

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

Complaint no.: 2944 of 2024
Date of decision: 01.10.2025

1. Pawan Anand
2. Rachna Anand

Both R/o:- 1/3, West Patel Nagar, Central Delhi,
Delhi-110008.

Complainants**Versus**

1. M/s. Godrej Highview LLP
Office: Godrej One, Floor-5th, Pirojshanagar
Eastern Express Highway, Vikhroli,
Mumbai-400079.

**Respondent
no.1**

2. M/s. Aum Shri Hotel and Resorts
Address: 902A, Floor-9th, D-Mall,
Netaji Subhash Place, Pitampura.

Respondent no.2**CORAM:**

Ashok Sangwan

Member**APPEARANCE:**

Kuldeep Kohli (Advocate)
Rohan Malik (Advocate)

**Complainants
Respondent
no.1****ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided

under the provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of project	"Godrej Nature Plus"
2.	Nature of project	Group Housing
3.	Location of project	Village-Dhunela, Sector-33, Sohna, Gurugram, Haryana.
4.	DTCP License	License no. 01 of 2014 dated-03.01.2014
5.	RERA registered	Registered Vide registration no. 18 of 2018 Dated-30.01.2018
6.	Allotment Letter	07.04.2022 (As on page no. 51 of complaint)
7.	Agreement For Sale	03.11.2022 (As on page no. 80 of complaint)
8.	Unit no.	0903, Floor-9 th , Building-G (As on page no. 82 of complaint)
9.	Unit area	77.53sq.mtr [Carpet Area] (As on page no. 82 of complaint)
10.	Possession clause	Clause 7. POSSESSION

		<i>7.1 The Promoter assures to ahnd over possession of the Apartment for Residential alongwith parking (if applicable) to the Allotttee on or before 30th day of June 2023 (as may be mentioned in customer BBA) unless there is delay or failure due to "force majeure". [Emphasis supplied]</i> <i>(As on page no. 87 of complaint)</i>
11.	Due date of possession	30.06.2023
12.	Sale consideration	Rs.1,16,00,555 /- <i>(As on page no. 83 of complaint)</i>
13.	Amount paid	Rs.1,04,40,499.28/- <i>(As per Statement of Accounts dated 17.05.2024 on page no. 77 of complaint)</i>
14.	Occupation certificate	03.04.2023
15.	Offer of possession	Not on record

B. Facts of the complaint

3. The complainants have pleaded the following facts:

- I. That the brochure issued by the developers spoke of a "Distinctive Living", which was described as "Presenting An Exclusive Health LAND Mark". The complainants were induced by the assurances and representations made by respondent no. 1 and signed an application form for one unit and made a payment of Rs.9,60,056/- towards booking of a 2 BHK unit with private deck / terrace unit no. 903, Tower G in project "Godrej Nature Plus" situated at Sector 33, Sohna, Gurugram, Haryana measuring 77.53 sq. meters (carpet area). The total cost being Rs.1,16,00,555/- (inclusive of EDC and IDC, Parking



charges, PLC, Government fee / taxes / levies, common areas, interest free maintenance security, GST).

II. That the complainants subsequently made the following payments:

<i>Sr. No.</i>	<i>RECEIPT DATE</i>	<i>AMOUNT</i>
1.	31.03.2022	5,80,028.00
2.	31.03.2022	3,80,028.00
3.	11.04.2022	2,00,000.00
4.	22.02.2023	3800.28
5.	22.02.2023	2000.00
6.	02.03.2023	660,408.00
7.	03.03.2023	49,50,000.00
8.	03.03.2023	2,622,588.00
9.	06.03.2023	9,65,157.00
10.	31.03.2023	38,245.00
11.	31.03.2023	38,245.00
12.	22.02.2023	-2,000.00
13.	22.02.2023	-3,800.28
14.	14.04.2023	3,800.28
15.	14.04.2023	2,000.00
	TOTAL	10,440,499.28

III. That on 03.11.2022, the complainant executed an "Agreement for Sale" for the said unit in the project and the same was registered on 03.11.2022.

