

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

Complaint no.: 297 of 2024
Date of filing: 05.02.2024
Date of order: 02.09.2025

Ram Giri Yadav
R/o: House No. 627, Sector-31, Gurugram,
Haryana-122001.

Complainant

Versus

DLF Home Developers Limited
(Formerly known as DLF Commercial Complexes Ltd.)
Regd. Office: 2nd Floor, Arjun Marg, DLF
Shopping Mall, DLF City, Phase-I DLF QE,
Gurgaon

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

Appearance:

Shri Sukhbir Yadav (Advocate)
Shri J.K. Dang (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant-allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details.

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

Sr. No.	Particulars	Details
1.	Name of the project	"DLF Corporate Greens", Sector-74-A, Gurugram, Haryana.
2.	Area of the project	27.8 acres
3.	Nature of project	Commercial space
4.	DTCP license no.	License no. - 51 of 2008
5.	RERA registered	Not registered
6.	Unit no.	CG1-417, Tower 1 (page 73 of reply)
7.	Unit Area	1621 sq. ft. (Super-Area) (page no. 73 of reply)
8.	Application for allotment	30.06.2008 (page 36 of complaint)
9.	Agreement to sell (Between original allottee i.e. Devinder Gupta and complainant i.e. Ram Giri Yadav)	12.12.2009 (page 44 of complaint)
10.	Request for transfer letter by original allottee	12.12.2009 (page 43 of complaint)
11.	Letter issued by respondent confirming the nomination in name of complainant	10.02.2010 (page 59 of complaint)
12.	Space buyer's agreement b/w respondent and complainant	20.05.2010 (page no. 70 of reply)
13.	Possession clause as per the space buyer agreement dated 20.05.2010	Clause 10.2. Schedule for Possession of the said Premises: The Intending Seller based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Premises within a period of thirty six (36) months from the date of allotment of the said premises unless there shall be delay or there shall be failure due to reason mentioned in Clauses (11.1), (11.2),

		<i>(11.3) and Clause (39) or due to failure of Intending Allottee(S) to pay in time the total sale price of the said premises.</i> (Emphasis supplied) (page 85 of reply)
14.	Due date of possession	20.05.2013 (Calculated 36 months from the date of execution of agreement)
15.	Total sale consideration	Rs.94,34,450/- (page 75 of reply)
16.	Total amount paid by the complainant	Rs.91,42,668/- (as per the SoA dated 10.01.2015 page 147 of complaint)
17.	Occupation certificate for Tower 1, 2 and 4	19.06.2014 (page 49 of reply)
18.	Show Cause notice issued by the DTCP to the respondent	17.12.2014 (Page 14 of written submissions filed by the complainant)
19.	Show Cause notice withdrawn by the DTCP	24.06.2015 (Page 16 of written submissions filed by the complainant)
20.	Offer of possession	09.01.2015 (As on page no. 56 of reply)
21.	Objection raised by the complainant w.r.t to the Indemnity Cum Undertaking	12.10.2015 (page 182 of reply)
22.	Legal notice sent to respondent seeking refund	29.08.2016 (As on page no. 154 of complaint)
23.	Consumer Complaint filed before the National Consumer Disputes Redressal, New Delhi by complainant	1811 of 2018 (page 162 of complaint) <i>Order dated 14.12.2023 withdrawing the complaint and pursuing the remedy before the RERA Authority</i>

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- That Devinder Gupta & Sons Realtors Pvt Ltd (through its authorized representative) being an underwriter applied for the booking of a commercial unit bearing no. DCG 1-0417/CGP-1192 situated in the project of the

respondent DLF Corporate Greens, Sector-74A, Gurugram through an application for allotment by sale dated 30.06.2008.

