissal of complaint)
20.	Offer for fit-out possession	27.01.2017, 30.04.2019, 26.04.2024 (Page no. 7 to 9 of the reply of application)
21.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That the respondent announced the launch of "Corona Gracieux" project in the year 2010. The complainants while searching for a residential flat/accommodation were lured by the advertisements /brochures of the company to buy a flat/accommodation in their project namely "Corona Gracieux" project at Sector 76, Gurugram Haryana. The agents and officers

of the respondent's told the complainants about the moonshine reputation of the company and the agents of the respondent's made huge presentations about the project mentioned above and also assured that they have delivered several projects in the national capital region prior to this project. The respondent handed over one brochure to the complainants, which projected a very interesting landscaping of the said project and went on to incite the complainants to part with their hard-earned money by way of making payments. the respondent claimed that they have taken all due approvals, sanctions and government permissions towards development and construction of "Corona Gracieux" project and after representing through brochures, about the facilities to be provided, the respondent managed to impress the complainants, who then decided to invest their hard-earned money in purchasing the unit at "Corona Gracieux" project.

- II. That relying on various representations and assurances given by the respondent and on belief of such assurances, the original allottees Mr. Nitin Dua booked a residential unit in the project by paying an amount of Rs.4,00,000/- towards the booking of the said unit bearing no C-1503, in the project said project, having super area admeasuring 1550 sq. ft.
- III. That the respondent sent a provisional allotment letter dated 18.10.2010 to original allottee Mr. Nitin Dua confirming the booking of the said unit for a total sale consideration of Rs.59,25,150/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- IV. That the original allottee Mr. Nitin Dua made payments against the demands raised by the respondent the same has been acknowledged by the respondent vide the statement of account. The complainants contacted the respondent on several occasions and were regularly in touch with the

respondent. The respondent was never able to give any satisfactory response regarding the status of the construction and were never definite about the delivery of the possession. Many times, complainants also raised issue of difference in total sale consideration of the allotted unit but respondent never able to provide any satisfactory answer to the complainants.

- V. The respondent having taken more than 10% of the total sale consideration from the original allottee issued a completely one-sided apartment buyer agreement. On perusing a buyer agreement, the complainants were made aware of the due date of delivery, which as per Clause 23 of the apartment buyer's agreement respondent agreed to deliver the possession of the said unit within a period of 36 months from the start of construction (i.e. 25.03.2011 as marked in the statement of account thereby making the due date of delivery on or before 25.03.2014. Therefore, due date of possession comes out to be 25.03.2014.
- VI. That the initial allottee sold his unit to the present complainants through an endorsement of the ABA on the 23.04.2012. The same was further acknowledged by the respondent vide their intimation of transfer letter dated 28.04.2012.
- VII. As per demands raised and based on the payment plan as agreed upon the complainants to buy the captioned unit made the total payment of Rs.61,20,855/- against the total consideration of Rs.58,43,252/-
- VIII. During the period the complainants went to the office of respondent several times and requested them to allow him to visit the site, but it was never allowed stating that they do not permit any buyer to visit the site during construction period once complainants visited the site but were not allowed to enter the site and even there was no proper approach road. The

complainants even after paying still received nothing in return but only loss of the time and money invested by them.

- IX. That the respondent issued a letter stating that the unit of the complainants was ready for fit out possession and requested them to come forward to do the necessary compliances to take possession of the unit. The complainants on visiting the office of the respondent requested for the copy of the occupation certificate and requested to visit the unit before taking possession. The respondent issued various vague assurances that the respondent had applied for the OC and the same was expected shortly.
- X. That even after eight years from the due date of delivery (i.e., 25.03.2014) the respondent has been unable to handover the possession of the unit along with the occupation certificate.
- XI. That the respondent has 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. The respondent had further malafidely failed to implement and execute ABA with the complainants.
- XII. The complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for commercial purposes. they have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank.
- XIII. That the respondents are guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of Rules, 2017. The complainants have suffered on account of deficiency in service by the respondents and as such the respondents are fully liable to cure the deficiency as per the provisions of the Act, 2016 (central act 16 of 2016) and the provisions of Haryana Real Estate Rules, 2017.

