BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**3400 of 2021**
Date of filing :		**10.09.2021**
Date of decision	:	**19.08.2025**

Vibha Gandhi
R/O: H.no. 825, 2nd floor, Arjun Nagar Kotla Mubarakpur, New Delhi

Complainant

Versus

M/S Alpha Corp Development Private Limited
Registered office at: Golf View Corporate Towers, Tower-A, Sector-42, Gurugram 122002

Respondent

CORAM:
Shri Arun Kumar — **Chairman**
Shri Ashok Sangwan — **Member**

APPEARANCE:
Sh. JM Chhabra (father of complainant) — **Counsel for Complainant**
Sh. Vikas Verma (Advocate) — **Counsel for 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 there under or to the allottees 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. N.	Particulars	Details
1.	Project name and location	Gurgaon One, Sector 84 Gurugram
2.	Allotment letter to original allottee	20.01.2011 [pg. 25 of complaint]
3.	Date of Agreement For sale with original allottee	03.09.2011 [pg. 25 of complaint]
4.	Endorsement	01.12.2011 [pg. 26 of complaint]
5.	Unit No.	D1203, Tower D [pg. 30 of complaint]
6.	Unit area admeasuring	1181 sq. ft. [pg. 30 of complaint]
7.	Possession clause	***Clause 12 of BBA*** *The construction of the Apartment is proposed to be completed by the Owners/Company within 36 (thirty six) months (plus 6 months grace period) from the date of start of ground floor roof slab of the particular tower (building) in which the booking is made, subject to timely payment by the Allotee(s) of sale price, stamp duty and other charges due and payable according to the Payment Plan applicable to him/her/them and/or as demanded by the Owners/ Company, and subject to force majeure provisions.*
8.	Due date of Possession	03.03.2015 (Due date of possession calculated from the date of execution of BBA i.e., 03.09.2011 as the date of start of construction is not known + grace period of 6 months)
9.	Sale consideration	₹38,14,630/- (as per BBA at Page no 31 of complaint)

10.	Total amount paid by the complainant	₹46,17,465/- (as alleged by the complainant)
11.	Offer of Possession	13.10.2017 [pg. 54 of complaint]
12.	Occupation Certificate	09.10.2017 [pg. 72 of complaint]
13.	Handover of possession	27.03.2021

B. Facts of the complaint

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

a. The Complainant owns a Flat No. D-1203 in the Project. "GURGAON ONE" developed by M/s Alpha Corp Development Private Limited, Gurugram. The Developer issued a Final Demand "At the time of Possession" on 13.10.2017. In this Demand, the Developer charged a sum of ₹3,21,966/-on account of extra Super area of 89 Sq. ft. and ₹2,92,898/- on account of Escalation. This was contested and a number of emails were exchanged, but the Builder could not give any satisfactory response. He however halved these charges and issued a revised Demand with a condition that this reduction will be claimed only by those Buyers who withdraw Court cases filed against Alpha Corp or any of its subsidiary or employees and also give an undertaking that they will not file cases in any Courts after taking possession of the Flat. This condition of the Builder/Developer was not acceptable to us and the Developer was also not willing to accept the amount of Demand excluding the amount charged on account of extra super area/escalation and give possession of the Flat. The Developer could not give any proof/evidence/paperwork for justification of both these unreasonable demands. This resulted in filing of this case against the Developer for his obstinate behavior and also infringement of the Fundamental rights of

the individual. The old case filed vide case No. HRR/GRG/CRN/490/2018 may kindly be linked with this case.