- b. That in 2009, the complainant Ram Giri Yadav received a marketing call from the office of the above-said underwriter i.e., Devinder Gupta and Sons Realtors Pvt Ltd. for booking in a commercial project being developed by the respondent. Thereafter, the complainant visited the office of the respondent and the project site along with her family members. The marketing staff of the above-said underwriter as well as the marketing staff of the respondent allured the complainant through the lucrative advertisements which was launched by the respondent in relation to the said project. The said project is a multistoried shopping mall-cum commercial office building. The said project consists of shops, office spaces, an entertainment centre, and other kinds of commercial spaces.
- c. That the broker/underwriter and the official of the respondent party made various appealing representations, and also made a promise that the office units of the said project shall be delivered within 36 months from the allotment. Believing on representations and assurances of the respondent and the underwriter, the complainant in July 2009 purchased a commercial unit/office bearing no. DCG 1-0417/cgp-1192 in Tower-1 admeasuring 1621 sq. ft situated in the project of the respondent from the said underwriter for a total sale consideration of Rs.94,34,450/- inclusive of BSP, EDC, IDC, Int and 2 parking's under the construction linked payment plan.
- d. That on 12.12.2009, an agreement to sell was executed inter-se the complainant and the said underwriter concerning the subject commercial unit/office. As per the said agreement, the total consideration of the complainant's unit is Rs.94,34,450/- the complainant has paid an amount of Rs.35,50,707/-. The said BBA was a fixed set of papers, which was asked to be

signed by the complainant and no alteration or modification was entertained by the respondent. On request to change one-sided terms/clauses which were solely in favor of the respondent, it was told that the complainant has to sign the BBA as it is and, in any case, if it is not acceptable to the complainant then in that state of affairs the allotment with respect to the complainant's unit shall be cancelled and earnest money shall be forfeited. Furthermore, on the same day i.e., 12.12.2009, the authorized representative (Mr. Gaurav Dhawan) of the said underwriter i.e., Devinder Gupta and Sons Realtors Pvt Ltd. sent a request letter to the respondent party for the transfer of the unit in question in the name of the complainant and also asked to do the nomination in the respondent's records by endorsing the application for allotment and payment receipts in her name.

- e. That on 10.02.2010, the respondent sent a confirmation letter with respect to the nomination of the subject unit in the name of the complainant, and confirmed the nomination of the said unit in favor of the complainant. In this way, the name of the complainant was substituted in place of the underwriter and she purchased the unit in question from the said underwriter.
- f. That the complainant enquired about the builder buyer agreement from the respondent since an assurance was given to the complainant that the builder/unit buyer agreement for the complainant's unit shall be executed within a month from the date of the nomination. The nomination was done in December 2009, however, no BBA was executed by the end of January 2010.
- g. That after repeated telephonic conversations and a lapse of 5 months, on 20.05.2010, a pre-printed, unilateral, ex-facie, and arbitrary commercial office space buyer's agreement was executed inter-se the respondent and the complainant. As per clause 1.1 of the said BBA, the total consideration of the complainant's unit is Rs.94,34,450/- and according to the possession clause

10 the respondent has to give possession of the said unit within 36 months from the date of the allotment. The application for allotment was submitted on 30.06.2008, therefore, the due date of possession as per BBA was on or before 30.06.2011.

- h. That the complainant continued to pay the demands as and when raised by the respondent and has paid a sum of Rs.1,04,17,216/- as per the payment receipts issued by the respondent party and payments acknowledged by them in their transfer/nomination letter. The paid amount is inclusive of some extra charges such as service tax.
- i. That the complainant paid regular instalments towards the commercial unit in question as and when demanded by the respondent, however, the respondent despite receiving a huge amount from the complainant, failed to give possession of her commercial unit. The complainant with great difficulty is carrying on her business which is the only source of her livelihood as a result of the non-availability of the unit booked by her in the respondent's project.
- j. That the complainant in 2015, visited the project site and found that the construction was going on in a dilatory manner. The complainant raised her grievance about slow construction and possession of her unit, however, the official staff of the respondent never paid any heed to the complainant's grievances and kept on giving false assurances to the complainant that the possession shall be handed over her to soon but this term "soon" indicates an indefinite time for the respondent, therefore, the date of possession promised by the respondent party kept on came and went by.
- k. That after the lapse of the promised due date of possession, the complainant got worried and started losing hope for the possession of her unit. The respondent has not given possession to the complainant of her unit and did not complete the project within the promised time as well.