C. Relief sought by the complainants:

4. The complainants filed an application for amendment if relief on 22.04.2024 and same was allowed vide proceedings dated 14.01.2025. The complainants have sought following relief(s) through said amendment application:
- i. Direct the respondent to handover the physical possession of the unit in question in a habitable state, after obtaining the occupation certificate.
 - ii. Interest as per Section 18 of the RERA Act, 2016 for every month of delay at prescribed rate of interest as per RERA Act, 2016 read with Haryana RERA Rules, 2017 from due date to handover i.e. 25.03.2014 till actual handing of the possession.
 - iii. To execute the conveyance deed of the allotted unit in favour of the complainants
 - iv. To not raise any payment demand, in violation of the provisions of RERA Act, 2016.
 - v. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the complainants.
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 contested the complaint on the following grounds: -
- I. That Mr. Nitin Dua had made detailed and elaborate enquiries with regard to competence, capacity and capability of the answering respondent to successfully conceptualize, promote, construct and develop the residential group housing project. After being fully satisfied in all respects Mr. Nitin Dua proceed to purchase an apartment in the project.
 - II. That respondent had issued provisional allotment letter dated 18.10.2010 in favor of Mr. Nitin Dua. In order to determine the rights and obligations the parties to the builder buyer agreement, all terms and conditions incorporated in the aforesaid contract are to be cumulatively considered

in their entirety. The complainants are not entitled to selectively rely upon a particular clause of the builder buyer agreement in isolation. It was clearly mentioned in clause 24 of the builder buyer agreement that in case the completion of the building/said complex was delayed due to delay in sanction of building/grant of completion/occupation certificate by the competent authority or for any other reason beyond the control of the respondent, in that event the respondent would be entitled to extension of time for delivery of possession of the said apartment.

- III. That the complainants had decided to purchase the apartment in question in the year 2012 goes on to establish that the complainants were completely satisfied with the progress of the project.
 - IV. That letter dated 27.01.2017 had been issued by the respondent calling upon the complainant to obtain physical possession of the apartment booked for purchase by them as the same was ready for delivery of physical possession. That part occupation certificate for the project from Directorate of Town and Country Planning, Haryana, Chandigarh is concerned, no lapse of any nature can be attributed to the respondent by the complainants.
 - V. That the construction stands duly completed at the spot. There is no deficient in service on the part of the respondent. It cannot be claimed by the complainants that the construction of the unit has not been raised by the respondent. The construction stands duly completed at the spot and the respondent has tried its level best to ensure that occupation certificate is obtained by M/s Ninex Builders Limited from the concerned statutory Authority.
7. All other averments made in the complainant were denied in toto.
 8. 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 submissions made by the parties.

E. Application for dismissal of complaint by the respondent.

9. The respondent filed an application for dismissal of the complaint on 03.07.2023 and made following submissions:

- a) That the Licence bearing no.16 of 2010 pertaining to land measuring 16.819 acres situated in revenue estate of Kherki Daula, Gurgaon-Manesar Urban Complex, comprised in Sector 76 Gurugram had been granted by the Directorate of Town and Country Planning, Haryana, Chandigarh to M/s Ninex Developers Pvt. Ltd and certain other landowners i.e. Mr. Suraj Mal and others.
- b) That Ninex developers had entered into agreement dated 16.06.2010 with the respondent. The aforesaid Licence had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh for development of a residential group housing project over land measuring 16.819 acres situated in the revenue estate of Kherki Daula, Gurgaon comprised in Sector-76, Gurugram. By virtue of the said agreement, respondent and M/s Ninex Developers Pvt. Ltd. had entered into transaction in respect of land measuring 4 acres forming part of the licenced land. Actual physical possession of land measuring 4 acres had been delivered by Ninex developers to the respondent.
- c) That by virtue of the said agreement, duly sanctioned FSI against land measuring 4 acres had been purchased by respondent from Ninex Developers Limited after payment of substantial consideration mutually agreed between the parties. In furtherance of said agreement, irrevocable general power of attorney dated 20.09.2011 had been executed and got registered by M/s Ninex Developers Pvt. Ltd. in favour of respondent, so as to enable respondent to undertake

conceptualization, promotion, construction and development of residential group housing project over land measuring 4 acres, subject matter of the said agreement. The said agreement and aforesaid general power of attorney are valid and subsisting till date.