b. In the Demand dated 13.10.2017, the Builder also paid delayed possession charges @ Rs. 5/-per sq. ft as mentioned in clause 12.1 of the Apartment Buyer Agreement executed on 3rd September, 2011. Both the delayed period and DPC as calculated by the Builder are also not acceptable as the delay period (36 months plus 6 months grace period) of handing over the flat should be calculated from the date of execution of the Builder Buyer Agreement which is on 03.09.2011 and not from the date of start of ground floor roof slab of the particular Tower/(building) in which the booking is made which Builder has stated to be 06.11.2012. Also, no force majeure can be claimed by the Builder as no natural calamity had taken place during this period. The old case HRR/GRG/CRN/490/2018 was decided on 10.12.2019. In this Judgment the Hon'ble Authority directed the Complainant to take the possession of the Flat within one month on a fresh Demand to be calculated on the basis of the Judgment where DPC was granted @10.20% and other reliefs were also granted by the Hon'ble court. The Builder didn't honor the Judgment and didn't hand over the -19- possession to the Complainant but filed an appeal in the Real Estate Appellate Tribunal, Chandigarh against this judgement. While the Hon'ble Tribunal remitted back the case to Hon'ble Authority for retrial, it also directed the Builder to handover the possession of the Flat to the Complainant on payment of ₹2,00,000/- as interim relief. The Builder filed another Appeal in the Punjab & Haryana High Court, Chandigarh against this interim relief. The Hon'ble High Court, passed an order directing the Builder to handover the possession of the Flat on payment

of ₹3,00,000/-. The same was paid to the builder promptly and the Builder finally handed over the possession of the Flat on 28.03.2021. In view of the discussion above, the Hon'ble Authority is requested to kindly calculate 3 years 6 months i.e. the period of construction from the date of signing of the Apartment Buyer Agreement which comes to 03.03.2015 and hence DPC to be calculated till date of possession i.e. 28.03.2021. The payment of delayed possession charges contained @ Rs. 5/- per sq. ft. is not in consonance with the order in Section 18 (1) of the RERA Act, 2016 and clause 15 of the Notification of 2017 of the Director, Town & Country Planning, Chandigarh. In the Judgment dated 10.12.2019, passed in the original case No, HRR/GRG/CRN/490/2018, DPC @ of 10.20% was allowed, which may kindly be maintained.

c. Charges for Additional Area - Regarding charging for additional area the Demand dated 13.10.2017, the Builder was asked time and again to supply documentary evidence regarding addition of land in the Project "Gurgaon-One" but he couldn't supply. Even during the trial of the original case, the Respondent/Builder was asked on 11.04.2019 to supply a copy of the Original Building Plan approved by the Director Town & Country Planning, Chandigarh showing the Super area etc. and the OC issued thereof, but the Builder couldn't supply any documents. Noe on checking the reply filed by the Builder/Respondent in case No. HRR/GRG/CRN/490/2018, I could find that the Builder has attached some documents which shows 12.515 acres of land of the Project viz. (i) copy of order dated 28.10.2009 issued by the Director, Town & Country Planning, Chandigarh granting a licence for setting up of a Group Housing Colony in the Revenue Estate of Village Sihi Sector-84 of Gurgaon Manesar Urban Complex. The approval shows an area of

12.515 acres of the project. The same was renewed on 27.12.2013 with the same area (ii) Order approving the revised Building Plans dated 30.11.2011. This order also shows an area of the Project as 12.515 acre (iii) the letter of the Company addressed to the Director-General, Town & Country Planning seeking Occupation Certificate of the Project. This also shows an area of 12.515 acres and (iv) even the OC issued by the Director, Town & Country Planning, Chandigarh, also shows an area of the Project as 12.515 acres. Thus, it is seen that no extra area has been added by the Builder in the land of the Project. In a recent Judgment dated 26/8/2020 of NCDRC, -20- New Delhi in Consumer case No. 285 of 2018, Pawan Gupta V/s Experion Developers Pvt. Ltd, it was decided that Builder's demand for extra money on account of alleged increase in sale area is illegal. The Hon'ble Supreme Court also affirmed NCDRC order by dismissing Builder's Appeal. In this case also there is no increase in the total area of the Project. So, the demand of the Respondent/Builder for an extra area of 89 sq. ft is illegal and unwarranted.