- l. That the complainant made several efforts to get possession of her unit, she made various telephonic conversations as well as paid several visits to the project site and sales office of the respondent, but all went in vain. The respondent has caused an inordinate and extraordinary delay in initiating and constructing the planned milestone of its project. The complainant made repeated efforts to get some information about her unit and possession of the same, however, the complainant never got any satisfactory reply from the respondent, and the respondent kept on lingering on the matter on one pretext or the other.
- m. That after a long follow-up and struggle, finally after 7 years, the respondent issued an offer of possession letter on 09.01.2015 with respect to the complainant's commercial unit. In the said offer of possession, the respondent increased the super area of the complainant's unit from 1621 sq. ft. to 1666 sq. ft. without any intimation and prior consent of the complainant. The respondent party has levied various unreasonable charges in the said offer of possession which are not appropriate charges such as service tax and other charges on account of increased area. Moreover, the respondent has charged unacceptable charges of Rs.5,40,000/- on account of parking, therefore, the respondent is liable to refund the same to the complainant. The demand of Rs.2,36,250/- under the head other costs and Rs.88,231/- under contingency deposit is against the agreed terms of BBA. Furthermore, the said offer of possession is illegal, invalid, and not in accordance with law since the respondent party has issued the said offer of possession without obtaining the occupancy certificate, hence the same is not tenable in the eyes of law. The occupancy certificate for the concerned tower was applied for by the respondent on 27.07.2017 (after 2.5 years from the date of the offer of possession), and the occupation certificate was obtained by the respondent on

19.03.2018, therefore, the said offer of possession was just a piece of paper nothing more than that.

- n. That on 11.12.2015, the complainant sent a grievance letter to the respondent concerning the refund of car parking charges. At the time of execution of the BBA, it was clearly stated by the respondent party that the total sale consideration of the unit in question is inclusive of 2 parking. The basement comprising of parking space as well as other common areas are included under the consideration of the complainant's unit, and now the respondent party is making an effort to extract the money from the complainant by selling the car parking separately.
- o. That the complainant raised her grievances on several occasions, however, none of her grievances was ever responded to by the builder/respondent, therefore, after suffering mentally from the acts of the respondent and being ignored by the respondent, the complainant sent a legal notice dated 29.08.2016 to the respondent.
- p. That from January 2011, the complainant continued to visit the project site and office of the respondent to get physical possession of her unit/office space, but all went in vain because the respondent failed to complete the construction of the project on time. since 2016, the complainant has been contacting the respondent telephonically and making efforts to get possession of the allotted commercial unit/office space but all went in vain. Despite several telephonic conversations, requests, and personal site visits by the complainant, the respondent failed to give the complete offer of possession or physical possession.
- q. That since January 2015, the complainant has been visiting the office of the respondent and asking for justification of the unreasonable demands being

charged by the respondent, and justification regarding the increase in the area of the unit, however, she got nothing but mental harassment.

- r. That being aggrieved by the misconduct of the respondent, the complainant filed a consumer complaint bearing no. 1811 of 2018 before the Hon'ble National Commission Disputes Redressal Commission against the respondent. Due to long pendency of the complaint, the complainant decided to withdraw the complaint qua her claim and decided to file a complaint before this Authority. The complainant filed an application on 12.12.2023 for the withdrawal of the said complainant i.e., 1811 of 2018 so that the complainant can file the complaint before this Authority. Thereafter, on 14.12.2023, The Hon'ble NCDRC dismissed the said complaint as withdrawn with liberty to pursue the remedy under the law.
- s. That on 03.02.2015, the complainant paid Rs.4,24,932.63/- to the respondent as property registration charges. But the respondent failed to register the conveyance deed therefore, on 03.12.2015 refunded the said amount with interest through cheque in favour of the complainant.
- t. That the complainant made several phone calls, visited several times to the office of the respondent and requested to complete the project as per specifications and amenities as per BBA, the complainant further requested to give justification for the increase in the area & unjustifiable demands raised by the respondent, but all went in vain till now the respondent failed to offer the possession of the complainant's office space as the said unit is yet not ready for occupation.
- u. That complainant having paid more than 100% of the actual cost of the unit in question and is ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of on promised time.