- d) That after execution of the said agreement, respondent had undertaken the development, construction and implementation of a residential group housing project over the parcel of land measuring 4 acres purchased by it from Ninex Developers. The present complainant had entered into apartment buyer agreement on 01.09.2011 with the respondent in respect of apartment bearing number C-1503, 14th floor admeasuring 1550 sq. ft.
- e) That after raising of construction, letter dated 14.12.2016 had been sent by the respondent to M/s Ninex Developers Limited to submit application for grant of part occupation certificate to Directorate of Town and Country Planning, Haryana, Chandigarh. This letter was addressed to M/s Ninex Developers Limited as the licence had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh in favour of M/s Ninex Developers Limited. Even thereafter request letter dated 02.03.2017 had been sent by respondent to M/s Ninex Developers Limited for submission of application for issuance of part occupation certificate.
- f) That application dated 27.04.2017 received on 11.05.2017 was submitted by M/s Ninex Developers Pvt. Ltd on behalf of respondent with Directorate of Town and Country Planning, Haryana, for grant of part Occupation Certificate in respect of Towers 'A1', 'B1', 'C1', 'D1', and 'E1'. That even thereafter, letters dated 09.09.2017, 24.01.2018, 12.07.2018 and 08.02.2019 were sent by the respondent to M/s Ninex Developers Limited calling upon Ninex Developers to fulfil its

obligations as a licence holder in terms of the said agreement so that the part occupation certificate so applied could be expeditiously obtained from Directorate of Town and Country Planning, Haryana, Chandigarh.

g) That proceedings titled "BDR Finvest Private Limited Vs. Ninex Developers Limited" under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "Code of 2016") were instituted before the National Company Law Tribunal, Principal Bench, New Delhi. Order dated 25.07.2019 was passed by the National Company Law Tribunal, Principal Bench, New Delhi whereby Mr. Vekas Kumar Garg was appointed as Interim Resolution Professional. It was further observed in the aforesaid order that all requirements contemplated under Section 7 of the Code of 2016 stood fulfilled.

h) That the National Company Law Tribunal, Principal Bench, New Delhi was pleased to declare moratorium in terms of Section 14 of the Code of 2016. Paragraph number 8 of order dated 25th of July, 2019 reads as under:

"We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

i) That application under Section 60(5) of the Code of 2016 read with Rule 11 of the National Company Tribunal Rules, 2016 had been submitted by respondent before the National Company Law Tribunal, Principal Bench, New Delhi vide IA-2809/2021 seeking the following relief:

"In light of above facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

(1) Direct the Respondent to comply with the terms and conditions of the agreement dated 16.06.2010.

- (2) Direct the Respondent herein to adhere with the all compliances of the DTCP, Haryana and get Licence No.16/2010 renewed and keep the same alive till the grant of occupation and completion certificates to the extent of the share of the Applicant herein with immediate effect.*
- (3) To Direct the respondent to pay all statutory dues to the appropriate authorities including departments such as electricity department as well as other statutory bodies in relation to licence no.16 of 2010.*
- (4) Direct the Respondent herein to clear the dues, compliances up to date with DTCP, Haryana w.r.t Licence No.122/2012 issued in the name of the corporate debtor.*
- (5) In the interest of justice, grant stay of proceeding in all the cases pending before Real Estate Regulation Authority, Gurugram (Haryana) initiated by the homebuyers/allottees against the applicant herein w.r.t. the project developed in the project land under the Licence No.16/2010.*
- (6) Also grant stay of any proceedings initiated herein against the applicant before any other judicial/ quasi-judicial authority due to default of the Respondent w.r.t. the project developed in the project land under the Licence No.16/2010.*
- (7) Pass any order/direction as this Hon'ble Tribunal deems fit in the interests of justice."*

- j) That it had been highlighted by respondent in the aforesaid application that there was no lapse attributable to respondent in so far as non-issuance of occupation certificate by Directorate of Town and Country Planning, Haryana, Chandigarh was concerned. The commencement of proceedings under Section 7 of the Code of 2016, appointment of Interim Resolution Professional and Declaration of Moratorium is proving a stumbling block/hindrane in the endeavor of respondent to obtain occupation certificate. Moreover, M/s Ninex Developers has failed to fulfil various obligations towards Town and Country Planning Department/ State of Haryana on account of which the licence as on date has expired. Also, in light of facts narrated above, respondent is not in a position to initiate any legal action against M/s Ninex Developers Limited on account of declaration of moratorium and appointment of Interim Resolution Professional.
- k) That in order to facilitate the process of insolvency resolution, an Insolvency Resolution Professional (hereinafter referred to as "IRP") has also been appointed. According to the provisions of the Code, the erstwhile management of the debtor is divested of its powers and the

same is then vested in an IRP. The IRP then continues the business of the corporate body as a going concern until a resolution plan is drawn up, which enables the corporate body to pay back its debts. The IRP is duty-bound to monitor the assets of the debtor and claims made against it and constitute a committee of creditors. In fact, the control and custody of the assets of the debtor may also be taken over by the IRP.