IV. That the Clause no 7.1 of the Agreement for Sale dated 03.11.2022 reads as under:

7.1 Schedule for possession of the said Apartment for Residential - The Promoter agrees and understands that timely delivery of possession of the

Apartment for Residential along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1) (f) of Rules, 2017, is the essence of the Agreement.

The Promoter assures to hand over possession of the Apartment for Residential along with parking (if applicable) to the Allottee on or before 30th June 2023 (or as may be mentioned in customer BBA) unless there is delay or failure due to "force majeure", war, flood, drought, fire, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature, reasons beyond the control of the Promoter, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project (Force Majeure). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment for Residential

- V. Therefore, had to be given to the complainants by the respondent no. 1 by 30.06.2023. That since the time of booking and during the years of 2022 & 2023, the complainants have been meeting the representative of the respondent no. 1 regularly seeking clarity concerning the status of the project and the delivery date but unfortunately the representatives of respondent no. 1 have been giving vague reasons for the delay in the project assuring that all the efforts are being made to deliver the project on priority.
- VI. That after losing all hope from the respondent and having shattered and scattered dreams of owning a unit and also losing a considerable amount of time and money (as per the buyer's agreement dated 03.11.2022 the complainant never received the letter of possession and till now the area looks far from complete and habitable as is evident from the status report provided by company.
- VII. That the complainant has been diligently making the payments as per the demands of the respondent hoping that the possession will be delivered to them soon. But the hopes have been completely shattered

as the respondent has failed to intimate the complainant of any date of delivery of possession of the plot.

- VIII. That the project is nowhere near completion. The complainants had booked the unit in the entire complex which had to be provided with all the facilities. The complainant had not booked a standalone unit. Therefore as held by the Honourable Supreme Court, the entire set of amenities including roads, parks and all other facilities as stated earlier have to be provided and offered with the unit.
- IX. It is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric (distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.
- X. The promoter is selling a unit for which possession is given after obtaining occupation certificate and occupation certificate is granted under code 4.10 of Haryana Building Code, 2017 wherein the competent authority grants occupation certificate only after completion of necessary infrastructural work as mentioned therein meaning thereby that the water supply, sewerage, electricity, road, drainage etc. have been provided by the promoter and it is all but natural that providing of

such services is necessary for making a unit habitable and ready for possession to the allottee.

- XI. External Development Charges are paid to the government in lieu of providing external infrastructure. The terms "External Development Works" has been defined in section 2 (w) of the Act as follows:

"2 (w). In this Act, unless the context otherwise requires, - ("external development works" includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws".

- XII. In the considered opinion of the Authority, in *Varun Gupta Vs. Emaar India Ltd.*, it has been held that if the allottee has already paid these charges and hence all the above facilities are required to be provided to the allottee before the offer of possession is given to the allottee by the respondent no. 1.
- XIII. That the cause of action accrued in favour of the complainants and against the respondent on the date when the respondent entered into their respective Agreement, it also arose when the respondent inordinately and unjustifiably delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the respondent has not been delivered the unit and the infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day-to-day basis.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
- Direct the respondent to pay interest at the prescribed rate of interest of 10.75% per annum for every month of delay on the amount paid by the complainants from the due date of possession plus 2 months.

- ii. To handover the unit in a habitable condition and execute the Conveyance Deed in favour of the complainants after the receipt of the Occupation Certificate and a valid offer of possession for the unit in a habitable condition.
- iii. Direct the respondent to provide all the amenities as per the assurances given in the Brochure.
- iv. Direct the respondent not to charge anything from the complainants which is not a part of the Buyer's Agreement.
- v. Direct the respondent to ensure not to raise the demands in the Offer of Possession which are not a part of the Agreement like increase in the area, GST on corresponding amount, advance monthly maintenance beyond 12 months, additional EDC/IDC, additional maintenance, Electrification Charges, Sewerage & water charge, indemnity bond and in case any such illegal demands are raised by the respondent in the offer of possession, the same may kindly be declared as an invalid offer of possession.
- vi. Direct the respondent not to cancel the unit as the complainants are interested in taking possession of the property.
- vii. Direct the respondent not to create any third party rights in the unit as the complainants are interested in taking possession of the unit.
- viii. Direct the respondent not to charge Holding Charges at any point of time.
- ix. Direct the respondent not to charge maintenance charges till the time the physical possession along with all the amenities and the Conveyance Deed is handed over to the complainants.