d. Also, in the Demand dated 13.10.2017, The Builder has charged ₹2,92,898/- on account of " Escalation". In Para 4.1 of the Apartment Buyer Agreement, it has been mentioned that the Basic sale price has been calculated on the basis of the current prevailing sale price of input materials. Escalation in sale prices of input materials and services, if any, as per the Wholesale Price Index (WPI) shall be borne by the Allottee (s). The Escalation, if any, in the same shall be absorbed by the Owners/Company to the extent of 5% (five percent) over and above such price increase as per WPI and any escalation over and above the said 5% is to be payable by the allottees, subject to a maximum limit of

15% (fifteen percent) over and above such price increase as per the WPI. The Builder has failed to mention the cost of construction taken into account while calculating the Basic Sale Price. What was the whole sale price of the input materials used for construction of the building/apartment is not mentioned in this para. He even failed to attach any calculation sheet of escalation with the Possession letter. The calculation becomes necessary because as mentioned in para 4.1, if the increase is up to 5%, the entire amount on account of escalation will be borne by the Builder/Promotor and if the escalation surpasses 5% but remain up to 15%, the entire escalation shall be borne by the Allottee and even if the escalation further goes beyond 15%, the Builder/ Promotor will ask the allottee to bear the entire amount of escalation. In the event of allottee not willing to pay such escalation then he has the choice to surrender the flat. In that event, the Builder has the right to refund him the amount paid by the allottee without any interest and also only after the flat is sold by the Builder/Promotor to the third party. It is the duty of the Builder/Promotor to calculate the cost of construction based on the wholesale Price index year wise to determine the cost of construction and inform the buyers at regular interval so that an Allottee is well aware of the increase in the cost of the flat and is not stunned at the time of receipt of the possession letter. Also, any escalation of cost due to delay in construction which is fault of the Builder cannot be passed on the Buyer. Since the Builder/Promotor has not provided any detail of whole sale price of input materials used for construction of the building/apartment either in para 4.1 of the Apartment Buyer Agreement or failed to provide or attach with the possession letter, he can't charge any amount on account of" Escalation"

from the Buyer's/allottee(s). It is worthwhile to mention here is that the Builder/Promotor knew that there is no increase in the cost of construction, he himself reduced this amount of escalation by 50% later on so that he can fill his coffer. In the Judgment dated 10.12.2019 in the original case No. HRR/GRG/CRN/490/2018, the Hon'ble Authority has held the escalation charges as unjustified stating that the respondent cannot link the escalation charges with the Wholesale price index. Hence the same should be maintained.

e. Also the Car parking charged by the builder ₹2,50,000/- is unjustified since it is provided just in a reserved area in the Basement which is already part of Super Area/Common Area (as per clause 11.3 of the Apartment Buyer's Agreement) and has already been charged by the Builder in the Saleable area. The Builder could have charged for Car parking separately if he had provided an exclusive Garage which is what we expected and paid for it. It is thus, clear that the promoter has no right to sell ' stilt parking spaces' as these are neither 'flat ' nor appurtenant or attachment to a 'flat'. Under the circumstances and the discussion above, the Builder may be directed to refund ₹2,50,000/- paid to him as Car Parking Charge.

f. During Appeal proceedings before the Hon'ble High Court, the Builder presented a new Demand and we were shocked to see that the Builder has added holding and maintenance charges for the flat for a period before the possession was handed over to the Complainant (The same was also observed by the Hon'ble High Court as unjustified in the Order dated 01.03.2021. Even though Builder was directed by the Hon'ble Authority to give Possession in the Order dated 10.12.2019. In the said Judgment, it was also mentioned that if the Complainant didn't take the

possession of the Flat within One month from the date of uploading of the Judgment, the Holding Charges will arise. But it was Builder who didn't give the possession of the Flat despite all efforts by the Complainant. So, the payment of Holding Charges does not arise. The possession of the Flat was ordered to be handed over to the Complainant on the Orders of Hon'ble Appellate Tribunal and Hon'ble Punjab & Haryana High Court because the possession of the Flat was not given due to the obstinacy of the Builder, the question of payment of Maintenance Charges before the date of handing over of the possession of the Flat i.e. 28.03.2021 does not arise. The same should be withheld and Builder should not charge holding/maintenance or any other charges till the date of possession i.e. 28.03.2021. Also, the maintenance charges should be calculated on the original Super Area and not the increased Super Area.