- v. That it has been more than 15 years from the date of booking and even though the construction of the towers is not completed, it clearly shows the negligence of the builder. As per project site conditions, it seems that the project would further take more than a year to complete in all respects, subject to the willingness of the respondent to complete the project.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- a. To get possession of her commercial unit/office space complete with all amenities as per the terms of BBA.
- b. To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities)
- c. To get an order in her favour by directing the respondent party to provide area calculation (Carpet area, loading & Super area).
- d. To get an order in her favour by directing the respondent party to get the Conveyance Deed executed with respect to the complainant's unit/office space.
- e. To get an order in her favour by directing the respondent party to refund the Car Parking charges of Rs. 5,40,000/- (Five Lacs Forty Thousand) with interest. Justification: The basement is part of the common area and the Builder can not dual charge for one place.
- f. To get an order in her favour by directing the respondent party to issue a fresh offer of possession after refraining the respondent from charging Rs.2,36,250/- under the head Other Costs and Rs. 88,231/- under contingency Deposit. Justification: Therese charges are illegal and not the part of cost of the unit and there is no valid offer of possession after receipt of OC.
- g. To get an order in her favour by restraining the respondent(s) from asking indemnity/undertaking for possession of the flat (as language/contents of undertaking indemnity/undertaking format are contrary to law and against the principle of natural justice.
- h. To initiate proceedings against the Respondent under section 59 of the Act, for non – registration of the project, as the OC of the project was obtained after coming into force of RERA/HARERA.

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:
- a. That the complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the apartment in question. The application for issuance of occupation certificate in respect of the Project in question was made on 24.01.2014 i.e. well before the notification of the Rules 2017. The occupation certificate in respect of the project was issued by the Competent Authority on 19.06.2014. Thus, the project in question is not an 'Ongoing Project" under Rule 2(1)(o) of the Rules. The Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
 - b. That the respondent has developed a commercial complex known as DLF Corporate Greens, situated in Sector 74A, Gurugram, in accordance with permissions, approvals and sanctions from the competent authorities. Licence no 51 of 2008 and grant of renewal of the aforementioned license dated 03.08.2021 whereby the said license had been renewed upto 18.03.2025. The license was granted in favour of M/s Apramey Infrastructure Private Limited, M/s Shramika Buildcon Private Limited, M/s Lakshya Buildtek Private Limited, M/s Shivsagar Builders Private Limited, Mr. Rajinder Singh Cheema, Mrs. Jaspal Cheema, Mr. B.S. Mathur, Mr. B.S. Mathur(HUF), Mrs. Santosh Mathur, Mr. Sanjeev Jain (HUF), Mr. Rajeev Jain (HUF), Mr. Girish Jain, Mr. Pawan Duggal, M/s Garv Developers Private Limited and M/s Dae Real Estates Private Limited. Furthermore, DLF Retail Developers Limited has entered into collaboration/ Development Agreements with the Land Owning Persons

whereby DRDL had been authorized to construct, develop and market various commercial building(s) on the Plot of Land subject matter of the license referred to above, at its own costs, in accordance with the permitted land uses and sanctions and clearances from the competent authorities. DRDL had entered into an agreement with M/s DLF Commercial Complexes Ltd. to sell the development rights derived from the Land Owning persons to M/s DLF Commercial Complexes Ltd including the rights to market, sell, transfer, convey the retail/office/entertainment centre/parking spaces(s)/other commercial space(s) in the multistoreyed buildings that was to be constructed on the said Plot of Land, collect advances, receive sale consideration and act on all incidental issues/matters relating thereto.

- c. That the complaint is also barred by limitation. The respondent had sent letter dated 27.06.2014 whereby it was intimated to the complainant that Occupation Certificate in respect of DLF Corporate Greens had been issued by the competent authorities on 19.06.2014. Physical possession of the Commercial Unit/Office had been offered by the respondent to the complainant vide letter dated 09.01.2015. Instead of obtaining possession, the complainant chose to ignore the aforesaid offer of possession and addressed frivolous correspondence.
- d. That the complainant instead of making the outstanding payments proceeded to demand compensation and further, unscrupulously and deceitfully sought to delay the payment of stamp duty, registration charges and interest-bearing maintenance security in respect of the office space subject matter of the present complaint on absolutely erroneous and specious grounds. The limitation period for challenging the offer of delivery of physical possession as invalid has expired long ago. The complaint is liable to be dismissed on this ground alone.