- l) That the respondent herein had approached the National Company Law Tribunal, New Delhi Bench by filing I.A. No. 541/2022 (Annexure R14) wherein the Haryana Real Estate Regulatory Authority through its Registrar was impleaded as the respondent seeking the following prayer:

PRAYER

In the light of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- 1. Pass an order declaring that the Licence No. 16/2010 is an asset of the Corporate Debtor on which moratorium applies;*
- 2. leave to withdraw prayer No. 4 in I.A. No. 2809/2021 in C.P (IB) -281 (PB)/2019 filed by the applicant herein;*
- 3. Pass any order/direction as this Hon'ble Tribunal deems fit in the interests of justice*

- m) That the Ld. NCLT, New Delhi was pleased to issue notice to Haryana Real Estate Regulatory Authority through its Registrar on 2.2.2022 and the same was served to Haryana Real Estate Regulatory Authority through its Registrar on 8.2.2022 (Annexure 15). The case set up by the respondent has found favour with the Ld. NCLT, New Delhi and licence bearing no.16 of 2010 has been treated as asset of the corporate debtor on which the moratorium granted applies.
- n) That in light of the same, the continuation of any kind of proceeding in this Hon'ble Authority against the respondent will be in contempt of the moratorium declared under Section 14 of the Code. Moreover, the erstwhile authorised representatives of the respondent company and

even the present employees have been stripped of their powers to act on behalf of the company till the period of moratorium does not expire and will not be able to come forward and provide any help in their official capacity to this Hon'ble Authority

- o) That it has been unanimously held by various courts that in view of the moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016 no pending suits or proceedings shall continue in any court of law, tribunal, arbitration panel or other authority.
- p) That the moment an insolvency petition is admitted, moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings. In fact, it has even been held by courts of law that procedural continuation of proceedings in such cases like permitting the filing of written statement or applications is violative of the moratorium and constitute misconstruing the scope and import of Section 14(1)(a) of the Code of 2016. In the present case license had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh and the same is an intangible asset and therefore, the same is immune from any proceeding under Section 14 of the Insolvency & Bankruptcy Code, 2016. Thus, the continuation of proceedings has been interpreted to mean that every step therein is encompassed which includes not only adjudicatory steps but also procedural ones. Therefore, it is absolutely illogical and irrational for the complainant to contend even hypothetically that the complaint can be prosecuted only against respondents.
- q) That in HRERA Complaint no. 728 of 2021 titled as Neelima Arora & Ors. vs. Corona Buildcon Pvt. Ltd, the Hon'ble HRERA, Gurugram has considered the impact of ongoing moratorium. Moreover, Hon'ble NCLT, New Delhi has passed order dated 08.02.2023 whereby it has declared

license bearing no.16 of 2010 as an asset of the corporate debtor which is also shared license of the present respondent on which the moratorium granted applies. Continuation of any proceeding in this Hon'ble Authority including the present case against the respondent will be in violation of the moratorium declared under Section 14 of the Code. Based on the facts on record, Hon'ble HRERA, Gurugram passed order dt. 26.05.2023 and disposed of the complaint no.728 of 2021 stating "The licensee company is in NCLT who has to apply for obtaining occupation certificate from the competent authority, Hence the authority cannot intervene till the moratorium is going on the that company.

F. Jurisdiction of the Authority:

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial Jurisdiction:

11. 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.

F.II Subject-matter Jurisdiction:

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of

all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

13. 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 complainant at a later stage.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover the physical possession of the unit in question in a habitable state, after obtaining the Occupation certificate.

G.II Interest as per Section 18 of the RERA Act, 2016 for every month of delay at prescribed rate of interest as per RERA Act, 2016 read with Haryana RERA Rules, 2017 from due date to handover i.e. 25.03.2014 till actual handing of the possession.

14. The complainants are a subsequent allottees. The subject unit (1503 15th floor in tower-C) was originally allotted to Nitin Dua. A buyer's agreement was executed in this regard on 01.09.2011 between original allottee and respondent. Further, the buyer's agreement was endorsed in the favor of the complainants on 23.04.2012. The original allottee transferred all his rights and liabilities in relation to subject unit in the favor of the complainants i.e. Anuj Mehta and Ankur Mehta. The Authority has decided this issue in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the Authority has held that in cases where subsequent allottee has stepped into the shoes of original allottee before the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges. So, the Authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing

over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

15. 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."