- x. Direct the respondent to adjust the interest for the delayed possession from the outstanding dues if any, after getting a confirmation of the dues from the complainants.
5. On the date of hearing, the Authority explained to the respondents /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. Vide proceedings dated 03.09.2025, respondent no.2 i.e., Aum Shri Hotels and Resorts Private Limited was proceeded against ex-parte.

D. Reply by the respondent no.1

7. The respondent no. 1 has contested the complaint on the following grounds:
- I. The complainants being the educated persons, after satisfying themselves with the project, vide application form dated 31.03.2022, applied for allotment of unit no. 903, 9th Floor, Tower - G in the project for a sale consideration of Rs.1,16,95,755.27/-.
 - II. Pursuant to receipt of the requisite payment, the respondent allotted the said unit in favour of the complainants vide allotment letter dated 07.04.2022. Thereafter, the respondent called upon the complainants to execute the Agreement For Sale. In pursuance of the same, the AFS was executed on 03.11.2022 between the parties.
 - III. As per clause 7.1 of the AFS, the respondent assured to hand over possession of the apartment to the complainants on or before 30th June 2023 unless there is delay or failure due to "force majeure", war, flood, drought, fire, cyclone, earthquake, epidemic pandemic or any other calamity caused by nature, reasons beyond the control of the promoter, Court Orders, Government Policy/ guidelines, decisions affecting the regular development of the real estate project (Force Majeure). If, the completion of the project is delayed due to the above conditions, then



the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the apartment for residential.

- IV. Clause 9.1 of the AFS, categorically excludes liability of the respondent to pay any compensation in case of occurrence of a force majeure event, Court Orders, Government Policy/Guidelines, decisions affecting the timelines for offer of possession.
- V. That while the project was being developed in the year 2020, the entire world fell in the clutches of Covid 19 pandemic and the country was in complete lockdown for several months. It is reiterated that even the Government of India had declared Covid-19 as a *force majeure* event.
- VI. That the Authority also reviewed the situation independently and released an order dated 26.05.2020, wherein it has been clarified that all the registered projects with the Authority shall be extended automatically by 6 months, invoking force majeure clause. In view of the aforesaid, the registration of the project automatically got extended from 30.06.2023 to 30.12.2023.
- VII. Further, a brief of various difficulties that were faced by the Respondent while developing the project during the Covid -19 pandemic and thereafter, are mentioned herein below:

- a. *Due to second wave of covid, the construction workers went back to their hometowns. Movement of labourers to construction sites was further worsened due to closing of borders and lockdown imposed by other state governments. Other labourer issues such as 14 days quarantine, social distancing, frequent sanitisation of workplace etc. In view of the second wave, the Hon'ble Panchkula Authority granted respite to the Developers for 3 months (01.04.2021 to 30.06.2021) on the account of force majeure event i.e., specific to "second wave of covid 19". It is also a matter of common knowledge that second wave of covid 19 was much graver than the first wave and thus, the damage and slowdown that was caused due to second wave in the project was way more than 3 months. Acute shortage of imported material, raw material in the market owing to interstate import restrictions. Contractors refusing to execute works at site in view of increased prices in raw material like copper, aluminium etc.*

b. Market recession and negative customer sentiment towards real estate.

- VIII. At this juncture, it is imperative to highlight that business of construction is labour intensive and shortage of labour and material due to covid and reasons beyond the control of the respondent had led to slowdown of construction, thereby affecting the pace and schedule of construction of the project and thereby its expected handover dates.
- IX. It is further submitted that the adverse effects of Covid -19, which admittedly is a force majeure event and its effects in all spheres of life including the real estate sector are being faced even today. In fact, its crippling effects till June 2022 were duly recognised by the Hon'ble Supreme Court in a *suo motu* action in which the Hon'ble Supreme Court granted extension in limitation on court filings, let alone construction activities which are more labour-intensive activities. Therefore, it is clear that the timeline for delivery of possession stood extended due to force majeure events and the respondent is not in breach of any of its obligations.
- X. That apart from the restrictions imposed by the authorities in view of covid-19, various other authorities (including courts, pollution control boards/Air Quality management authorities) also banned construction activities in NCR Region. Vide Order dated 29.10.2018 ban was from 01.11.2018 to 10.11.2018, Order dated 24.12.2018 ban was from 24.12.2018 to 26.12.2018, Order dated 11.10.2019 ban was from 11.10.2019 to 31.12.2019, Order dated 04.11.2019 ban was from 04.11.2019 to 16.11.2019, Order dated 16.11.2021 ban was from 16.11.2021 to 21.11.2021 and Order 24.11.2021 ban period was 24.11.2021 to 20.12.2021 passed by various concerned authorities/courts, banning/ restricting various construction activities