C. Relief sought by the complainant:

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

   a. Grant of delayed possession charges from the date of Execution of the Apartment Buyer Agreement till the date of handing over of the Possession.

   b. Reversal of Charges for unjustified extra area of 89 sq. ft. as mentioned in the Demand dated 13-10-2017.

   c. Reversal of unjustified Escalation Charges of Rs. 2,92,898/- as mentioned in the Demand dated 13-10-2017.

   d. Refund of Car Parking charges of Rs.2,50,000/-as the Builder provided Car Parking in the Basement which he already charged as part of Super Area and also in violation of the Judgment of Hon'ble Supreme Court in

case No. 2544 of 2010, Nahal Chand Laloo Chand Pvt. Ltd. Versus Panchal Cooperative Housing Society Ltd.

e. The Builder/Promotor may be asked to charge Maintenance charges of the Flat from 28.03.2021 as the possession of the Flat was handed over on 28.03.2021 with the intervention of the Hon'ble Appellant Tribunal, Hon'ble Punjab & Haryana 3- High Court and the Hon'ble Authority. Also, the maintenance charges should be calculated on the original Super Area i.e., 1181 sq. ft. and not on the increased Super Area.

f. The Builder may be directed not to charge holding charges as the Builder was opposing giving Possession of the Flat all through till the Hon'ble courts interfered and ordered to give the Possession.

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 on the following grounds.

a. That it is submitted that the Real Estate (Regulation and Development) Act, 2016 being parliamentary legislation, jurisdiction thereunder could never be exercised in a manner as to encroach upon the exclusive domain of matters governed by State laws of Haryana which admittedly are laws referable to List II of the Seventh Schedule of the Constitution of India, and the jurisdiction of authorities constituted there under, such as the Director General, Town and Country Planning, Haryana.

b. That the other proposition of law, which is now well settled by the law declared by the Hon'ble Supreme Court of India is that the Real Estate (Regulation and Development) Act, 2016 does not have retrospective application. That admittedly in the instant case, the project in question

stands constructed pursuant to licenses granted by the Director General, Town and Country Planning, which is an authority constituted under the Haryana Development and Regulation of Urban Areas Act, 1975. This a law relating to colonization, referable to Entry 18, List II of the Seventh Schedule to the Constitution of India. Further, the Haryana Building Code, 2017 is also a state law, as opposed to being a Parliamentary legislation.

c. That accordingly, jurisdiction under the Real Estate (Regulation and Development) Act, 2016 would have to be exercised giving deference to the approvals granted under State laws of Haryana, and accordingly, the project having been ready to be occupied as far back as December 27, 2016, by a deeming fiction created by the state laws of Haryana, assumption of jurisdiction over the Respondents by way of the instant complaint would constitute a retrospective application of the Real Estate (Regulation and Development) Act, 2016, aside of being an encroachment into the exclusive domain of the Director General, Town and Country Planning, Haryana, Chandigarh.

d. That it is manifest upon a reading of Section 88 of RERA, 2016, which provides 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...", that Parliament could not have, and did not intend to, supplant the provisions of or encroach into the jurisdiction of State laws, which have been enacted by the respective State Legislature.

e. That in any event, delay on the part of the statutory authorities in granting approval to the answering respondent, could not clothe the complainant with a right or invest this Ld. Authority with jurisdiction. That pertinently, one aspect on which the statutory regime remained

consistent, despite such change of law, was that the there was no change effected in respect of the deeming fiction of law that continued untrammelled from the Haryana Building Code, 2016, in terms of which the Petitioner had applied.