16. Clause 23 of the buyer's agreement provides for handing over of possession and is reproduced below:

23 POSSESSION OF THE SAID APARTMENT

Based upon the preset plans and estimates and subject to all the description the developer contemplates to complete the construction of the said building/apartment within 36 months from the start of construction, subject to timely payment by the allottees.....

However, under normal circumstances, a grace period of 6 months is available to the builder before applying any such penal compensation payable to the allottees

17. **Due date of handing over possession and admissibility of grace period:**

As per clause 23 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of start of construction plus grace period of 6 months. As per the applicant ledger (Annexure 5) the date of start of excavation is 25.03.2011. Hence, the due date of possession comes out to be 25.09.2014 including grace period of six months being unqualified.

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., 29.07.2025 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 29.07.2025 interest rate has been 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 complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
23. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of Rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 23 of the buyer's agreement executed between the parties on 01.09.2011, the possession of the subject unit was to be delivered within 36 months from the date of start of construction. As far as grace period is concerned, the same is allowed being unqualified. Therefore, the due date of handing over possession comes out to be 25.09.2014. The respondent has failed to handover possession of the subject unit till date of this order. 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 01.09.2011. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
24. It is pertinent to note that the respondent had already applied for the occupation certificate through M/s Ninex Developers Limited vide application dated 27.04.2017 received on 11.05.2017 before the concerned competent authority but is not being granted due to non-compliance by the

licencee company i.e. M/s Ninex Developers Limited which was under moratorium. The licensee applied for the OC well before the commencement of the CIRP proceedings against it. The Authority observes that the moratorium was proving a stumbling block/hindrance in the endeavour of the respondent to obtain the occupation certificate. Hence, the CIRP proceedings against M/s Ninex Developers Limited were the primary reason for the delay in obtaining the same.

25. Furthermore, as per Recital C of the buyer's agreement dated 01.09.2011 which was endorsed in the favor of complainants, it is explicitly mentioned that licence no. 16 of 2010 was granted in favour of M/s Ninex Developers Limited by the Directorate of Town and Country Planning (DTCP), Haryana and the complainants were very well aware that M/s Ninex Developers Limited was the licence holder for the project.
26. It is also a matter of record that the AR of the respondent during proceedings dated 29.07.2025 submitted that the licence for the project was renewed on 13.06.2025 and the OC is expected to be obtained in the near future. In view of these facts, the respondent cannot be held liable for the period during which the licensee holder (M/s Ninex Developers Limited) was under moratorium and the licence was not renewed.
27. 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 complainant is entitled to delay possession charges at rate of the prescribed interest @10.90% p.a. from the due date of possession i.e. 25.09.2014 till 25.07.2019 (the date of imposition of moratorium on M/s Ninex Developers Pvt. Ltd./licence holder). Furthermore, the complainants are entitled for delay possession charges from the date of renewal of the project license i.e. 13.06.2025 till valid offer of possession plus 2 months after obtaining OC 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.

G.III To execute the Conveyance deed of the allotted unit in favour of the Complainants.

28. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title:- (1).

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws. Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

29. The Authority observes that OC with regard to unit in question has not been obtained by the respondent/promoter from the competent authority. The respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of three months after receiving occupation certificate from the competent authority

G.IV To not raise any payment demand, in violation of the provisions of RERA Act, 2016.

30. The buyer's agreement was executed between the parties on 01.09.2011 prior to the enactment of the Act, 2016. Hence, the respondent shall not

charge anything from the complainants which is not the part of the buyer's agreement.

G.V Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the Complainants.

31. The Authority cannot deliberate on the above sought relief since the complainants have failed to enumerate the specific defaults being committed by the respondent in their complaint and the pleadings under which the respondent-promoter shall be penalised.

H. Directions of the Authority

32. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.90% p.a. for every month of delay from the due date of possession i.e. 25.09.2014 till 25.07.2019 (the date of imposition of moratorium on M/s Ninex Developers Pvt. Ltd./the licence holder). Further, the respondent is directed to pay the delay period interest from the date of renewal of the project license i.e. 13.06.2025 till valid offer of possession plus 2 months after obtaining OC 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
- ii. The arrears of such interest accrued from due date of possession till the date of order by the Authority shall be paid by the promoter to the allottee 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.

- iii. The respondent shall not charge anything from the complainant which is not the part of the agreement to sell.
 - iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
 - v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
 - vi. The rate of interest chargeable from the allottee 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 promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
33. Complaint as well as applications, if any, stand disposed off accordingly.
34. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

29.07.2025