BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4255 of 2023**
Date of complaint	:	**06.10.2023**
Date of order	:	**01.10.2025**

Balraj Singh,
R/o: - 8, Ladywood Road, Sutton Cold Filed,
United Kingdom-B742SN. **Complainant**

Versus

IREO Private Limited
Regd. Office At: C-4, First Floor,
Malviya Nagar, New Delhi- 110017. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Harprit Singh Arora (Advocate) **Complainant**
MK Dang (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se.*

A. Project and unit related details

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

S. No.	Heads	Information
1.	Project name and location	"Ireo City" at sector 60, Gurgaon, Haryana
2.	Licensed area	329.923 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no.	63 of 2009 dated 03.11.2009 for 110.144 acres 107 of 2010 dated 2012.2010 for 139.838 acres 60 of 2012 dated 11.06.2012 for 79.941 acres
5.	RERA registered/not registered	**Not Registered**
6.	Plot no.	ICP-B-B05-01 (page no. 87 of complaint)
7.	Plot measuring	314.43 sq. yd. [page no. 87 of complaint] Decrease in area- 264.45 sq. yards (page 91 of complaint)
8.	Date of provisional allotment	25.07.2011 (page no. 27 of complaint)
9.	Date of environment clearance	24.12.2013 (page no. 50 of reply)
10.	Date of execution of plot buyer's agreement	19.06.2012 (page no. 35 of complaint)
11.	Date of consent to establish	14.02.2014 (page no. 61 of reply)
12.	Possession clause	***11.1 Possession and Holding Charges*** *Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including*

		but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the offer of conveyance of the said plot to the Allottee ***within a period of 36 months from the date of receipt of requisite approvals*** *("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 months ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.*
13.	Due date of delivery of possession	14.02.2017 [calculated from the date of consent to establish] Note: Grace period is not allowed.
14.	Total consideration	Rs.1,54,29,247/- [as per payment plan on page no. 69 of complaint]
15.	Total amount paid by the complainants	Rs.1,46,69,326/- [as per SOA on page 85 of reply]
16.	Completion certificate	Not on record
17.	Offer of possession	20.12.2021 (page 89 of complaint)
18.	Conveyance deed	09.12.2022 (page 92 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That the complainant vide application in the month of March, 2011 has applied for a residential plot and was allotted a unit bearing no. ICP-B-B05-01, measuring 314.43 sq. yds., in the project of the respondent named IREO CITY, at Sector-60, Gurugram, vide allotment letter dated

25.07.2011, for a consideration price of Rs.1,10,05,050/-. Thereafter, a builder buyer's agreement was also executed between the parties, regarding the said allotment. The complainant had opted for construction linked plan, and had made timely payments to the extent of Rs.1,45,12,110.65/- through cheques and bank transfers.

II. The construction in the project was not carried as per scheduled commitments, but the respondent kept on raising demands for payments. Keeping in view the pace of construction, and the intentions of the respondent, the complainant preferred not to commit default while making timely payments, in the project of the respondent. The complainant expressed his desire to know the status of construction in the project. However, the respondent allured and motivated the complainant to assure timely delivery of possession of the unit.

III. That the respondent had charged an exorbitant rate of interest, under the pretext of delayed payment on the part of complainant, on unauthorized demands, which were not due on the date, the same were raised which is totally arbitrary, amounting to unfair trade practice, keeping in view that the payment plan was construction linked plan.

IV. That due to inordinate delay in delivery of possession, respondent was under obligation to calculate and adjust delay compensation, as per RERA norms, which was not done. Rather unnecessary and unauthorized charges were imposed in the alleged final demand, which is raised without obtaining completion certificate and occupancy certificate, against the mandatory provisions of statutory norms under the Act.

V. That imposing exorbitant charges in the form of unauthorized delay interest, and other charges, which are not applicable even, is an act of unfair trade practice, on the part of respondent, for which the complainant prays for the waiver, apart from prayer of delay penalty at the prescribed rate/s, as per RERA norms, as applicable for the time being in force. It is further pertinent to submit here that the offer of possession was made on 20th December, 2021, without obtaining completion certificate, with a further demand of stamp duty of around eight lacs, which was paid to the respondent. It is pertinent to submit here that the complainant raised a concern for reduced area in the said offer of possession, but the respondent assured that the deficiency shall be made good, and the booked area shall be delivered. It is submitted that the conveyance deed was got executed on 9th of December, 2022, and was handed over to the complainant vide covering letter dated 6th January, 2023. It was noticed after the execution of conveyance deed that the area of the plot stands decreased, to 265.45 sq. yds., whereas the payment for the booked area i.e., 314.43 sq. yds., was charged from the complainant, which amounts to unfair trade practice, and the respondent had not fulfilled its assurance of delivering the booked area of the plot.

C. **Relief sought by the complainant:**

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

   I. Direct the respondent to refund of excessive amount charged for the reduced area.

   II. Direct the respondent to pay delay possession charges as per Act.

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 has contested the complaint by way of reply and written submissions dated 17.09.2025 on the following grounds: -

i. That the plot buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.

ii. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.

iii. That the complainant after checking the veracity of the credentials of the respondent had applied for allotment of a plot vide application for provisional allotment in 'Ireo City' project of the respondent dated 01.03.2011. The complainant agreed to be bound by the terms and conditions of the application for provisional allotment. The complainant had paid a sum of Rs.10,00,000/- as initial booking amount and receipt dated 17.03.2011 in this behalf was issued by the respondent.

iv. That based on the said application, the respondent vide its provisional allotment offer letter dated 25.07.2011 allotted to the complainant plot no. ICP-B-B05-01 having tentative super area of 314.43 sq. yards for a sale consideration of Rs.1,54,29,247/- which is exclusive of applicable taxes, stamp duty, registration charges etc. It is submitted that the complainant signed and executed the plot buyer's agreement on 19.06.2012.

v. That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan. The complainant has made belated part-payments on several occasions after multiple reminders were sent by the respondent. It is pertinent to note that the complainant is a willful defaulter and is not entitled for any relief.

vi. That in terms of the plot buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise development could not have been undertaken in the absence of the necessary approvals. The approval of part demarcation and zoning plan for plotted colony area measuring 29.794 acres in sector 60 under licenses no. 63 of 2009, 107 of 2010 and 60 of 2012 was applied on 16.08.2012. In the present case, it may be noted that the environment clearance issued by State Environment Impact Assessment Authority, Panchkula for the plotted development of 29.79 acres at Sector 60 for which licenses no. 63 of 2009, 107 of 2010 and 60 of 2012 were issued was granted on 24.12.2013. It is pertinent to mention here that it has been specified in Clause 1 of Clause A of the environment clearance of the said project that the consent to establish has to be obtained before starting the development of the project. It is submitted that the consent to establish of the said project was granted on 14.02.2014. Therefore, the pre-condition of obtaining all the requisite approvals was fulfilled only on 14.02.2014. In terms of clause 11.1 and 11.3 of the agreement, the proposed time for handing over of possession expired only on 14.08.2018.

vii. That the respondent completed the development of the project and had applied for the grant of part completion certificate on 12.05.2016 for the area admeasuring 29.79 acres for which licenses no. 63 of 2009, 107 of 2010 and 60 of 2012 were granted. Thus, after completing the development work of the project in a timely manner, the respondent did everything within its powers and control for obtaining requisite approvals from the competent authority to handover possession to the allottees. However, the respondent came to know on making enquiries in the concerned offices that the authorities in question were not processing such applications of the respondent and even of other developers on the ground that some CBI probe was ordered regarding proposed acquisition and release of land measuring about 1400 acres due to which the respondent also suffered unnecessarily and badly without any fault on its part. Under these circumstances, the requisite approvals were not being issued by the concerned authorities and accordingly the respondent could not have offered the possession to the complainant. However, the Hon'ble Apex Court vide its order dated 25.08.2020 titled as "Jai Naryana @ Jai Bhagwan & Ors. Vs State of Haryana & Ors." held that the Occupation Certificate be issued by the concerned authorities. Furthermore, it has been observed in the said order that the conveyance deeds would be subject to the ultimate outcome of the CBI investigation. The time lost on account of the court orders and CBI investigation falls under the ambit of the definition of 'force majeure' condition as defined in Clause 1 of the plot buyer's agreement as the same was beyond the reasonable apprehension and control of the respondent. Moreover, the DTCP vide its memo dated 03.03.2021, has held that the period from 01.11.2017 to 30.09.2020 would be zero period because the approvals were withheld by the department.