f. That Rule 2(o) imbibes the wisdom of the deeming fiction of law under the Haryana Building Code, 2016 and Haryana Building Code, 2017, and is a reiteration of settled law that the Real Estate (Regulation and Development) Act, 2016 has no retrospective application. This Hon'ble Authority being a creature of the Real Estate (Regulation and Development) Act, 2016, therefore would not act contrary to Rule 2(o) above.

g. That therefore, there is no gainsaying that the instant proceedings are not amenable to the jurisdiction of this Hon'ble Authority and the complaint ought to be disposed at the threshold itself, on this ground above. That without prejudice to the pleas canvassed above, even if the instant complaint is found to be within jurisdiction, it would be incumbent upon this Hon'ble Authority to appropriately mould the application of the statute so as to ensure that its consequences remain consistent with the statute not having retrospective application. A fortiori, the statutory regime could not be applied to the Respondents in a manner that results in retrospectivity through the back door, and rewriting of affairs that took place admittedly at a point of time in the past when enactment of the Real Estate (Regulation and Development) Act, 2016 was not even contemplated. Any approach to the contrary exposes the statute to a charge of unconstitutionality and is in the teeth of law declared by the Hon'ble Supreme Court of India in Newtech

Promoters and Developers (P) Ltd. v. State of U.P., 2021 SCC OnLine SC 1044.

h. The Respondent No. 2 will be filing an application under Section 8 of the Arbitration and Conciliation Act, 1996, in due course, to amplify upon and elaborate upon its plea for the disputes to be referred to arbitration. Accordingly, those aspects are not being repeated to avoid undue prolixity of pleadings herein. The pleas that would be taken in that application may be then read as part and parcel of the instant reply. The reference to arbitration would also mean that the agreed seat of arbitration being New Delhi, it would operate to oust the jurisdiction of all forums at Gurugram including this Ld. Authority. Accordingly, the answering respondent submits that this Ld. Authority may be pleased to act consistent with the law declared in Reliance Industries Ltd. v. Union of India, (2014) 7 SCC 603, that an agreement as to seat is clearly in the nature of an exclusive jurisdiction clause that ousts the jurisdiction of other forums.

i. That it is therefore evident that the Complaint was originally filed seeking very limited reliefs – the first relief claimed above being in respect of amounts charged on account of, firstly, extra common area, and secondly, escalation in demand; and the second relief being in respect of possession. So far as the second relief above, the position that obtains today is that possession has already been handed over to the Complainant in compliance with the orders of the Hon'ble Real Estate Appellate Tribunal, Chandigarh and the Hon'ble High Court of Punjab & Haryana, Chandigarh, which is without prejudice to the rights of the Respondent.

j. That the Respondent herein had been served with a copy of the first Complaint above. There was no Application filed along with the said Complaint, praying for leave in terms of the principles underlying Order II Rule 2(3) of the Code of Civil Procedure, 1908 [hereinafter "CPC"]. Accordingly, the Complainant would be taken to have omitted/ relinquished his right to seek any further relief in respect of the cause of action in respect of which the Complaint was filed, other than the reliefs expressly sought therein. The principles underlying Order II, Rule 2 of the CPC are a part of the public policy of India, and accordingly, even in other statutes where analogous provisions do not exist, the application of these principles has been affirmed by the Hon'ble Supreme Court of India, as well as various High Courts. The Respondent craves leave of this Hon'ble Authority to refer to and rely upon such judgements at the stage of hearing.

k. That, accordingly, it is submitted that, to the extent the Complainant has sought to enlarge the scope of the present Complaint by adding prayers 1, 4, 5 and 6, and pleadings in support thereof, it is an abuse of the process of law that ought to be nipped in the bud being in the teeth of the principles underlying Order II, Rule 2 of the CPC. The Respondent submits that adjudication of any of the matters implicating prayers 1, 4, 5 and 6, and any pleading or document connected thereto would be a manifest error of jurisdiction on the part of this Hon'ble Authority.

l. That it appears that the ingenious device by which the Complainant has been able to achieve this outcome of post facto enlarging the scope of the proceedings is by purporting to "refile" her Complaint in the format "CRA" as the Complainant has herself conceded in paragraph 6 of the order dated 01.02.2021 passed by the Hon'ble Appellate Tribunal in

Appeal No. 73 of 2020. The fact remains that the Respondent herein was never served with a copy of the said Complaint, and as noted in the order passed by the Hon'ble Appellate Tribunal, a finding was suffered that the said Complaint had been sent at a wrong email address, and the Hon'ble Authority had itself not communicated the next date of hearing to the Respondent.

m. That so far as the fact that the scope of the original Complaint had been enlarged by amending the Complaint and adding other reliefs, the Complainant herein suffered a further finding that Respondent herein having not filed a reply to the amended Complaint, "...the case will require the re-trial in accordance with law. Thus, we have no other option but to remand the case to the learned Authority...", as is apparent from paragraph 22 of the said order. Further, in paragraph 24 of the order, it was reiterated that "...the present Appeal is hereby allowed, the impugned order dated 10.12.2019 passed by the learned Authority is hereby set aside and the case is remanded to the learned Authority for fresh decision by following the principles of natural justice and in accordance with law...". Therefore, this is the very first opportunity where the Respondent has been able to invite the attention of this Hon'ble Authority to the sleight of hand of the Complainant, and place on record its objections thereto, so that it may be adjudicated in accordance with law inasmuch as there has been no opportunity till date to contest the amendment carried out to the Complaint by Complainant herein. It is settled law that any finding rendered in such ex parte proceedings that have been conducted in the earlier round, would have to be treated as having been rendered coram non judice, and a nullity in the eyes of law.

n. That it further bears emphasis that the matter had been carried in Appeal before the Hon'ble High Court of Punjab & Haryana at Chandigarh in RERA-APPL-32 of 2021 (O&M) and in compliance of the directions passed therein, possession of the unit had been handed over to the Complainant on 27.03.2021.

o. That accordingly, it follows that on a plain reading of the prayers in the 3rd Complaint, and the pleadings and documents in support thereof, vis-à-vis the first Complaint, there is no escaping the fact that the Complainant has acted in the teeth of the principles underlying Order II, Rule 2 of the CPC. Without prejudice to the above, it is submitted that the matter can be considered from another perspective, i.e. the impermissibility of amending the Complaint again and again in respect of facts that were to the knowledge of the Complainant right from the time the first Complaint was filed. By either yardstick, the inevitable outcome is the same, i.e. in respect of facts that the Complainant was fully aware of from the very outset, successive Complaints cannot be filed enlarging the scope of the proceedings at her whims and fancies.

p. That further without prejudice to the above, it is submitted that the conduct of the Complainant is downright contemptuous and seeks to undermine the majesty of the forums constituted under RERA, 2016, inasmuch as she has deliberately misconstrued the orders passed to try and secure a benefit for herself, which is completely impermissible in law.

q. That in addition to the above, it is further submitted without prejudice that the Complainant is estopped from seeking reliefs in respect of the matters prayed, when she herself has performed the ABA without

demur or protest ever since 2011, and has never raised an objection contemporaneously in respect of the matters now complained of.

r. That further without prejudice to the above, it is submitted that the reliefs claimed at Serial Nos. 4, 5 and 6, which pertain to parking charges, maintenance charges and holding charges, are also hopelessly barred by limitation, inasmuch as the same were known to the Complainant ever since she entered into the Apartment Buyers Agreement in 2011.

s. That accordingly, it is submitted that the present Complaint may be dismissed at the threshold, leaving it open to the Complainant to prosecute the Complaint originally filed by her, if she desires, or in the alternative, the additional pleadings, documents and prayers that have been added post facto may be struck out by this Hon'ble Authority in exercise of inherent powers in principles of principles underlying Order VI, Rule 16 of the CPC.