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such as work time restrictions, use of DG sets at construction sites. These orders could not be anticipated. That total ban period under these orders is 142 days.

- XI. In addition to the above, there were restrictions/ban on construction activities in view of the Stage - III of Graded Response Action Plan ("GRAP") in NCR region. Total ban period in terms of these orders is 130 days.

DATE OF ORDER	DATE OF REVOCATION	NUMBER OF DAYS
29.10.2022	14.11.2022	17
04.12.2022	07.12.2022	04
30.12.2022	04.01.2023	06
06.01.2023	15.01.2023	10
02.11.2023	28.11.2023	27
22.12.2023	01.01.2024	11
14.01.2024	18.01.2024	05
14.11.2024	05.12.2024	22
16.12.2024	27.12.2024	12
03.01.2025	05.01.2025	03
09.01.2025	12.01.2025	04
15.01.2025	17.01.2025	04
29.01.2025	03.02.2025	06
		Total - 130

- XII. That despite facing odds of force majeure events (covid -19), the respondent kept the construction activity at full swing (in permissible limits) and received the Occupation Certificate on 03.04.2023. Therefore, it is submitted that since the signing of the AFS, the complainants were aware of the terms and conditions mentioned therein and despite of the knowledge of aforesaid force majeure events, which are already in public domain, and having agreed to the terms and conditions of the AFS, the complainants have filed present complaint and malafidely seeking possession along with interest on alleged delay in offer of possession. The aforesaid is being done in spite of occurrence

of "*force majeure event*" (outbreak of covid 19, declared as force majeure event).

- XIII. It is to be noted that the terms and conditions agreed in the AFS do not provide for any relief to the complainants without attributing any breach on the part of the respondent.
- XIV. In view of the same, no delay is attributable to the respondent in the present case as the development of the project was majorly hampered due to various Force Majeure events which was duly considered by the Authority. In view of the above, the complainants are not entitled to claim any compensation/ interest for any alleged delay in offer of possession. However, in complete ignorance of the above, the complainants have resorted to file the present complaint in order to arm twist the respondent and surrender to the unlawful demand of seeking interest on delay in delivery of possession of the unit.
- XV. In light of the above, the present complaint is liable to be dismissed as baseless and misconceived.

8. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

9. The Authority observed 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) 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; 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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding Force Majeure circumstances.

13. The respondent no.1 has taken an objection that the construction of the project was delayed due to force majeure conditions such as various orders passed by the concerned authorities (including courts, pollution control boards/Air Quality management authorities), outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which the construction activities

came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Agreement For Sale' was executed between the parties on 03.11.2022. As per clause 7 of the Agreement dated 03.11.2022, the due date for offer of possession of the unit

7. Possession

7.1 *The Promoter assures to hand over possession of the Apartment for Residential alongwith parking (if applicable) to the Allottee **on or before 30th day of June 2023** ("as may be mentioned in customer BBA") unless there is delay or failure due to "Force Majeure", war, flood, drought, fire, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature, reasons beyond the control of the Promoter, Court orders, Government Policy/guidelines, decisions affecting the regular development of the real estate project (Force Majeure). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment for Residential.*

[Emphasis supplied]

12. The Authority vide notification no. **9/3-2020** dated **26.05.2020** have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic and the same is also allowed to the respondent in lieu of the notification of the Authority. Thus, the due date of possession comes out to be 30.12.2023.
13. The respondent has submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc., but these were for a short period of time and are the events happening every year. The respondent no.1 was very much aware of these event and thus, the promoter/ respondent cannot be given any further leniency based on the aforesaid reasons.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to pay interest at the prescribed rate of interest of 10.75% per annum for every month of delay on the amount paid by the complainants from the due date of possession plus 2 months.