- e. That vide letter dated 01.07.2010 the complainant was informed that M/s DLF Commercial Complexes Ltd had been amalgamated with DLF Retail Developers Ltd. Furthermore, vide letter dated 30.08.2010 it was conveyed to the complainant that the name of DLF Retail Developers Ltd stood changed to DLF Universal Ltd. Furthermore, the real estate business of M/s DLF Universal Ltd. has merged/amalgamated into M/s DLF Home Developers Ltd vide order dated 29.03.2016 of the Hon'ble High Court of Punjab and Haryana. Since the complainant has failed to implead DRDL and the Land Owning Persons as parties to the present complaint and therefore the complaint is bad for non-joinder and mis-joinder of necessary parties. The complaint is liable to be dismissed.
- f. That the complainant expressed her desire to takeover physical possession of the Said Unit. An Indemnity cum Undertaking dated 17.12.2015 had been voluntarily and consciously executed by the complainant in respect of the Said Unit. The complainant in the said Indemnity cum Undertaking that all payments had been made by her strictly in conformity with terms and conditions of the agreement and that she had no claim of any nature against the respondent, including but not limited to timely payment rebate, early payment rebate and compensation for delayed possession.
- g. Thereafter, letter dated 12.10.2015 had been issued by the complainant to the respondent wherein it was falsely claimed by the complainant that she had been compelled to sign the Indemnity cum Undertaking, and that certain amount of the complainant was being illegally, utilised by the respondent.
- h. That even thereafter, the complainant refused to come forward to obtain physical possession of the Said Unit from the respondent. No lapse or delay with regard to delivery of physical possession can be attributed to the respondent.

- i. That the subject unit had been booked for purchase by the complainant so as to on short term profit therefrom. However, at no point of time, any guarantee of escalation in price/value had been given by the complainant. The complainant was unable to realise the anticipated profits which the complainant had conjured in her mind. On this account the complainant was never inclined to obtain physical possession of the subject unit from the respondent. The complainant was conscious and aware of the fact that once she proceeded to obtain physical possession of the subject unit from the respondent, she would be liable to pay maintenance charges on a monthly basis. On this account also the complainant was completely disinclined to obtain physical possession of the subject unit. Baseless imputations have been levelled by the complainant.
- j. That letter dated 08.08.2017 had been sent by the respondent to the complainant along with final statement of accounts. By virtue of the aforesaid letter, it was intimated that the respondent had availed Alternative Tax Compliance Scheme introduced by Haryana, Excise and Tax Department and therefore VAT amount would be liable to be paid by the complainant to the respondent.
- k. Thereafter, letter dated 22.01.2018 had been sent by the respondent to the complainant intimating to the complainant that pro rata property tax was liable to be paid by the complainant against the subject unit. The complainant failed to make payment of the aforesaid amount.
7. All other averments made in the complaint were denied in toto.
8. 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.

9. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

10. 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

11. 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.

12. 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.

F. Findings on the objections raised by the respondent

F.I Objection regarding complaint being barred by limitation.

13. The respondent herein contends that the complaint is barred by limitation but as regard to limitation, the cause of action is continuous and recurring since possession is not yet delivered. The delay is ongoing. Hence, this objection stands rejected.

G. Findings on the relief sought by the complainants.

G.I To get possession of her commercial unit/office space complete with all amenities as per the terms of BBA.

G.II To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities)

G.III To get an order in her favour by directing the respondent party to issue a fresh offer of possession after refraining the respondent from charging Rs.2,36,250/- under the head Other Costs and Rs.88,231/- under contingency Deposit. Justification: Therese charges are illegal and not the part of cost of the unit and there is no valid offer of possession after receipt of OC.

14. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. The factual matrix of the case reveals that an application for allotment was submitted by Mr. Devinder Gupta (the original allottee) to the respondent on 30.06.2008. Thereafter, an agreement to sell was executed on 12.12.2009 between the original allottee and the complainant in respect of the subject unit. Subsequently, a Space Buyer's Agreement was executed between the complainant and the respondent on 20.05.2010 for a total sale consideration of Rs.94,34,450/- with respect to the unit no.CG1-417, Tower-1 admeasuring 1621 sq. ft. As per Clause 10.2 of the said agreement possession of the subject unit was to be handed over within 36 months from the date of allotment.

16. The complainant herein contends that the respondent failed to hand over possession of the subject unit within the agreed period, i.e., by 30.06.2011, calculated from the date of the allotment dated 30.06.2008. However, upon

perusal of the documents, it is observed that the document dated 30.06.2008 is merely an application for allotment submitted by Mr. Devinder Gupta and cannot be construed as an allotment letter. Therefore, the due date of possession is computed from the date of execution of the Space Buyer's Agreement dated 20.05.2010, which is the only contractual document between the complainant and the respondent. Accordingly, the due date of possession comes out to be 20.05.2013.

17. The complainant has further submitted that the respondent obtained the occupation certificate on 19.06.2014 and issued an offer of possession on 09.01.2015. However, in the meantime the occupation certificate was put in abeyance by the competent authority through a show cause notice dated 17.12.2014, directing the respondent to refrain from offering possession to allottees until compliance with the conditions mentioned in memo dated 19.06.2014. The said show cause notice was subsequently withdrawn on 24.06.2015 by the DTCP. Therefore, the offer of possession dated 09.01.2015 cannot be considered valid as the respondent was under restraint from issuing any offer of possession during that period.
18. The Authority observes that the respondent was granted occupation certificate on 19.06.2014 by the competent authority. However, a show cause notice dated 17.12.2014 was issued by the DTCP, directing the respondent not to offer possession to any allottee. The relevant portion of the said show cause notice is reproduced hereinbelow:

"In view of above lapses on your part, the permission granted vide memo no. 13122 dated 19.06.2014 to occupy the building is kept in abeyance and you are directed not to offer further possession to the allottees to occupy the said building till compliance of all the terms & conditions of memo dated 19.06.2014 is made, and also to show cause within a period of 15 days of issue of this letter as to why occupation certificate dated 19.06.2014 should not be withdrawn/cancelled."

19. Subsequently, the said show cause notice dated 17.12.2014 was withdrawn by the DTCP vide order dated 24.06.2015. The relevant portion of the said withdrawal order is reproduced hereinbelow:

"In view of the above, I am directed to inform you that show cause notice bearing memo no. 28359 dated 17.12.2014 is withdrawn."

20. In the meantime, despite the occupation certificate being in abeyance, the respondent issued an offer of possession to the complainant on 09.01.2015. The complainant has rightly objected to the same on the ground that the respondent was legally restrained from offering possession pursuant to the DTCP's order dated 17.12.2014. The Authority is of view that the occupation certificate regained its original force and validity upon withdrawal of the show cause notice on 24.06.2015, thereby restoring the occupation certificate issued on 19.06.2014. Since, the offer of possession dated 09.01.2015 was issued during the period when the occupation certificate was in abeyance, the same has no legal validity as on the date of issuance. However, the Authority notes that the occupation certificate held in abeyance on 17.12.2014 became effective again on 24.06.2015, since the bar imposed by DTCP with respect to issuance of offer of possession was withdrawn by it vide letter dated 24.06.2015 itself. In view of the above, the offer of possession issued on 09.01.2015 would be deemed to have come into effect on 24.06.2015.

21. Herein, the complainant intends to continue with the project and is seeking delay possession interest 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."

22. Clause 10.2 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"10.2

Schedule for Possession of the said Premises:

The Intending Seller based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Premises within a period of thirty six (36) months from the date of allotment of the said premises unless there shall be delay or there shall be failure due to reason mentioned in Clauses (11.1), (11.2), (11.3) and Clause (39) or due to failure of Intending Allottee(S) to pay in time the total sale price of the said premises."

(Emphasis Supplied)

23. **Due date of possession and admissibility of grace period:** As per clause 10.2 of buyer's agreement, the respondent has proposed to handover the possession within a period of 36 months from the date of allotment of the subject unit. As already elaborated above the authority calculated due date of possession from the date of space buyer agreement dated i.e. 20.05.2010 which comes out to be 20.05.2013.

24. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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%.

(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.*

25. 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.

26. 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., 02.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

27. 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;"*

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

29. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in

contravention of the Section 11(4)(a) of the Act by not handing over possession to the complainant by the due date as per the agreement dated 20.05.2010. By virtue of clause 10.2 of the agreement, the possession of the subject apartment was to be delivered by 20.05.2013 for the reasons mentioned above.

30. In the present complaint, the offer of possession was made by the respondent on 09.01.2015. However, since the Occupation certificate dated 19.06.2014, on the basis of which the offer was held in abeyance during this period it can only be deemed to have come into effect after the said order of the competent authority was withdrawn on 24.06.2015. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 20.05.2013 till the deemed valid date of offer of possession (24.06.2015) plus two months i.e., 24.08.2015.
31. It is pertinent to note that the complainant had approached the Hon'ble NCDRC bearing complainant no. 1811 of 2018 for the relief of *refund* with the respect to the present unit and withdrew his complainant on 14.12.2023 and has now approached this Authority for grant of delay possession charges as he wishes to retain the unit.
32. 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 @ 10.85% p.a. w.e.f. 20.05.2013 till 24.06.2015 (the date on which the show cause notice bearing no. 28359 dated 17.12.2014 for keeping the OC of the project in abeyance was withdrawn by the DTCP) plus 2 months in terms of Section 18 (1) of the Act of 2016 read with Rule 15 of the Rules.

G.IV To get an order in her favour by directing the respondent party to get the Conveyance Deed executed with respect to the complainant's unit/office space.

33. The complainant is seeking directions for the execution of conveyance deed.

Section 17 (1) and proviso of the Act of 2016 provide as under:

"Section 17: - Transfer of Title

17(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.

34. The Authority is of view that promoter is under an obligation to get conveyance deed executed in favour of the complainant as per the section 17(1) of the Act, 2016. Whereas as per Section 19(11) of the Act of 2016, the allottee is 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 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

G.V To get an order in her favour by directing the respondent party to refund the Car Parking charges of Rs. 5,40,000/- (Five Lacs Forty

Thousand) with interest. Justification: The basement is part of the common area and the Builder can not dual charge for one place.

35. The builder buyer agreement executed between the parties contains a detailed breakup of total price of the unit in para 1.1 of the agreement. In view of the said clause the car parking charges of Rs.5,40,000/- were separately included in the break-up of total sale price of the subject unit. The charges for car parking raised recovered by the respondent are in terms of buyer's agreement. Hence, no relief is made out for refund the car parking charges.

G.VI To get an order in her favour by directing the respondent party to provide area calculation (Carpet area, loading & Super area).

36. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

G.VII To get an order in her favour by restraining the respondent(s) from asking indemnity/undertaking for possession of the flat (as language/contents of undertaking indemnity/undertaking format are contrary to law and against the principle of natural justice).

37. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **"Varun Gupta V. Emaar MGF Land Ltd**

G.VIII To initiate proceedings against the Respondent under Section 59 of the Act, for non - registration of the project, as the OC of the project was obtained after coming into force of RERA/HARERA.

38. No substantial argument has been put forward by the complainant in the pleadings or submissions before the Authority in this regard. Therefore, no findings are returned on this issue.

H. Directions of the Authority.

39. 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) of the Act:

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e. 10.85% per annum for every month of delay from due date of possession i.e. 20.05.2013 till 24.06.2015 (i.e. the date of show cause notice no. 28359 dated 17.12.2014 vide which the OC for the project was kept in abeyance and was withdrawn by the DTCP) plus 2 months in terms of Section 18 (1) of the Act of 2016 read with Rule 15 of the Rules.
- ii. The respondent shall not levy interest for delayed payment from the complainant for the period during which the OC was kept in abeyance.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges. The respondents/promoter shall handover possession of the unit and execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining completion certificate/part CC from the competent Authority.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.

v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by ***Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.***

vi. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

40. Complaint Stands disposed off.

41. File be consigned to the registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Arun Kumar)

Chairman

Date:02.09.2025