viii. That after completing the internal infrastructure i.e. internal roads, street lighting, water pipeline, sewerage etc., the respondent offered permissive possession of the said plot to the complainant vide its letter dated 08.05.2018. The letter offering permissive possession had been issued by the respondent in order to facilitate physical demarcation. Thereafter, demarcation was carried out in the presence of the complainant and the size of the plot allotted to the complainant came to be 265.45 sq. yds. The complainant had no objection regarding the reduction in size of the plot and the said fact was also confirmed by the complainant vide his email dated 17.12.2021. Accordingly, after no objection the complainant himself and as per the terms of the plot buyer's agreement, the respondent issued notice of possession for the reduced plot size i.e. 265.45 sq. yards along with statement of account on 20.12.2021.

ix. That the complainant then got executed conveyance deed bearing vasika No. 17695 dated 09.12.2022 in his favour in respect of the said plot admeasuring 265.45 sq. yards from the respondent wherein, the complainant had accepted the reduced size of the plot out of his own free will, consent, without any force, coercion or any outside pressure. The complainant had satisfied himself with not only the development made at the site but also the final demarcation of the size and location of the plot in question. It was further undertaken by the complainant that he shall not raise any objection or make any claims against the respondent in respect of any reason whatsoever. Moreover, prior to the execution of the conveyance deed bearing vasika No. 17695 dated 09.12.2022, the actual, physical and vacant possession of the plot had been obtained by the complainant vide possession letter dated 24.02.2022. The reduced area of the plot was duly mentioned in the said possession letter dated 24.02.2022 and no objection whatsoever was ever raised by the complainant before filing of the instant highly false, baseless, misconceived and untenable complaint.

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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

9. 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.

F. Findings on the objections raised by the respondent.

F. I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

10. The respondent has submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The Authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017* which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*

> 122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

11. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

12. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of

above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F. II Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

13. The respondent has submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute. The Authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that Section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the Authority.

14. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi

(NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in *case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.III Objection regarding force majeure conditions.

15. The respondent has contended that it had completed the development of the project and had applied for the grant of part completion certificate on 12.05.2016. However, there was departmental delay in processing such applications of the respondent and even of other developers on the ground that some CBI probe was ordered regarding proposed acquisition and release of land measuring about 1400 acres due to which the respondent also suffered unnecessarily and badly without any fault on its part. Under these circumstances, the requisite approvals were not being issued by the concerned authorities and

accordingly the respondent could not have offered the possession to the complainant. The time lost on account of the court orders and CBI investigation falls under the ambit of the definition of 'force majeure' condition as defined in Clause 1 of the plot buyer's agreement as the same was beyond the reasonable apprehension and control of the respondent. Moreover, the DTCP vide its memo dated 03.03.2021, has held that the period from 01.11.2017 to 30.09.2020 would be zero period because the approvals were withheld by the department. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 14.02.2017. Further, the time taken in getting governmental approvals/clearances cannot be attributed as reason for delay in project. Moreover, the said period was ordered to be treated as zero period as far as the obligations of the respondent are concerned insofar as the dues and charges as appurtenant to the license only and not for statutory obligations under the Act, 2016. Thus, the respondent/promoter cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to refund of excessive amount charged for the reduced area.

16. The complainant has submitted that the conveyance deed was got executed on 09.12.2022 and was handed over to the complainant vide covering letter dated 06.01.2023. It was noticed after the execution of conveyance deed that the area of the plot stands decreased to 265.45 sq. yds., whereas the payment for the booked area i.e., 314.43 sq. yds., was charged from the complainant.

17. The respondent has submitted that the demarcation was carried out in the presence of the complainant and the size of the plot allotted to the complainant came to be 265.45 sq. yds. The complainant had no objection regarding the reduction in size of the plot and the said fact was also confirmed by the complainant vide his email dated 17.12.2021. The complainant also got executed conveyance deed bearing vasika No. 17695 dated 09.12.2022 in his favour in respect of the said plot admeasuring 265.45 sq. yards from the respondent wherein, the complainant had accepted the reduced size of the plot out of his own free will, consent, without any force, coercion or any outside pressure. The complainant had satisfied himself with not only the development made at the site but also the final demarcation of the size and location of the plot in question. It was further undertaken by the complainant that he shall not raise any objection or make any claims against the respondent in respect of any reason whatsoever.