G.II To handover the unit in a habitable condition and execute the Conveyance Deed in favour of the complainants after the receipt of the Occupation Certificate and a valid offer of possession for the unit in a habitable condition.

G.III Direct the respondent to provide all the amenities as per the assurances given in the Brochure.

14. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainants booked a unit in the project namely "Godrej Nature Plus", being developed by the respondent in Sector-33, Sohna, Gurugram. Vide Allotment Letter dated 07.04.2022, the complainants were allotted a unit bearing no. 0903 on 9th Floor in Tower-G, in the project "Godrej Nature Plus" situated in Sector 33 of the respondent for a sale consideration of Rs.1,16,00,555/- and they have paid a sum of Rs.1,04,40,499.28/- till date. The Agreement For Sale was executed between the parties on 03.11.2022.

15. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

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

As per clause 7.1 of the Agreement For Sale executed between the complainants and the respondent, the possession of the unit was to be

handed over to the complainants on or before 30.06.2023 and the same is reproduced below:

“”....7

7. 1 POSSESSION

*The Promoter assures to hand over possession of the Apartment for Residential alongwith parking (if applicable) to the Allottee **on or before 30th day of June 2023** (“as may be mentioned in customer BBA”) unless there is delay or failure due to “Force Majeure”, war, flood, drought, fire, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature, reasons beyond the control of the Promoter, Court orders, Government Policy/guidelines, decisions affecting the regular development of the real estate project (Force Majeure). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment for Residential.*

[Emphasis supplied]

17. The Authority vide notification no. **9/3-2020** dated **26.05.2020** have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic and the same is also allowed to the respondent in lieu of the notification of the Authority. Thus, the due date of possession comes out to be 30.12.2023.

18. Admissibility of delay possession charges at prescribed rate of interest:

The complainants intends to continue with the project and are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

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

20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter

which is the same as is being granted her in case of delayed possession charges.

23. 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 7.1 of the agreement dated 03.11.2022, the due date was agreed to be 30.06.2023. Also the grace period of 6 months is granted to the respondent on account of Covid-19. Occupation certificate was granted by the concerned authority on 03.04.2023 **but the respondents have failed to offer possession of the unit to the complainants till date.** The complainants have annexed an email dated 20.05.2024 on record (Page no. 103 of complaint), in the said email, the respondent no. 1 has clearly mentioned that they are working towards sending the "Possession Intimation Letter" in respect of Tower-G, H and J. the same is reiterated below:

"Date:-18th April, 2024

To,

Mr. Pawan Anand

Unit No.-GODNPSG-0903

Greetings from Godrej Properties Ltd.!

*It gives us immense pleasure to share that we have now entered in the final phase of work at Godrej Nature Plus. We would like to apprise you that we shall soon be starting visits to your apartment followed by Possession/Handover process for Tower- G, H, J. **We are glad to inform you that we are working towards sending Possession Intimation Letter (PIL) of Tower-G, H & J within Q2 of FY25 followed by PIL of rest of the towers.***

We are happy to inform you that your tower is gradually taking shape with amenities such as Badminton Court, Kids Play Area, reflexology, Tennis Court, Cricket Pitch, and Half Basketball Court being ready. The landscaping is also shaping up well including trees, shrubs, and green covers.

We understand that you are eager to see your dream home taking shape. Hence, starting 4th May, 2024, we would like to invite you to for a visit to the site so that we can show your apartment, tower, and common amenities. Following after the visit in G, H, J we will conclude the remaining snagging, housekeeping work that

will make the unit ready for the possession and around Q2 of FY25 we will initiate the PIL followed by Registration Handover Formalities.

We hope you will appreciate that we plan to do this for all over 220+ customers for towers G, H, and J, and thus, we will extend our invite to each of you in a phased manner. Your Relationship Manager will be in touch to coordinate and schedule the date of the apartment visit.