t. That, nevertheless, in the para wise reply below, the Respondent for the sake of completeness, is initially replying only to the allegations in the first Complaint, and thereafter, without prejudice to his rights and remedies in law, under a separate section, providing its Response to the remainder of the allegations, which it continues to maintain, would constitute an error of jurisdiction on the part of this Hon'ble Authority, if entertained. In point of fact, the Respondent would urge this Hon'ble Authority to decide this aspect at the very outset, for which a separate application is being preferred, so as to ensure that the Complainant is not able to derive any mileage from the sleight of hand practiced by her.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

9. 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) The promoter shall-*
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act 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 complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Grant of delayed possession charges from the date of Execution of the Apartment Buyer Agreement till the date of handing over of the Possession.

11. In the present complaint, 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."*

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

> *"The construction of the Apartment is proposed to be completed by the Owners/Company within 36 (thirty six) months (plus 6 months grace period) from the date of start of ground floor roof slab of the particular tower (building) in which the booking is made, subject to timely payment by the Allotee(s) of sale price, stamp duty and other charges due and payable according to the Payment Plan applicable to him/her/them and/or as demanded by the Owners/ Company, and subject to force majeure provisions."*

13. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction. The due date of possession is calculated from the date of execution of BBA i.e., 03.09.2011 as the date of start of construction is not known. The period of 36 months expired on 03.09.2014. Grace period of 6 months is allowed being unqualified. Accordingly, the due date of possession comes out to be 03.03.2015.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.

15. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

16. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.08.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

17. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

18. 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 the complainant in case of delayed possession charges.

19. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, 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 12 of the buyer's agreement executed between the parties, the possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction. Therefore, the due date of handing over possession comes out to be 03.03.2015. In the present case, the complainant was offered possession by the respondent on 13.10.2017 after obtaining occupation certificate dated 09.10.2017 from the

competent authority. Upon examination, the Authority notes that the respondent has handed over the possession of the unit on 27.03.2021 i.e., after a lapse of approx. 4 years from the date of offer of possession. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.

20. 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 prescribed rate of the interest @ 10.85% p.a. w.e.f. 03.03.2015 till actual handing over of possession i.e., 27.03.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

F.II. Refund of Car Parking charges of Rs.2,50,000/-as the Builder provided Car Parking in the Basement which he already charged as part of Super Area.

21. The Authority observes that the complainant had agreed to pay car parking charges in addition to the total cost of the apartment, as stipulated in Clause 1.5 of the Builder-Buyer Agreement (BBA) dated 03.09.2011. The payment schedule attached to the BBA also specifies an amount of ₹2,50,000/- towards car parking charges. Accordingly, the complainant is liable to pay the said car parking charges.

F.III. Reversal of Charges for unjustified extra area of 89 sq. ft. as mentioned in the Demand dated 13.10.2017.

F.IV. Reversal of unjustified Escalation Charges of Rs. 2,92,898/- as mentioned in the Demand dated 13.10.2017.

F.V. The Builder may be directed not to charge holding charges as the Builder was opposing giving Possession of the Flat all through till the Hon'ble courts interfered and ordered to give the Possession.

22. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

F.VI. The Builder/Promotor may be asked to charge Maintenance charges of the Flat from 28.03.2021 as the possession of the Flat was handed over on 28.03.2021.

23. In the present complaint, the respondent has obtained the occupation certificate on 09.10.2017 from the competent authority and thereafter, offer the possession on 13.10.2017. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 15, that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee.

24. Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession.

G. Directions of the authority

25. 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):

a. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 03.03.2015 till actual

handing over of possession i.e., 27.03.2021. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

b. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

c. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

d. The rate of interest chargeable from the allottees 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.

e. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

f. 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.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.08.2025