18. After considering the documents available on record as well as submissions made by the parties, the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except for the statutory rights under the Act of 2016. Moreover, relevant clauses of the conveyance deed dated 09.12.2022 is reproduced hereunder for ready reference:

> *"J. That after approval of the part Zoning Plan, the final detail of the Allotted Plot was intimated by the Vendor to the Vendee vide Notice of Possession dated 24.02.2022 wherein the detail of the Allotted Plot was confirmed as under: - Plot No. ICP-B-B05-01 (Plot No. 145 as per approved part Zoning Plan) admeasuring 265.44 Sq. yds. (221.91 Sq. Mtrs.) more particularly described in the schedule, forming part of this Deed (hereinafter referred to as the said "plot"). The Site Plan of Ireo City Plots – Phase-I is annexed herewith as Annexure-I, Layout Plan of the said Plot is annexed herewith as Annexure-II and copy of the letter for part zoning plan bearing Memo No. ZP-582-C/AD (RA)/2021 6762 dated 15.03.2021 is annexed herewith as Annexure-III. It is specifically clarified by the Vendor and accepted by the Vendee that the Site*

Plan depicted herein as Annexure-I. The Vendor accepted the said Plot by its free will and consent, without any force, coercion, outside pressure of any nature, whatsoever.;

1.4. That the Vendee has already taken the actual physical vacant and peaceful possession of the said Plot after demarcation at site in the presence of the Vendee, has been delivered to the Vendee before signing and execution of this deed and the Vendee confirms the taking over of the possession of the said Plot to its complete satisfaction as to the area and location of the said Plot. And the Vendee assures that the Vendor shall not raise any objections or make any claim against the vendor in respect or for any other reason whatsoever any such claim or objection, if any, shall be deemed to have been waived off by the vendee.

19. The complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of decreased area charges or any other charges. Also, it is a matter of record that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means. The complainant could have asked for the above claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed, the complainant cannot seek any refund of charges other than statutory benefits, if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no relief in this regard can be effectuated at this stage.

G. II Direct the respondent to pay delay possession charges as per Act.

20. The complainant intends 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.""

(Emphasis supplied)

21. Clause 11.1 of the plot buyer's agreement (in short, the agreement) dated 19.06.2012, provides for handing over possession and the same is reproduced below:

11.1

Possession and Holding Charges

"Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the offer of conveyance of the said plot to the Allottee ***within a period of 36 months from the date of receipt of requisite approvals*** *("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 months ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."*

22. The respondent promoter has proposed to handover the possession of the subject plot within a period of 36 months from the date of receipt of requisite approvals and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the respondent.

23. On a bare reading of the clause 11.1 of the agreement, it becomes apparently clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is so vague and ambiguous in

itself. Nowhere in the agreement it has been defined that fulfilment of which conditions form a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for completion of the construction of the plot in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject plot. It seems to be just a way to evade the liability towards the timely delivery of the subject plot. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the Authority is of the view that the date of consent to establish i.e., 14.02.2014 ought to be taken as the date for determining the due date of possession of the plot in question to the complainant. Therefore, the due date of possession comes out to be 14.02.2017.

24. **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.

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., 01.10.2025 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%.**

27. 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 by the due date as per the agreement. By virtue of clause 11.1 of the buyer's agreement executed between the parties, the possession of the subject plot was to be delivered by 14.02.2017. As per the official website of DTCP, Haryana as well as documents available on record, an application for grant of part completion certificate for the project in question was made to the

competent authority on 12.05.2016, but no part CC/CC has been granted for the said project till date. It is observed that in terms of the order dated 25.08.2020, passed by the Hon'ble Apex court in civil appeal titled as "Jai Naryana @ Jai Bhagwan & Ors. Vs State of Haryana & Ors.", the possession of the plot in question has been offered to the complainant vide notice of possession letter dated 20.12.2021 and conveyance deed of the plot in question has also been executed in his favour on 09.12.2022. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject plot and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 19.06.2012 to hand over the possession within the stipulated period.

28. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to 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 the prescribed rate i.e., @10.85% p.a. w.e.f. 14.02.2017 till offer of possession plus 2 months 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.

H. Directions of the authority

29. 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 complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 14.02.2017 till offer of possession plus two months 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. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

30. Complaint stands disposed of.

31. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 01.10.2025