Our intent in show your apartment is to help you assess the sense of space and better visualize how you would like to decorate

24. The Authority is of the view that there is delay on the part of the respondent to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 30.12.2023 to hand over the possession within the stipulated period.
25. 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. In the present complaint, the occupation certificate was granted by the competent authority on 03.04.2023 but the respondent has failed to issue the Offer of Possession to the complainants till date, despite receiving the Occupation Certificate two years back. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 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 till offer of possession plus two months, after receiving the Occupation certificate or actual handing over of possession, whichever is earlier.

26. 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 delayed possession at prescribed rate of interest i.e., 10.85 % p.a. w.e.f. 30.12.2023 till the expiry of 2 months from the date of offer of possession or actual handover whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
27. Further, the respondent is directed to offer the possession of the allotted unit (with all the promised amenities) within a period of 60 days after issuing the offer of possession to the complainants. The complainants with respect to obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupation certificate, after paying the outstanding dues.
28. The respondent is directed to execute Conveyance Deed in favour of the complainants in terms of Section 17 (1) of the Act, 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of offer of possession.
- G.IV Direct the respondent not to charge anything from the complainants which is not a part of the Buyer's Agreement.**
- G.V Direct the respondent to ensure not to raise the demands in the Offer of Possession which are not a part of the Agreement like increase in the area, GST on corresponding amount, advance monthly maintenance beyond 12 months, additional EDC/IDC, additional maintenance, Electrification Charges, Sewerage & water charge, indemnity bond and in case any such illegal demands are raised by the respondent in the offer of possession, the same may kindly be declared as an invalid offer of possession.**
29. The complainants have sought the above mentioned reliefs regarding various charges. The Authority observes that no demand on Offer of Possession has been made by the respondent to the complainants, till date as the Offer of

Possession has not been issued yet. Thus, the Authority cannot give directions in regard to any event that has not occurred yet. Although, the respondent is directed not to raise any demand on charges other than those mentioned in the Buyer's Agreement.

G.VI Direct the respondent not to cancel the unit as the complainants are interested in taking possession of the property.

G.VII Direct the respondent not to create any third party rights in the unit as the complainants are interested in taking possession of the unit.

30. The complainants are seeking directions to restrain the respondent from cancelling the unit of the complainants and not creating any third party rights on the unit. The Authority is of the view that there is neither any document on record showing the respondent's intention or willingness to cancel the allotment of the complainants' unit nor the respondent has taken any measures in this regard. Thus, the Authority cannot grant the said relief on mere apprehension of the complainants and the said reliefs are declined.

G.VIII Direct the respondent not to charge Holding Charges at any point of time.

31. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

32. Moreover, the respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of

the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

G.IX. Direct the respondent not to charge maintenance charges till the time the physical possession along with all the amenities and the Conveyance Deed is handed over to the complainants.

33. The respondent is entitled to charge maintenance charges as per terms and conditions of the buyer's agreement. In the present matter, the respondent has not obtained the Occupation Certificate from the competent authority. ¶ As per Section 11(4)(g) of the Act, 2016:

The promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of allottees.

34. This implies the promoter cannot shift maintenance cost to buyers before the possession offer. Thus, the respondent is only entitled to charge maintenance charges from the stage of "Valid Offer of Possession" after receiving the Occupation certificate, because maintenance charges are meant to cover the cost of upkeep and common area services from the point the property is ready for use by the buyer.

H. Directions of the Authority

35. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act:

- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 30.12.2023 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e.,

10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. 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.
- iii. The respondent is directed to provide an updated statement of accounts to the complainants within a period of one week from the date of this order and thereafter, the complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to offer possession of the allotted unit within 30 days from the date of this order. The complainants with respect to obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months from the date of offer of possession.
- v. The respondent is directed to execute conveyance deed in favour of the complainants in terms of Section 17 (1) of the Act, 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of obtaining Occupation Certificate.
- vi. The respondent-builder is directed not to charge anything which is not part of buyer's agreement
- vii. The respondent is further directed to 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 60 days of the order.

36. Complaint as well as applications, if any, stand disposed of accordingly.
37. File be consigned to registry.

Dated: 01.10.2025


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM